

Select Committee on Juvenile Offenders

Report on the Inquiry into Juvenile Offenders

Ordered to be printed on 29 July 2005 according to the
Resolution of the House

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Council. Select Committee on Juvenile Offenders.

Report on the Inquiry into Juvenile Offenders / Legislative Council, Select Committee on Juvenile Offenders. [Sydney, N.S.W.] : The Committee, 2005. – xix, 190 p. ; 30 cm. (Report ; no. 1)

Chair: Gordon Moyes.

“July 2005”.

“Ordered to be printed on 29 July 2005, according to the resolution of the House”.

ISBN 978-1-920788-08-7

1. Juvenile delinquents—New South Wales.
- I. Title
- II. Moyes, Gordon.
- III. Series: New South Wales. Parliament. Legislative Council. Select Committee on Juvenile Offenders. Report ; no. 1

364.3609944 (DDC22)

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Terms of Reference

1. That the provisions of the *Juvenile Offenders Legislation Amendment Bill 2004*, as passed by the House, be referred to a select committee for inquiry and report.
2. That, notwithstanding the generality of paragraph 1, the Committee examine in particular the following matters:
 - (a) the reasons for, and the consequences of, the transfer of management responsibility for the Kariong Juvenile Justice Centre from the Department of Juvenile Justice to the Department of Corrective Services including the impact on staff at Kariong and Baxter detention centres
 - (b) whether the transition of Kariong Juvenile Justice Centre into a juvenile correctional centre operated by the Department of Corrective Services is the most effective method of addressing management problems at that centre,
 - (c) the issue of adult detainees sentenced as juvenile offenders at Kariong and elsewhere in the juvenile detention centre system,
 - (d) the classification system and appropriateness of placements for detainees,
 - (e) alternatives to the establishment of a juvenile correctional centre,
 - (f) the wider social implications of incarcerating juveniles in juvenile correctional centres run by the Department of Corrective Services,
 - (g) management of staff assault issues in the juvenile justice system,
 - (h) whether incarcerating juveniles in juvenile correctional centres achieves reduced recidivism, rehabilitation and compliance with human rights obligations.
3. That, notwithstanding anything contained in the standing orders, the Committee consist of six members, comprising:
 - (a) two government members,
 - (b) Ms Cusack and Mr Lynn, and
 - (c) Revd Dr Moyes and Dr Wong.
4. That the Chair of the Committee be Revd Dr Moyes.
5. That the Committee report by 29 July 2005.

These terms of reference were referred to the Committee by Resolution passed 9 December 2004, Minutes No 88, Item 30, pp 1205-1210

Committee Membership

Revd the Hon Dr Gordon Moyes MLC	Christian Democratic Party	<i>Chair</i>
Hon Catherine Cusack MLC	Liberal Party	
Hon Amanda Fazio MLC	Australian Labor Party	
Hon Charlie Lynn MLC	Liberal Party	
Hon Eric Roozendaal MLC	Australian Labor Party	
Hon Dr Peter Wong MLC	Unity Party	

Table of Contents

	Chair's Foreword	xii
	Summary of Recommendations	xiv
	Glossary	xix
Chapter 1	Introduction	1
	Conduct of the inquiry	1
	The management of juvenile offenders in NSW	2
	The broad objectives of juvenile justice	2
	The NSW Department of Juvenile Justice	3
	Department of Corrective Services	6
	Differences between the DJJ and DCS as they relate to this report	8
	Major conclusions and recommendations	9
	Structure of the report	9
Chapter 2	Kariong Juvenile Justice Centre and reasons for the transfer	11
	Background to Kariong	11
	NSW Ombudsman – Inquiry into Juvenile Justice Centres (1996)	12
	Detection and Management of Illicit Drugs (DAMOID) Report (1997)	12
	Report of Review Team into Security & Related Issues at Juvenile Justice Centres (1997)	12
	Shier and Sherlock Inquiry (1999)	12
	D.P. Rodgers: Report into Security and Related Issues, Kariong Juvenile Justice Centre (1999)	12
	NSW Ombudsman – Investigation into Kariong (2000)	12
	Council on the Cost and Quality Government Review of Juvenile Justice Centres (2000)	13
	Johnston and Dalton Report (2002)	13
	Johnston Report (2003)	13
	Dalton Report (2004)	13
	The Fish Payne Pattenden Viney Pty. Ltd Report (2004)	13
	Recent notable events	14
	Problems at Kariong Juvenile Justice Centre	14
	Management and staffing	15
	Security and safety	15
	Programming and detainee management	15
	Kariong culture	16
	Departmental oversight	16
	Critical incidents	16
	The NSW Government view	16

	Mismanagement of Kariong	17
	Political imperative?	18
	Lack of consultation	19
	Conclusion	20
	Profile of young offenders	20
Chapter 3	Impact of the transfer	23
	Evidence from staff	23
	Impact on Kariong staff	23
	Displacement and redeployment	24
	Uncertainty and loss of permanency	25
	Inhibited career prospects	26
	Frank Baxter Juvenile Justice Centre	27
	Speed of the transfer and lack of consultation with staff	28
	Other effects	28
	Conclusion	29
	Impact on the operation of Kariong	30
	Has the transfer addressed management problems?	30
	Has the transfer been effective?	31
	Immediate change	31
Chapter 4	Consequences of the transfer – the legislation	36
	<i>The Juvenile Offenders Legislation Amendment Act 2004</i>	36
	The amendments in brief	36
	Juvenile correctional centres	37
	Change to section 19 orders: court may order that a juvenile offender serve sentence of imprisonment <i>as a juvenile offender</i>	38
	Transfers ‘up’: changes to section 28 and the new section 41C	38
	Section 28 before the amendments	38
	Section 28 after the amendments and the new section 41C	39
	Transfer from juvenile detention centre to juvenile correctional centre	39
	Transfer from juvenile correctional centre to adult correctional centre	40
	Transfers ‘down’: changes to section 10 and the new section 41C	42
	Section 10 before and after the amendments	42
	Transfer from juvenile correctional centre to detention centre	42
	Transfer from adult correctional centre to juvenile correctional centre	42
	Concerns about the new legislative powers	43
	Potential for more juvenile correctional centres	43
	Removal of court’s discretion under section 19	43
	Transfer powers generally	44
	Power to transfer from detention centre to juvenile correctional centre	44

	Power to transfer from juvenile correctional centre to adult correctional centre	47
	Conclusion	53
Chapter 5	Classification	54
	Classification and placement	54
	Purpose of classification	54
	Old for new	54
	New security classification categories	56
	Reclassification	56
	Classification, transfers and the <i>Juvenile Offenders Legislation Amendment Act 2004</i>	56
	Abuse of the system	58
	Conclusion	59
Chapter 6	Rehabilitation and recidivism	61
	Rehabilitation for juvenile offenders	61
	The role of the DJJ and the DCS in rehabilitation	62
	DCS and its management of Kariong Juvenile Correctional Centre	64
	Conclusion	68
	The need for effective rehabilitation programs	69
Chapter 7	Adults in juvenile justice	73
	Principle of separation	73
	International obligations	73
	Domestic law	74
	How do adults enter the juvenile justice system?	75
	Appropriateness of adults in the juvenile justice system	77
	Problems with the current system	77
	Benefits of the current system	78
	Other issues	79
	Do adults provoke misbehaviour?	79
	When is an adult not an adult?	79
	Conclusion	80
Chapter 8	Human rights issues for juveniles	82
	International human rights instruments	82
	The relevant instruments	82
	The status of these instruments in Australia	82
	The UN Rules are not binding	84
	Relevant Articles in the Convention on the Rights of the Child	84
	Relevant rules in the Beijing Rules	85

	Relevant rules in the Rules for Protection of Juveniles Deprived of their Liberty	85
	Australasian Standards for Juvenile Custodial Facilities	86
	The <i>Standards</i>	86
	Stated variations to standards under the Department of Corrective Services	87
	Concerns about compliance with human rights obligations and Standards	87
	The transfer of children into adult correctional centres	87
	Management of juveniles by the Department of Corrective Services	88
	Using force and disciplinary powers	93
	Conclusion	97
Chapter 9	Other systemic issues	100
	Issues concerning Indigenous young people	100
	Over-representation	100
	Transfer of Kariiong	101
	Dislocation from communities	101
	Conclusion	102
	Mental health issues	103
	Numbers of offenders with a mental illness	103
	Adequacy of the system	103
	Addressing mental health issues within the system	105
	Conclusion	106
	State wards in the juvenile justice system	107
	Young offenders with intellectual disabilities	109
	Dispersal versus centralised detainment for serious young offenders	110
	Staff assaults	112
	Departmental changes to the prevention of staff assaults	113
	Risk assessment and programming	118
	Casualisation of the workforce	119
	Recruitment and training	121
	Training (DCS)	124
	Performance review	125
	Policy implementation and consultation	125
Chapter 10	Wider consequences of the transfer	128
	Is this the <i>most</i> effective solution?	128
	Legislative	129
	Cultural	129
	Impact on other Centres	131

	Conclusions	132
Chapter 11	Alternatives to establishing a juvenile correctional centre	135
	Previous report and recommendations	135
	NSW Ombudsman Report (2000)	135
	Johnston and Dalton Report	135
	Dalton Report	136
	Other Alternatives	138
	The 'Dispersal Model'	138
	Establish an interim facility	142
	Diversion from custody	142
	Custodial interventions	144
	Consultation	145
Chapter 12	Conclusions and major recommendations	149
	Conclusions and recommendations	149
Appendix 1	Submissions	155
Appendix 2	Witnesses and Site Visit	156
Appendix 3	SORC and SYORP	158
Appendix 4	Memorandum of Understanding (MOU)	160
Appendix 5	Comparison of powers	169
Appendix 6	DJJ Classification System	176
Appendix 7	Minutes	183
Appendix 8	Dissenting Statement: Opposition Members	214

Chair's Foreword

The way in which we deal with the problems of juvenile offending is changing all the time. Research into the underlying causes of criminality in our young people continues to shine light on the multitude of social and economic disadvantage that provide the backdrop to their misbehaviour. Recent developments in this State in diverting young people away from crime and to addressing the rehabilitation of juvenile offenders have been progressive and successful in reducing the number of juveniles appearing before court and in our custodial facilities.

To those young people who end up in detention, we have numerous international and domestic obligations. The principles that form the foundation of the NSW Department of Juvenile Justice are aimed at prevention, first, then rehabilitation and reintegration into our communities. These have been established through a consultative approach that has been held up as progressive and forward thinking. The responsibility of Parliament, through the scrutiny of this Select Committee, has been to ensure that these principles are not undermined by changes in Government policy.

This Select Committee's inquiry has been wide-ranging. In addition to investigation of the reasons and consequences of the Government's decision to transfer administration of Kariiong to the Department of Corrective Services, including provisions of the *Juvenile Offenders Legislation Amendment Act 2004* that gave effect to that decision, the terms of reference also invited the Committee to consider a vast range of issues relating to the administration and operation of the Department of Juvenile Justice.

Previous reports into Kariiong have repeatedly isolated key areas for reform both at the Centre and across the Department. Continuing disturbances at the State's only maximum-security facility for juvenile offenders have been cause for concern. The Government's decision to transfer responsibility to the Department of Corrective Services, however, has received widespread criticism from participants to this inquiry both in written submissions and throughout our five days of hearings in March, April and May.

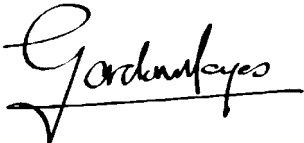
In making its recommendations, the Committee has tried to balance the very important principles and objectives surrounding the management of juvenile offenders together with the reality that considerable operational changes have already been made in relation to the management of Kariiong. While the Committee acknowledges that the legislation is currently operational, I do not believe this has prevented us from a full examination of a range of legislative, philosophical and policy issues concerning the management of juvenile offenders in New South Wales.

On behalf of the Committee, I would like to thank all of those who made submissions and gave evidence to the inquiry for their thoughtful, detailed and sometimes personal contributions. The Committee would also like to put on record our appreciation for the Governor of Kariiong, his staff and detainees for speaking candidly with Committee Members during our site visit to Kariiong.

I would like to take this opportunity to thank fellow Committee members for their input into this complex and challenging inquiry. Acknowledgement should also go to members of the Committee

secretariat, Graeme Elliott, Julie Langsworth, Lenny Roth, Tanya Bosch and Laura Milkins for their dedication, hard work and expertise in contributing to this report.

I commend this report to the Government, and call on it to ensure that all the recommendations made by this Committee are implemented without delay, to safeguard the integrity of the principles of the Department of Juvenile Justice and the interests of juvenile offenders in custody in NSW.

A handwritten signature in black ink, reading "Gordon Moyes". The signature is written in a cursive style with a horizontal line underneath the name.

Revd Hon Dr Gordon Moyes AC, MLC
Chair

Summary of Recommendations

- Recommendation 1** **60**
That, in recognition that the new Objective Classification System has only been in effect for six months, the Department of Juvenile Justice undertake a full evaluation of the effectiveness of the system. This evaluation should include an assessment of outcomes for detainees and whether the delivery of effective programming has been assisted.
- Recommendation 2** **69**
That the Department of Corrective Services, in its management of juvenile correctional centres, continues to ensure that security and control coexist with effective casework and rehabilitation.
- Recommendation 3** **69**
That the NSW Government continues to ensure that the Department of Corrective Services is provided with adequate resources to allow it to provide the necessary rehabilitation programs to young offenders incarcerated at Kariiong.
- Recommendation 4** **72**
That the Departments of Juvenile Justice and Corrective Services ensure further research is conducted on the effectiveness of current rehabilitation programs aimed at reducing recidivism. The research should include a thorough examination of those juveniles most of risk of re-offending.
- Recommendation 5** **102**
That the NSW Government commission an independent, professional audit of rehabilitation programs directed at Indigenous young offenders; evaluate the effectiveness of those programs and develop new policies to more effectively address over-representation of Indigenous people in the juvenile justice system.
- Recommendation 6** **103**
That the NSW Government comply with the recommendations of the Royal Commission into Aboriginal Deaths in Custody in order to ensure that the management of Indigenous offenders is both culturally appropriate and aimed at reducing the known risks associated with the incarceration of Aboriginal people.
- Recommendation 7** **107**
That the NSW Government, in its ongoing examination of appropriate strategies and services for young offenders with mental illness, consider the practicality and appropriateness of establishing specialist mental health units within juvenile justice centres or a purpose-built facility for young people with mental illness. In addition, the Department should seek to ensure that young offenders with mental illness and adults with mental illness are not co-located.
- Recommendation 8** **107**
That, in recognition that mental health problems frequently occur in teenage years, the NSW Government ensure that young people at Kariiong with mental illness, or at risk of mental illness, have access to mental health professionals, and the necessary programs and services.

- Recommendation 9** 108
That the Departments of Juvenile Justice and Corrective Services work together with other government departments, particularly the Department of Community Services, to ensure there is continuity of care and support of former State wards whilst they are in custody.
- Recommendation 10** 110
That the NSW Departments of Juvenile Justice and Corrective Services continue to ensure there is adequate access to professional expertise in intellectual disability so that the disability related support and therapeutic needs of young offenders are addressed.
- Recommendation 11** 116
That the Department of Juvenile Justice implement the recommendations in the *Review of Department of Juvenile Justice Industrial Relations and Human Resources Practices* by John Newbery, which call for a thorough re-assessment of the role and effectiveness of the investigations process. In addition, the Department of Juvenile Justice should work together with the NSW Ombudsman to design a more integrated misconduct process for the juvenile justice.
- Recommendation 12** 118
That the Department of Juvenile Justice revise and formalise clear penalties for detainees who breach centre policies, including assaults on staff, and ensure that all staff and detainees have access to and understand these sanctions.
- Recommendation 13** 118
That following the development of the Department of Juvenile Justice's incentive schemes in response to the NSW Ombudsman reports in July 2002, the Department review the effectiveness of this scheme, including an investigation into whether training for all staff in the application of the scheme is enforced. The review should also assess the suitability of rewards available to detainees to ensure that they are appropriate and meaningful.
- Recommendation 14** 121
That the Department of Juvenile Justice review management practices to ensure that all staff, including casual staff, receive on-going training and support in recognition of their value to achieving successful outcomes for the Department and detainees. This training and support should be linked to regular performance reviews to ensure consistency and establish best practice.
- Recommendation 15** 121
While recognising there may continue to be a need for casual staff on occasion, the Department of Juvenile Justice should strive to establish and retain a committed permanent workforce that minimises the requirement for casual employees.
- Recommendation 16** 124
That the Department of Juvenile Justice considers and implements the recommendations of the *Review of Department of Juvenile Justice Industrial Relations and Human Resources Practices* by John Newbery, in particular in relation to recruitment and training.
- Recommendation 17** 124
That the Department of Juvenile Justice provide former Kariiong staff who have continued employment with the Department with appropriate training and support.

- Recommendation 18** **124**
That the Department of Juvenile Justice develop appropriate management training and support for new unit coordinators and all levels of management. This training should be undertaken by all internally promoted staff.
- Recommendation 19** **124**
That the NSW Government ensure that an increased programs and training budget is provided for the Department of Juvenile Justice to develop and increase training provisions for all staff.
- Recommendation 20** **125**
That the Department of Corrective Services ensure that all staff working at Kariiong receive on-going training and support, particularly in relation to the management of young offenders. This training and support should be linked to regular performance reviews.
- Recommendation 21** **148**
That the Department of Juvenile Justice ensures that the Juvenile Justice Advisory Council and the Aboriginal Justice Advisory Council are consulted on all future decisions relating to the future of the juvenile justice system, and in particular the accommodation and treatment of juveniles in detention in NSW.
- Recommendation 22** **151**
That the NSW Government continue the current management arrangement for Kariiong while undertaking an evaluation of the operation and management of the Centre to establish the longer term impact of the decision on detainees and the juvenile justice system more broadly. This investigation should include an evaluation of:
- the case management system, including the number of rehabilitation and therapeutic programs being provided for juveniles; attendance figures for those programs and their effectiveness in achieving desirable outcomes
 - transfers of detainees between Kariiong Juvenile Correctional Centre and a) juvenile justice centres and b) adult facilities
 - access arrangements for juveniles, including access to legal services, advocates and family and support networks
 - service reviews and Official Visitor reports
 - all records of incidents at the Centre (including assaults), including an assessment of the investigation and management of those incidents in terms of use of force and use of restraint equipment, and punishments given to detainees.
- Recommendation 23** **152**
That the NSW Government consult the Juvenile Justice Advisory Council and Aboriginal Justice Advisory Council with a view to making immediate legislative amendments and changes to Departmental procedures to ensure the appropriate management of juveniles at Kariiong, as per the recommendations in this report.
Specifically, that the NSW Government consult upon, and amend, relevant legislation to attend to the following issues:
- to include provisions in the *Crimes (Administration of Sentences) Act 1999* to reflect Australasian Standards for Juvenile Custodial Facilities relating to the rights of

juveniles in detention, similar to those contained in the *Children (Detention Centres) Act 1987*

- to specify Kariong Juvenile Correctional Centre as the only correctional centre established by the amendments in the *Juvenile Offenders Legislation Amendment Act 2004*. This removes the possibility of additional centres being proclaimed as correctional centres
- to make the legislation gender specific, to remove the possibility of young women being subject to amendments in the *Juvenile Offenders Legislation Amendment Act 2004*
- to ensure that detainees cannot be transferred to an adult correctional centre on the basis that they 'wish to be transferred' unless provided with counselling and advice. Additionally, to provide for those detainees transferred under this provision to be allowed to transfer back should they so wish
- to ensure that the SYORP and/or SORC are involved in all decision-making pertaining to transfers of juvenile offenders between juvenile justice centres and Kariong Juvenile Correctional Centre; and between Kariong Juvenile Correctional Centre and the adult system
- to constitute the SYORP in legislation, setting out its functions, membership and the way it is to conduct its inquiries
- to specify what 'behaviour' in particular would justify the making of a transfer order, under section 28 of the *Children (Detention Centres) Act 1987* and 41C of the *Crimes (Administration of Sentences) Act 1999*
- to allow juvenile offenders a right of appeal to a court against a decision to transfer that detainee from Kariong Juvenile Correctional Centre to an adult correctional centre.

Additionally, that the NSW Government:

- amend Department of Corrective Services departmental goals to include a commitment to rehabilitation for juvenile offenders specifically, as they have been determined to have different requirements to adults
- amend Department of Corrective Services procedures to: extend out-of-cell hours for all detainees to accommodate the provision of more programs; encourage the access and involvement of external agencies and advocates for young people as per the Australasian Standards for Juvenile Custodial Facilities
- set measurable targets for assessment for reintegration of offenders back into the Juvenile Justice system at the earliest possible opportunity.

Recommendation 24

153

That the NSW Government continue to develop a long-term strategy for the accommodation of serious young offenders, and in particular:

- to further consider returning the responsibility for management of all juvenile offenders to the Department of Juvenile Justice in the longer term
- to further investigate establishing an alternative facility for 18-24 year olds, including comparative analysis of such approaches in other States, Territories and other jurisdictions, to address concerns relating to adults in the juvenile justice system.

Recommendation 25

154

That the NSW Government provides:

- a long-term commitment to maintaining a separate Department of Juvenile Justice to administer the range of non-custodial and custodial services appropriate to the needs of young people in NSW
- an increased allocation of funding for the provision of these services. In particular, priority should be given to provide increased budgets for program development and staff training.

Recommendation 26

154

That the NSW Government ensures:

- that the Departments of Juvenile Justice and Corrective Services ensure research is conducted on the effectiveness of current rehabilitation programs aimed at reducing recidivism. The research should include a thorough examination of those juveniles most at risk of re-offending
- that the Departments of Juvenile Justice and Corrective Services invest in effective and appropriate programs targeted at those offenders most at risk of re-offending. The Departments should consider programs from other jurisdictions, including other states and overseas, that have shown to be successful in addressing recidivism rates in young offenders.

Glossary

AJAC	Aboriginal Justice Advisory Council
ASJCF	Australasian Standards for Juvenile Custodial Facilities
ATSI	Aboriginal and Torres Strait Islanders
Beijing Rules	UN Standard Minimum Rules for the Administration of Juvenile Justice
BOCSAR	NSW Bureau of Crime Statistics and Research
CAT	Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment
CROC	United Nations Convention on the Rights of the Child
DCS	NSW Department of Corrective Services
DJJ	NSW Department of Juvenile Justice
FPPV	Fish Payne Pattenden Viney Pty Ltd
ICCPR	International Covenant on Civil and Political Rights
JJAC	Juvenile Justice Advisory Council
MOU	Memorandum of Understanding
NCOSS	Council of Social Services of NSW
OCS	Objective Classification System
PSA	Public Service Association of New South Wales
Riyadh Guidelines	United Nations Guidelines for the Prevention of Juvenile Delinquency
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
SORC	Serious Offenders Review Council
SYORP	Serious Young Offenders Review Panel

Chapter 1 Introduction

On Thursday 9 December 2004, the Legislative Council passed a resolution to establish a Select Committee on Juvenile Offenders to examine the transfer of Kariong Juvenile Justice Centre to the NSW Department of Corrective Services, and certain related issues. As directed by the terms of reference, this report examines the provisions of the *Juvenile Offenders Legislation Amendment Act 2004*, specific issues relating to the decision to transfer the management responsibility for Kariong and matters concerning the management of juvenile offenders more generally.

In this chapter the Committee provides an overview of the conduct of the inquiry, with a brief summary of the inquiry process. The chapter also provides a brief background to the Departments of Juvenile Justice and Corrective Services in relation to their purpose, service ethos and policies, programs and strategies.

Conduct of the inquiry

- 1.1 The terms of reference were widely advertised, with the closing date for submissions being Friday 11 March 2005. The Committee received a total of 29 submissions from a wide range of government and non-government agencies, community groups, staff and other interested individuals.
- 1.2 On Friday 25 February 2005 the Committee conducted a site visit to the Kariong Juvenile Correctional Centre. The Committee met with Governor Peter Maa and Deputy Governor David Mumford and a number of staff including custodial and education officers. The Committee also had the opportunity to tour the Centre and talk to a number of detainees. The Committee is very grateful to have had the opportunity to visit Kariong, and thanks in particular the Department of Corrective Services and the staff at Kariong for facilitating our visit.
- 1.3 The Committee held five days of hearings in March, April and May at which 38 witnesses appeared. The Committee took evidence from The Hon John Hatzistergos MLC, Minister for Justice, representatives from the Departments of Corrective Services and Juvenile Justice, the Children's Magistrate, John Crawford, former Kariong staff, academics, legal experts and non-government community groups. The Committee also heard from representatives of the two central advisory bodies, the Juvenile Justice Advisory Council (JJAC) and the Aboriginal Justice Advisory Council (AJAC). The detailed analysis, conclusions and recommendations made in this report are based on the information from government departments, independent watchdog agencies, juvenile justice staff, academics, non-government service providers, community groups and individuals. The Committee thanks the inquiry participants for their considerable input.
- 1.4 The Committee invited The Hon Diane Beamer, MP, Minister for Juvenile Justice to appear as a witness, however the Minister declined the invitation. The Committee also invited representatives from the Department of Juvenile Justice to appear at a further hearing in July, however due to the departure in late June of Mr David Sherlock from his position as Director General, the Department was unable to assist the Committee at a further hearing. While the Committee appreciates the written responses provided by the Minister, the Committee regrets

that Minister Beamer was unable to appear before the Committee to answer additional questions from Committee members.

The management of juvenile offenders in NSW

- 1.5** The terms of reference for the inquiry cover a broad range of issues. Pivotal to the understanding of many of the changes that have been implemented as a result of the *Juvenile Offenders Legislation Amendment Act 2004*, is the respective philosophies that underpin the two government departments involved.
- 1.6** This section deals with the differences that exist between the Departments of Juvenile Justice and Corrective Services. In particular, we consider the philosophical underpinnings of each Department and briefly overview the approaches taken by each Department in dealing with juvenile offenders. The section provides background information to assist in understanding the impact of the recent transfer of management responsibility for Kariong from the Department of Juvenile Justice (DJJ) to the Department of Corrective Services (DCS).

The broad objectives of juvenile justice

- 1.7** Australia has a reputation within the international community as an innovator and proponent of best practice in juvenile justice. The foundation for this reputation is the work done by all levels of government, but particularly State and Territory governments, in ensuring the justice system meets international standards. The National Children's and Youth Law Centre describe the primary objectives of juvenile justice as 'rehabilitation and the diversion from the criminal justice system through reintegration into society.'¹
- 1.8** In the 1980s and 90s most Australian States and Territories introduced new statutes, policies and programs that shifted juvenile justice from a welfare needs based model towards a restorative justice response.² In addition, NSW and others signed up to international rules and conventions governing the rights of young people.
- 1.9** There are four international conventions impacting on the management of juvenile justice in Australia and NSW. The major conventions are:
- *United Nations Guidelines for the Prevention of Juvenile Delinquency* (The Riyadh Guidelines)
 - *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*
 - *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (The Beijing Rules)
 - *United Nations Convention on the Rights of the Child* (CROC).
- 1.10** Article 37(c) of the CROC states:

¹ Submission 12, National Children's and Youth Law Centre, p2. As raised later in the report, the Centre is concerned that the recent legislative amendments will detract from this reputation of Australia and NSW as leaders in the field of juvenile justice.

² Submission 18, Ms Elizabeth Moore, p1

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.³

- 1.11** Over the past several decades, the CROC and the other international conventions have heavily influenced the development of legislation and policy governing juvenile justice in NSW. Many people believe the recent decision by the NSW Government to establish new legislation to provide for the transfer of management responsibility of Kariong to the DCS breaches some of the human rights principles contained in these conventions.

The NSW Department of Juvenile Justice

- 1.12** The development of the DJJ, its charter and obligations has occurred over several decades. The Department of Juvenile Justice was established as a separate public service department in late 1993. The DJJ became, and remains today, the only separate department for juvenile justice in Australia. The underlying principles, policies and programs are the result of bipartisan support and based on a wide consultative process, and a number of documents including a Green Paper, *Future Directions for Juvenile Justice in NSW*.⁴ This Green Paper proposed significant changes to juvenile justice and was followed in 1994 by the government's response, the White Paper, *Breaking the Crime Cycle*,⁵ upon which the Government based its juvenile justice policy directions.
- 1.13** As noted in a previous inquiry into juvenile justice conducted by a NSW Legislative Council Committee, historically children within the juvenile justice and community welfare systems were under the same government administration. In 1987, a package of legislative reform, including the *Children (Criminal Proceedings) Act 1987* and the *Children (Care and Protection) Act 1987*, significantly modified these arrangements, such that 'care' (welfare) matters were separated from criminal proceedings. At this time a distinct Children's Court was established, the criminal age of responsibility was changed to 10 years and a series of non-custodial sentences were available to magistrates.⁶
- 1.14** The current DJJ's vision, 'Striving to break the Juvenile Crime Cycle', reflects many of these changes made in the late 1980s and early 1990s, as does its statement of purpose 'Working together to provide services and opportunities for juvenile offenders to meet their responsibilities and lead a life free of further offending.'⁷ As noted by the Commissioner for

³ The issue of human rights and the Government's reservations in respect of this clause are discussed in Chapter 7

⁴ NSW Government, *Green Paper on Juvenile Justice: Future Directions for Juvenile Justice in NSW*, Sydney, 1993

⁵ NSW Government, *White Paper: Breaking the crime cycle: New directions*, Sydney, 1994

⁶ Standing Committee on Social Issues, *Juvenile Justice in New South Wales*, Report No 4, May 1992, p7. See this report for a comprehensive overview of the changes to juvenile justice in the 1980s and early 1990s.

⁷ NSW Department of Juvenile Justice, at www.djj.nsw.gov.au accessed 21 June 2005

Children and Young People, Gillian Calvert, the DJJ has specific philosophies, policies and resources for dealing with children and young people.⁸

1.15 The DJJ's Corporate Plan 2004-2007 outlines its 'philosophy of intervention with young people' and includes the following priorities: the safety of the community and staff; young people to be treated with dignity and respect; and each young person to be treated as an individual with separate and unique needs. The DJJ aims to ensure the majority of offenders are supported in the community by non-custodial programs, and where incarceration is required, these services are to be provided as part of the 'continuum of management of offending behaviour.'⁹

1.16 The Department is responsible for administering the following legislation:

- The *Children (Detention Centres) Act 1987*, which governs the administration of juvenile justice centres and the care and supervision of juvenile detainees (The *Children (Detention Centres) Amendment Act 2004* commenced on 13 May 2004 and clarified that a juvenile offender arrested for breach of bail conditions can be detained in a juvenile justice centre)
- The *Children (Community Services Orders) Act 1987*, which details the responsibility of the Department in supervising juvenile offenders placed on community service orders
- The *Young Offenders Act 1997*, which concerns the administration of youth justice conferencing
- The *Children (Interstate Transfer of Offenders) Act 1988*, which specifies the requirements for the transfer of young offenders.

1.17 Central to the principles of juvenile justice in this State is the *Young Offenders Act 1997*. The Act sets out four options for dealing with young offenders: warning, caution, youth justice conference and court.¹⁰ Former Director General of the DJJ, Mr David Sherlock told the Committee of the success of these measures in reducing re-offending:

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 re-offending 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.¹¹

⁸ Submission 15, NSW Commission for Children and Young People, p2

⁹ NSW Department of Juvenile Justice, *Corporate Plan 2004-2007*, accessed at www.djj.nsw.gov.au accessed 21 June 2005

¹⁰ For more information on the legislation governing juvenile justice and these various options, see NSW Department of Juvenile Justice, *Annual Report 2003/2004* and the submission to this inquiry, Submission 3, NSW Department of Juvenile Justice

¹¹ Mr David Sherlock, former Director General, NSW Department of Juvenile Justice, Evidence, 9 March 2005, p19

1.18 In addition to administering non-custodial services, the DJJ currently manages eight detention centres and one short-term facility.¹² The detention centres are spread out across the Sydney metropolitan area and in rural and regional NSW.¹³ According to the Department, the 1990s saw a dramatic shift in the views of what design was most appropriate for accommodating juveniles and a move towards smaller centres with unit-based single room accommodation. In addition:

The notion that the reintegration of young people back into their communities was made easier if they were detained closer to their family homes led to the construction of new centres in some rural and regional locations in NSW.¹⁴

1.19 According to Mr Sherlock, former Director General of the DJJ:

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. Kariiong represents 10 per cent of this group, or less than 1 per cent of the Department's total client group.¹⁵

1.20 The target group of clients dealt with by the DJJ as per the legislation is young people between the ages of 10 and 18 who have come into contact with the Department either through police referral or the court system.¹⁶ In the 2003-04 financial year, for every 1000 people aged 10-17 resident in NSW:

- 9.3 had a criminal matter finalised in the Children's Court
- 5.6 were convicted and/or sentenced in these finalised matters
- 2.86 were given sentences requiring the Department to supervise them in their community
- 0.6 were sentenced to detention.¹⁷

1.21 In terms of the number of juveniles coming into contact with the Department in 2003-04:

- 1,713 referrals were made by police and the courts to youth justice conferencing
- 2,836 young people were supervised in the community as a result of court orders
- the daily average number of young people in custody was 302.¹⁸

1.22 The large majority of young offenders are adolescent boys aged 15-17 years old, with girls and young women making up only 17% of young people in contact with the system.¹⁹

¹² NB: This does not include the operation of Kariiong

¹³ For more detailed information on these centres, see Submission 3, NSW Department of Juvenile Justice, pp56-58

¹⁴ Submission 3, NSW Department of Juvenile Justice, p58

¹⁵ Mr David Sherlock, Evidence, 9 March 2005, p2

¹⁶ As discussed later in this report, offenders above the age of 18 years are also clients of the DJJ

¹⁷ NSW Department of Juvenile Justice, *Annual Report 2003/2004*, p5

¹⁸ Submission 3, NSW Department of Juvenile Justice, pp21-22

- 1.23** Two bodies provide independent advice to the NSW Government on issues relating to juvenile justice. The JJAC advises the government on policy issues related to juvenile justice, including youth, welfare and legal matters. The Council has the mandate to promote public awareness of juvenile justice matters and ‘has the support of both major parties in the NSW Parliament.’²⁰ The AJAC, established in 1993 in response to recommendations in the Royal Commission into Aboriginal Deaths in Custody Report, also provides advice to the Government on the operation of criminal justice systems.²¹ The Serious Young Offenders Review Panel (SYORP) was established in 1998 as an independent body to advise the Director General of the DJJ on issues such as reviews of the classification of serious children’s indictable offenders.²²
- 1.24** The Committee heard from many inquiry participants on the uniqueness of the NSW juvenile justice system. The National Children’s and Youth Law Centre believes that NSW has a record of leadership among Australian States and Territories as demonstrated by such pioneering legislation as the *Young Offenders Act 1997*.²³ The Police Association of NSW told the Committee that the juvenile justice system was founded on the belief that children were entitled to a range of special protections due to their vulnerability and immaturity.²⁴
- 1.25** According to Children’s Magistrate, John Crawford, the juvenile justice system:
- ... is not a system set up on the basis of welfare. You know, it is not a care and protection system. It is a system for containment and detention for the purpose of rehabilitation.²⁵

Separation from the Department of Corrective Services

- 1.26** Accordingly, in the early 1990s operational responsibility for juvenile justice was transferred from the Minister for Health and Community Services to the Minister for Justice. In September 1993 the DJJ was established as a separate entity. Since that time, separate portfolio areas have existed for juvenile justice and corrective services. This separation was done in recognition of the fact that younger offenders, due to their age and emotional, physical and psychological immaturity, have very different needs to adult offenders.

Department of Corrective Services

- 1.27** According to its website, the DCS, under its various titles, has contributed continuously to NSW society and its criminal justice system since the founding of the colony in 1788. In 2005, the DCS aims to:

¹⁹ Submission 3, NSW Department of Juvenile Justice, pp21-22

²⁰ NSW Department of Juvenile Justice, *Annual Report 2003/2004*, p45

²¹ Submission 23, Aboriginal Justice Advisory Council, p3

²² See Appendix 3 for further details on the SYORP and the SORP

²³ Submission 12, National Children’s and Youth Law Centre, p2

²⁴ Submission 25, Police Association of NSW, p3

²⁵ Magistrate John Crawford, Magistrate, NSW Children’s Court, Evidence, 8 April 2005, p29

...protect the community by managing inmates in an environment which is safe, secure, fair and humane and in a manner which encourages inmates' personal development through the use of correctional programs and their own efforts.²⁶

1.28 The stated mission of the DCS is 'reducing re-offending through secure, safe and humane management of offenders'. The Corporate Plan 2004-2007 outlines the values and principles of the Department and includes a commitment to:

- the safety and welfare of offenders
- the rehabilitation and re-settlement of offenders
- the dignity and worth of the individual
- the promotion of reparation to the community and victims of crime
- professionalism and quality service delivery
- staff welfare, employment equity and accountability
- engagement with the community, interest groups and relevant research bodies.²⁷

1.29 The DCS is responsible for the administration of the following Acts: the *Crimes (Administration of Sentences) Act 1999*; *International Transfer of Prisoners (New South Wales) Act 1997*, *Parole Orders (Transfer) Act 1983* and the *Prisoners (Interstate Transfer) Act 1982*.²⁸ The DCS has as its head a Commissioner who is responsible to the Minister for all the Department's activities.

1.30 The DCS oversees 30 correctional centres, 10 periodic detention centres and two transitional centres for female inmates. The DCS manages approximately 9,100 offenders in full time custody, including approximately 600 women. In addition, the DCS manages 900 offenders in periodic detention centres in week and mid-week programs and supervises over 18,000 offenders in the community on parole, probation or serving community service orders.²⁹

1.31 The Committee understands the DCS currently manages over 500 young offenders between the ages of 16 and 21.³⁰ Inmates under the age of 25 years comprise 28% of the total inmate population.³¹ The Minister for Justice, the Hon John Hatzistergos MLC, told the Committee:

We have a lot of experience with young offenders in the corrective services system. We have more people in the age group of juvenile justice—16 to 21—than does Juvenile Justice. A lot of those are in juvenile offender programs that we operate at John Morony, at Oberon and at Brewarrina, particularly in relation to Indigenous young offenders. So, we have a lot of experience. We also have a lot of experience in dealing with serious offenders, which a lot of people who are at Kariong clearly are. Indeed, we have much more experience in dealing with issues relating to serious

²⁶ NSW Department of Corrective Services, at www.dcs.nsw.gov.au accessed 27 June 2005

²⁷ NSW Department of Corrective Services, *Corporate Plan 2004-2007*, p4

²⁸ Appendix 15, NSW Department of Corrective Services, *Annual Report 2003/04*, p122

²⁹ NSW Department of Corrective Services, at www.dcs.nsw.gov.au

³⁰ The discussion regarding how these offenders end up in the adult prison is discussed in Chapter 4

³¹ NSW Department of Corrective Services, *Annual Report 2003/04*, p10

offenders than the juvenile justice system, simply because of the large number of serious offenders in the adult system.³²

- 1.32** While not dealing directly or exclusively with juvenile offenders, the 2003-04 Annual Report outlines the DCS's Young Adults Offenders Action Plan. In 1992 the Department initiated a five-stage male Young Adults Program, which has since evolved into a specialised program. This program forms the basis for the 2005-2007 Young Adult Offender Action Plan. In 2003, the program used 35 older offenders as mentors and took young inmates through a number of steps to prepare them for work release, including a 'Raising Awareness for Change' course and an intensive 'Life Challenge' program. These programs were run at the John Morony and Oberon correctional centres.³³ As discussed in Chapter 6, some of the DCS's programs for young offenders have shown to reduce recidivism rates.³⁴
- 1.33** The Serious Offenders Review Council (SORC) is constituted under Part 9 of the *Crimes (Administration of Sentences) Act 1999* and provides advice and makes recommendations to the Commissioner with respect to the security classification of serious offenders, the placement of serious offenders and developmental programs provided for serious offenders. The SORC also provides reports and advice to the Parole Board concerning the release on parole of serious offenders.
- 1.34** As will be discussed in later chapters, in relation to its management of Kariong, numerous witnesses are concerned with the DCS's compliance with human rights obligations in relation to juveniles, the appropriateness of its management style for juveniles and with its capacity to deliver the necessary rehabilitation programs.

Differences between the DJJ and DCS as they relate to this report

- 1.35** The Committee notes that significant cultural and practical differences exist between the two departments including differences in their philosophical approaches, management style, staff training, access to programs and services, and treatment of detainees. The report deals with these differences in its examination of the reasons, consequences and effectiveness of the decision to transfer management responsibility of Kariong to the DCS. The Minister for Justice stated, however, that:

The detainees will either go to work or to school and in addition to that they will have to attend various programs to address their underlying offending behaviour.³⁵

- 1.36** It is also worth noting that this inquiry, whilst dealing with many issues relating to the management of juvenile offenders, should not be seen as a comprehensive examination of the DJJ. As with the DCS, the criticism of the DJJ in this report is principally in relation to its management of Kariong. The report does deal with a number of department-wide issues as

³² Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, pp4-5

³³ NSW Department of Corrective Services, *Annual Report 2003/04*, pp25-26

³⁴ Submission 2, NSW Department of Corrective Services, p6

³⁵ Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, p5

directed by the terms of reference, including classification, adults in the juvenile justice system and a number of staffing issues.

Major conclusions and recommendations

1.37 A number of inquiry participants raised concerns about the purpose of this inquiry given that the *Juvenile Offenders Legislation Amendment Bill 2004* was passed in late 2004, without any provision for formal review. According to the Youth Justice Coalition, given these conditions, the 'purpose of the Inquiry is unclear.'³⁶ The Shopfront Youth Legal Centre was similarly concerned about the value of this inquiry:

Despite this Inquiry this new legislation is currently operative in NSW. In this regard, it could be said that the serious concerns expressed in this submission have little real weight or influence.³⁷

1.38 Despite these concerns, the Committee has received a considerable amount of thoughtful and detailed information in submissions and oral evidence. While the Committee acknowledges that the legislation is currently operational, we do not believe this has prevented us from a full examination of a range of legislative and policy issues concerning the management of juvenile offenders in New South Wales, as directed by the terms of reference.

1.39 In making our recommendations, the Committee has been mindful of the philosophical issues associated with the management of juvenile offenders. We have also been cognisant that considerable changes have occurred at the Centre as a result of the transfer, and that there are many practical constraints involved in suggesting a way forward. The Committee has heard criticism of the decision to transfer Kariong to the Department of Corrective Services. In addition, we heard considerable criticism about the manner in which this decision was made. Criticism was made about aspects of the *Juvenile Offenders Legislation Amendment Act 2004* and with the impact of the Department of Corrective Services operating a centre for juveniles. In making its recommendations, the Committee has tried to balance the very important principles and objectives surrounding the management of juvenile offenders together with the reality that considerable operational changes have already been made in relation to the management of Kariong.

1.40 While several witnesses suggested the decision should be immediately overturned, the Committee believes that it would be counterproductive in the short-term to the effective management of Kariong, and importantly, to the wellbeing of young offenders at the Centre, to immediately return its administration to the Department of Juvenile Justice. The major conclusions and recommendations can be found at Chapter 12.

Structure of the report

1.41 **Chapter 2** provides the background to Kariong Juvenile Justice Centre and includes an overview of the numerous inquiries and reports into Kariong. The chapter also provides an overview of the problems at Kariong prior to the transfer.

³⁶ Submission 10, The Youth Justice Coalition, p1

³⁷ Submission 8, Shopfront Youth Legal Centre, p9

- 1.42 In **Chapter 3**, the Committee considers the immediate impact of the transfer and in particular the impact of the decision on staff at Kariong. In the second part of the chapter the Committee looks at whether the transfer has been effective in addressing the past management problems at the Centre.
- 1.43 **Chapter 4** provides a summary of the consequences of the *Juvenile Offenders Legislation Amendment Act 2004* in terms of legislative, administrative and operational changes at Kariong. The chapter also provides an overview of the major objections of inquiry participants to the legislative amendments.
- 1.44 The next several chapters deal with a number of systemic issues. The classification system and the effect of the *Juvenile Offenders Legislation Amendment Act 2004* in relation to the classification and placement of offenders is discussed in **Chapter 5**. In **Chapter 6**, the Committee considers whether incarcerating juveniles in juvenile correctional centres achieves reduced recidivism and rehabilitation.
- 1.45 In **Chapter 7**, the Committee addresses the issue of adult detainees in the juvenile justice system. **Chapter 8** then looks at the international human rights instruments that apply to young people in custody. In this chapter the Committee considers concerns about compliance with these human rights obligations and the Australasian Standards for Juvenile Custodial Facilities.
- 1.46 In **Chapter 9**, the Committee looks at a number of other systemic issues including those concerning Indigenous young people, mental health and State wards in the juvenile justice system. The chapter also considers other staffing issues including staff assaults, casualisation of the workforce and recruitment and training.
- 1.47 In **Chapter 10**, the Committee returns to the decision to transfer the administration of Kariong to DCS and considers the wider consequences of the transfer. In **Chapter 11** alternatives to the transfer of the management of Kariong are discussed, including the dispersal model, establishing an interim facility, diversion from court proceedings and custodial interventions. The chapter also looks at the importance of consultation in the formation of legislation and policy.
- 1.48 The final chapter, **Chapter 12**, provides the analysis and conclusions for the key recommendations of this report.

Chapter 2 **Kariong Juvenile Justice Centre and reasons for the transfer**

[Kariong's] history is very clear; there were many problems, and from the day the centre opened until the day that is closed it was riddled with difficulties and problems, and ultimately the Government made a decision that it should be transferred.³⁸

Prior to the transfer to the Department of Corrective Services, Kariong Juvenile Justice Centre was one of 10 detention centres operated by the Department in NSW. Kariong opened on 16 September 1991 to replace Endeavour House in Tamworth. It was designed to be the most secure of the State's juvenile justice facilities. It was to accommodate offenders over the age of 16 whose offences are considered to be the most serious and those who are unable to be managed in other centres because of their behaviour.

This chapter considers the recent history of Kariong in terms of the many reviews into the Centre since it opened in 1991. In doing so, the Committee investigated the recommendations of those reports, as well as evidence to the inquiry, to provide an overview of the reasons for the Government's decision to transfer its management to the Department of Corrective Services (DCS). The chapter ends with a brief discussion on the profile of juvenile offenders.

Background to Kariong

- 2.1** The purpose of Kariong Juvenile Justice Centre within the Department of Juvenile Justice (DJJ) was principally to detain two specific groups of offenders:
- those who, due to the seriousness of their offence (or alleged offence), require placement in a maximum-security setting for some period
 - those who are unable to be managed within the normal routines of other centres and who pose a risk of serious harm and/or disruption to the operation of other centres.³⁹
- 2.2** The associated political pressures and the often-public nature of offences for which young people are sentenced to Kariong has understandably focussed attention on the Centre. In operation since 1991, the Centre has been subject to numerous investigations and reviews into the effectiveness of its management and operation. While the terms of reference gave license to the Committee to consider the reasons for the transfer, it has largely deferred to existing literature and other well-documented evidence of the problems encountered at the Centre.
- 2.3** Since 1991, the following events and documents plot the complex and often troubled history of Kariong Juvenile Justice Centre.

³⁸ Mr David Sherlock, former Director General, NSW Department of Juvenile Justice, 9 March 2005, Evidence, p8

³⁹ NSW Ombudsman, *Investigation into Kariong Juvenile Justice Centre*, March 2000, p17

NSW Ombudsman – Inquiry into Juvenile Justice Centres (1996)

- 2.4 The NSW Ombudsman's Report (1996) provided a thorough critique of all juvenile justice centres in NSW and was a catalyst for major reforms. While the report highlighted many issues requiring attention it stopped short of recommending closure of the Centre. This report identified Kariong as one of four centres requiring urgent action. One issue specifically identified in relation to Kariong was the high number of casual or temporary staff.⁴⁰

Detection and Management of Illicit Drugs (DAMOID) Report (1997)

- 2.5 The DAMOID Report specifically dealt with drug related matters and made recommendations including a review of visitation procedures, increased specialist staff for alcohol and other drug related problems and for the use of DCS sniffer dogs to detect drugs.

Report of Review Team into Security & Related Issues at Juvenile Justice Centres (1997)

- 2.6 This report identified (among other things) the need for staff training in the use of restraint techniques, improvements to security equipment, the development of regimes for high-risk offenders, and the need for improvement in programs for detainees.

Shier and Sherlock Inquiry (1999)

- 2.7 This inquiry followed complaints from female staff at Kariong in October 1998. The NSW Ombudsman's Report (2000) notes that an action plan developed in response to the Shier and Sherlock Inquiry focused on 'staffing matters, notably staff discipline, support and direction, rotations and transfers, staff grievance processes, staff selection and affirmative action, staff training, rosters and higher duties opportunities. It also required a number of improvements in programming and client services'.⁴¹

D.P. Rodgers: Report into Security and Related Issues, Kariong Juvenile Justice Centre (1999)

- 2.8 Mr Don Rodgers, seconded from the DCS where he was the Superintendent of Lithgow Correctional Centre, was brought in as Acting Manager of Kariong from 24 March to 26 July 1999 following disturbances at the Centre. A report was provided to DJJ at the conclusion of his time as Manager identifying a number of critical areas where immediate changes were required. Many of the same themes previously identified were raised in his report.

NSW Ombudsman – Investigation into Kariong (2000)

- 2.9 The NSW Ombudsman's review of the riots in 1999 resulted in the release of a second detailed report from that office in March 2000. This report had 69 recommendations, again identifying

⁴⁰ In May 1996, it was found that of the 57 staff, 44 per cent were employed as casuals and 23 per cent were non-casual staff on temporary appointments.

⁴¹ NSW Ombudsman Report, March 2000, paragraph 3.103, p111

problems with centre management, intransigence from some staff, proliferation of casual staff and inadequate training, security, detainee management, and case management. It was also identified that there was no program budget. The report also concluded that the design and location of the centre were unsuitable for this kind of maximum-security facility and recommended closure.

Council on the Cost and Quality Government Review of Juvenile Justice Centres (2000)

- 2.10** This report attended to issues such as centre management restructuring, increased staffing numbers, recruitment, training and staff supervision. The DJJ implemented these recommendations in late 2003.⁴²

Johnston and Dalton Report (2002)

- 2.11** This report followed disturbances at Kariong between August and October 2002, and reiterated the failings of Kariong management and staff to deal with detainees. The authors noted that: ‘the lack of integration of case management, programs and behaviour management ... is contributing to significant safety, practice, behavioural and organisational culture issues at the centre’.⁴³

Johnston Report (2003)

- 2.12** As one of the original reviewers in 2002, Lou Johnston was employed to assess progress made by the DJJ towards the implementation of each of the recommendations made in the 2002 Johnston and Dalton Report. Overall, this report is critical of the lack of progress made by the Department in implementing procedural or cultural change at the Centre.⁴⁴

Dalton Report (2004)

- 2.13** Borrowing heavily from the Johnston and Dalton Report, Dalton highlighted, yet again, the high numbers of casual staff, low morale and inadequate procedures at the Centre.

The Fish Payne Pattenden Viney Pty. Ltd Report (2004)

- 2.14** In August 2004, the *State Wide Study of Juvenile Justice Centres NSW* was prepared for the DJJ. The report contains 4 volumes. The Executive Summary states that ‘a detailed planning and development appraisal of Juvenile Justice custodial facilities at Kariong was completed’⁴⁵ by the consultants. It further examined the suitability of Kariong Juvenile Justice Centre against Australasian standards in relation to the design and appropriate housing of juvenile offenders. The report is dealt with in detail in Chapter 11.

⁴² Submission 3, NSW Department of Juvenile Justice, p88

⁴³ Johnston L and Dalton V., *Review of Kariong Juvenile Justice Centre*, November 2002, p5

⁴⁴ Johnston L., *Follow-up Report: Review of Kariong JJC conducted in November 2002*, 22 December 2003

⁴⁵ Fish Payne Pattenden Viney Pty Ltd, *State Wide Study of Juvenile Justice Centres NSW*, August 2004, p3

Recent notable events

DATE	EVENT
3 November 2004	Minister for Juvenile Justice announcement – Transfer of Kariong Juvenile Justice Centre to the Department of Corrective Services
10 November 2004	Department of Corrective Services assumes management of Kariong Juvenile Justice Centre
9 December 2004	Parliament of New South Wales Legislative Council resolve to pass the Juvenile Offenders Legislation Amendment Bill and to establish a Select Committee on Juvenile Offenders
20 December 2004	<i>Juvenile Offenders Legislation Amendment Act 2004</i> proclaimed. Thereafter, Kariong Juvenile Justice Centre would be known as Kariong Juvenile Correctional Centre

- 2.15** The Committee commends the work already undertaken to investigate the reasons for the problems at Kariong Juvenile Justice Centre (JJC). The comprehensive and insightful NSW Ombudsman Report (1996) encapsulates the manifold systemic issues upon which the DJJ has had to reflect and act. The 2000 report continues this excellent work by investigating the operation of Kariong JJC in detail and recommends wide-ranging changes to the Department's management of that Centre. This highly critical report is of particular relevance to this inquiry, as are the two reports conducted by, first Lou Johnston and Mr Vernon Dalton, and second by Mr Dalton, in 2002 and 2004 respectively.
- 2.16** With this wealth of documentation already in the public domain, the Committee has attempted to step back from the many specific incidents and recommendations in those reports, preferring to reflect on some of the critical areas that remained outstanding at the time of the incidents in September 2004.⁴⁶ These disturbances were the catalyst for the Mr Dalton inquiry, and thereafter the decision by Government to transfer the administration of Kariong to the DCS.
- 2.17** The Committee also notes the report emanating from the NSW Legislative Council General Purpose Standing Committee No 3 inquiry in November 2004, which provides a useful summary of the issues raised by Kariong staff at that time.⁴⁷

Problems at Kariong Juvenile Justice Centre

- 2.18** While the sources of tension and problems at Kariong JJC are well documented, the following section provides an overview of the main issues highlighted both in evidence to the Committee as well as in the documents listed above. At the time of the Government's decision, the reasons for the problems at Kariong may be categorised in the following way:

⁴⁶ These incidents include the revelation of a sexual act being performed on a detainee in the visiting area of the centre and also riots by detainees, both in September 2004

⁴⁷ NSW Legislative Council, General Purpose Standing Committee No 3, *Inquiry into Kariong Juvenile Justice Centre*, Report 14, November 2004

Management and staffing

- casualisation of the work force – too few permanent staff, leading to inconsistency
- lack of individual responsibility or accountability
- lack of team work; lack of co-operation or collective purpose/responsibility
- failure to implement policies and procedures effectively
- inadequate training
- divisions between staff/management and between operational staff and support staff (counsellors and casework coordinators); staff distrusted each-other
- entrenched attitudes of staff, often competing philosophies for management of detainees
- recruitment and training issues, including inadequate performance measures and accountability
- high turnover of senior managers and different management approaches.

Security and safety

- physical security: site and design of the Centre inappropriate for maximum-security facility; equipment in disrepair
- ‘dynamic security’ of the Centre: inadequate work practices and procedures; overlooking of basic security issues, including evidence of contraband directly contributing to problems in the Centre (e.g. lighters)
- staff not able or willing to exercise proper control (constrained by management; constrained by powers under relevant legislation; not adequately trained to respond to difficult behaviour and in the appropriate use of force and restraint).

Programming and detainee management

- boredom among detainees, absence of programs, detainees with nothing to occupy time
- programs not tailored to detainee needs – either specific cultural issues overlooked (in the case of Aboriginal offenders and offenders from other ethnic groups) or long-term detainees with different needs to those with behavioural problems.
- school participation
- lack of individualised behavioural interventions, especially of concern given the specialised nature of the centre and detainees accommodated there.

Kariong culture

- staff concerns about the balance between goals of containment and rehabilitation too heavily weighted towards ‘welfare’ of detainees without consideration of basic security needs
- anti-professional culture
- isolated from the rest of DJJ system, presenting a range of problems, not least stigmatisation for detainees and staff.

Departmental oversight

- failure to acknowledge uniqueness of Kariong in terms of the purpose of the facility as well as the types of offender accommodated at the centre (including the problematic mix of high-risk offenders and different programming needs of those offenders)
- Department was aware of numerous problems, culpable of not working quickly to resolve issues before escalating out of control. Workers compensation claims alone would have directed the Department to consider wide-ranging management challenges.

Critical incidents

- 2.19** In addition to the general problems identified above, the Committee notes that some specific high-profile incidents at the Centre have been cited as catalysts for the transfer.⁴⁸ These incidents have been widely and publicly debated, and have been investigated separately by the DJJ. The Committee does not consider these incidents in any detail, as they do not fall within the scope of our inquiry. We do accept, however, that the very public nature of these incidents significantly undermined public confidence in the management of Kariong and heightened the ardour for change at the Centre to be implemented.

The NSW Government view

- 2.20** The Hon Diane Beamer MP, Minister for Juvenile Justice, said in her second reading speech in the Legislative Assembly that:

It is the Government’s view that those older, more serious offenders are best managed in the secure, disciplined environment of Corrective Services. That is the reason for the recent decision to transfer the administration of the Kariong Juvenile Justice Centre to the Department of Corrective Services.⁴⁹

- 2.21** The Government stated that its principal reason for the transfer was that detainees in Kariong Juvenile Justice Centre were no longer suited, or were no longer benefiting from the juvenile

⁴⁸ Submission 19, Public Service Association of NSW (PSA), p5

⁴⁹ Hon Diane Beamer, MP, Legislative Assembly, New South Wales, *Hansard*, 18 November 2004, p13194

justice system. Specifically, these are intended to affect ‘older detainees’ who are in Kariong because of their behaviour in other centres or because of the seriousness of their crime. Furthermore, the second reading speech goes on to suggest that the profile of juvenile offenders has changed over the last 10 years, and that these ‘more sophisticated, hardened and violent individuals’ are more prevalent in the system than they once were. To remove these detainees would ensure that ‘well-behaved offenders who have committed less serious offences are not tainted by association with older, more sophisticated offenders’.⁵⁰

- 2.22** This view has been contested by a number of participants to the inquiry, who adjudge the assumptions made in the Government’s assertions to be erroneous.⁵¹ Furthermore, participants have expressed their surprise at the Government’s sudden desire for change, and in particular that the profile and behaviour of detainees had become so prominent as a reason for its decision. Mr Garner Clancey, member of the Juvenile Justice Advisory Council and lecturer at the University of Western Sydney, pondered this question:

I am curious as to why this suddenly necessitated the transfer of the centre to DCS. There were riots soon after Kariong opened (centre opened in 91 riots in 91 or 92). There have been reports virtually every year since 1996 identifying substantial problems with the management of detainees in the centre. Why now is the government concerned with the potential contamination of the behaviour of a small number of older detainees on less serious or younger offenders?

It seems completely bizarre that we can have report after report identifying significant problems at Kariong for the past 8 or 9 years, and then the sudden transfer from DJJ to DCS. Why the haste?⁵²

Mismanagement of Kariong

- 2.23** A major criticism that permeates almost all evidence relevant to this inquiry is that management and staff were a major part of the problems that existed at the Centre. In evidence to the Committee, Ms Elizabeth Moore from the School of Humanities and Social Science, Charles Sturt University, provided a summary of her views on the practical reasons for the transfer:

There is an over reliance on casual staff, unsatisfactory staff skills and training, ineffective communication between management line staff, poor inmate behaviour management systems and weak security. All of these contribute to low staff morale and poor staff-inmate relations that are conflictual and ineffective in delivering the required security, safety and rehabilitation programs.⁵³

- 2.24** A great number of recommendations from the NSW Ombudsman reports, and other Department-commissioned reports, reflect the views of inquiry participants that mismanagement of the Centre and the intransigence of a small section of staff conspired to undermine the successful management of detainees. From the inadequate oversight by the DJJ

⁵⁰ Hon Diane Beamer, MP, Legislative Assembly, New South Wales, *Hansard*, 18 November 2004, p13194

⁵¹ This is discussed later in this chapter

⁵² Submission 29, Mr Garner Clancey, p11

⁵³ Ms Elizabeth Moore, Evidence, 14 March 2005, p25

right through all tiers of management to a number of front-line youth officers, few within the Department escape criticism. Recommendations from each of the reports on Kariong implored the DJJ to take urgent and radical remedial action to address staffing issues – including all those listed above.

- 2.25** While the focus has consistently been on this mismanagement, it is worth noting that neither NSW Ombudsman report considered those detained at Kariong to be responsible for the underlying problems at the Centre. Conversely, the Dalton Report in 2004 does include observations on the state of the centre that directs blame onto detainees. This report has been seen as directly responsible for precipitating the transfer to DCS. This report is also notable as its recommendations raised the possibility of handing over responsibility to DCS for the first time.

Political imperative?

- 2.26** Notwithstanding the persistent problems encountered at the Centre at the time of the Government's decision, some doubt has been expressed as to whether these wide-ranging difficulties at the Centre were the 'reasons' for the decision as such. The widely held view expressed in evidence to the Committee is that the decision to transfer operational management of Kariong to the DCS may have been a political one:

[there is a] widespread perception that this transfer was a 'knee-jerk' reaction.⁵⁴

On its face, it appears that the legislation is not the result of consistent policy, philosophy and legitimate concerns about the Juvenile Justice system, but rather a response to negative media coverage of Juvenile Justice facilities.⁵⁵

- 2.27** Father Nuthall, Department of Juvenile Justice Chaplain, was critical of the overall politicisation of juvenile justice issues by the public and media:

Politically the community seems to demand the image of the high fence, the high wall, so that we lock our problems behind that and the community feels safe. To some extent that is the comfortable illusion because fundamentally what we do is like throwing a burning rubber ball behind a high wall. Eventually it will bounce back if we do not do the right thing behind that high wall. However, that is a political reality and it is driven by the media and the climate of the day.⁵⁶

Both major political parties have sought to extract maximum political advantage out of the so called 'law and order' issue to the detriment of sound policy and good management of juvenile offenders.⁵⁷

- 2.28** Other examples have been identified by witnesses as having illustrated the political nature of the decision. Ms Sanders from the Shopfront Youth Legal Service gave this view:

⁵⁴ Submission 12, National Children's and Youth Law Centre, p2

⁵⁵ Submission 8, Shopfront Youth Legal Centre, p1

⁵⁶ Father Ramsay Nuthall, Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee, Evidence, 14 March 2005, p49

⁵⁷ Submission 7, Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee, p4

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.⁵⁸

2.29 The Minister for Justice stated:

We did not need richly paid consultants to tell us that the swimming pool was not going to work at Kariong, for what we were going to do. There was an adequate range of recreational activities to fulfil our requirements to ensure that inmates received appropriate exercise. That pool was appallingly located—I do not know why you put it there, in fact. I understand from some of the staff, the education staff in particular, that the shed, which was on a slope, was actually used as a diving platform by some of the detainees. When the detainees were misconducting themselves and staff were trying to get a hold of them, they would dive into the middle of the swimming pool and ask the staff to come in after them.⁵⁹

Lack of consultation

2.30 A majority of inquiry participants also remarked on the haste of the decision-making process which precipitated the transfer of Kariong. Key stakeholders have consistently raised concerns about how such a significant change in government policy could have been made with so little consultation with those who have most experience and expertise in the area of juvenile justice.

2.31 Ms Moore told the Committee:

I saw it as a hasty decision made with a lot of public attention on it. It was a disappointing decision given that the evidence has been there for some years that these other problems and these other things need addressing. The Dalton Report

⁵⁸ Ms Jane Sanders, Principal Solicitor, Shopfront Youth Legal Service, Evidence, 9 March 2005, p46

⁵⁹ Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, p16

really does not provide the same evidence base that is in previous reports. So, I did see it as a hasty political decision.⁶⁰

- 2.32** The Committee notes that, prior to the decision, the Government did not seek advice from the Juvenile Justice Advisory Council or the Aboriginal Justice Advisory Council, which are mandated specifically for the purpose of providing advice to the Government on juvenile justice matters. The issue of consultation on the decision is discussed in further detail in Chapter 11.

Conclusion

- 2.33** The Committee notes that Kariong had long been beset with problems and reviews of the Centre have brought forth consistent recommendations for change in relation to staff and management.
- 2.34** Whatever the reasons for the transfer, the Committee believes that a shift in Government policy of this magnitude should not have been made so quickly, with so little consultation and without safeguarding the integrity of the juvenile justice system. The weight of evidence to the inquiry shows widespread opposition to this decision among those who should be integral to the decision-making process, not least the Juvenile and the Aboriginal Justice Advisory Councils, which were established to provide precisely this kind of advice to the Government.
- 2.35** The Committee believes, however, that the failure of the DJJ to respond to the recommendations in the numerous reports listed above and address the management problems at Kariong represents a missed opportunity for the Department. The ineffectiveness of its efforts to implement operational and cultural change at the Centre cannot be attributed solely to the intransigence of some staff. While we accept that some staff caused problems in relation to the implementation of policies and procedures at the Centre,⁶¹ the Committee believes that the DJJ must take responsibility for the considerable management problems that existed at Kariong prior to the transfer.
- 2.36** Mismanagement at Kariong was the principal challenge for the DJJ. It is notable that the detainees have consistently escaped censure for their involvement in incidents at the Centre. The call for harsher environments in which to contain violent and disruptive detainees has largely come from the media and public. While the Committee does not believe the detainees involved in the incidents in 2004 were blameless, responsibility for security at the Centre and for supervision of detainees ultimately rests with the Department and its staff.

Profile of young offenders

- 2.37** As noted above, changes in the seriousness of juvenile offending have been discussed throughout this inquiry. The DJJ claim the seriousness of juvenile offending has increased in some categories of offences. The DJJ submission argues there is an upward trend in terms of offences against the person, including homicide and related offences, aggravated sexual assault, aggravated robbery, non-aggravated robbery and aggravated assaults. Data from the Children's

⁶⁰ Ms Elizabeth Moore, Evidence, 14 March 2005, p30

⁶¹ Submission 3, NSW Department of Juvenile Justice, p89. The Department submits that implementation was frustrated by ongoing staff and management difficulties

Court indicates an increase in these offences in the order of ten percentage points over a ten-year period.⁶²

- 2.38** The NSW Government argued that the involvement of Corrective Services in the management of Kariiong is justified on the basis that the profile and nature of juvenile offending has shifted markedly over the past decade. The Minister for Juvenile Justice, in her second reading speech to the Legislative Assembly, asserted that the transfer of Kariiong to the DCS was:

...recognition that some older detainees are better suited to the environment of the DCS, either due to the seriousness of their offence or because of their behaviour. The [Juvenile Offenders Legislation Amendment] Bill also reflects the significant changes in the profile of juvenile offenders over the past 10 years. That profile is of more sophisticated, more hardened and violent criminals, with criminal records including gang rape, aggravated assault and murder.⁶³

- 2.39** Professor Cunneen, Chair of the Juvenile Justice Advisory Council argues that the change in offender profile in detention has a lot to do with the success of diversion programs for young 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.⁶⁴

- 2.40** Other witnesses challenged the Department's reading of the statistics and the Minister's conclusions that the profile of young offenders is 'more sophisticated, more hardened and violent'.⁶⁵ Mr Clancey told the Committee that after looking at a number of sources of statistics on offender profiles, he was unable to draw similar conclusions:

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

⁶² Submission 3, NSW Department of Juvenile Justice, pp22-23

⁶³ Hon Diane Beamer, MP, Legislative Assembly, New South Wales, *Hansard*, 18 November 2004, p13194

⁶⁴ Professor Chris Cunneen, Chair, NSW Juvenile Justice Advisory Council, Evidence, 9 March 2004, p40

⁶⁵ Statistics provided by the DCS confirm the offending profile of juvenile offenders at Kariiong as at 18 February 2005: Murder: 7 inmates; Manslaughter: 1 inmate; Sexual Assault: 6 inmates; Break and Enter: 3 inmates; G.B.H.: 1 inmate; Robbery: 10 inmates; AOABH: 3 inmates. Submission 2, Department of Corrective Services, p4

to find it, or it does not appear to have been published. It has 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.⁶⁶

- 2.41** According to Mr Clancey, since its establishment in the early 1990s, there have been ‘pockets of different offenders’ moving through the juvenile justice system. Mr Clancey notes that in recent times, the system has had a higher than normal number of young men on serious sexual offences, but, he asks ‘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.⁶⁷

- 2.42** The Minister for Justice stated in evidence to the Committee that:

We have a lot of experience with young offenders in the corrective services system. We have more people in the age group of juvenile justice—16 to 21—than does Juvenile Justice. A lot of those are in juvenile offender programs that we operate at John Moroney, at Oberon and at Brewarrina, particularly in relation to indigenous young offenders. So, we have a lot of experience. We also have a lot of experience in dealing with serious offenders, which a lot of people who are at Kariong clearly. Indeed, we have much more experience in dealing with issues relating to serious offenders than the juvenile justice system, simply because of the large number of serious offenders in the adult system.⁶⁸

- 2.43** A number of witnesses told the Committee that the debate and decision making on juvenile justice and corrective service matters are not often based on empirical evidence. As we discuss later in the report, access to accurate and detailed information on offenders is essential to ensuring that appropriate programs are available to assist those detainees and reduce recidivism. This issue is discussed in Chapter 6.

⁶⁶ Mr Garner Clancey, Lecturer, University of Western Sydney, Evidence, 9 March 2005, p27

⁶⁷ Mr Garner Clancey, Evidence, 9 March 2005, p27

⁶⁸ Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, pp4-5

Chapter 3 Impact of the transfer

This chapter considers a number of the immediate impacts of the transfer of management responsibility for Kariong to the Department of Corrective Services. The chapter also considers the speed with which the transfer occurred and the level of consultation prior to the decision. In the final section of the chapter, the Committee considers the immediate impact of the transfer on the operation of Kariong, discussing its effectiveness in addressing management problems at the Centre. The wider, longer-term consequences of the transfer are discussed later in this report, in Chapter 10.

Evidence from staff

3.1 In this chapter, and throughout the report, the Committee reflects on the evidence provided by staff to this inquiry. Between September and November 2004 the NSW Legislative Council's General Purpose Standing Committee No 3 conducted an inquiry into Kariong Juvenile Justice Centre. It is not the purpose of our Committee to revisit the evidence or conclusions of this report, but its summary of the main issues raised in evidence is useful.⁶⁹ This Select Committee took evidence from a group of former staff at Kariong on 17 May 2005, who provided a personal insight into the impact of the transfer on staff and we are grateful to Mr Mark Fitzpatrick, Mr Brian Fitzpatrick, Mr Glen Menser, Mr Peter Hawthorne, Mr Stan Parkes and Ms Carolyn Delaney for their candid and open responses to the Committee's questions.

Impact on Kariong staff

3.2 On 3 November 2004, the Minister for Juvenile Justice announced that the Kariong Juvenile Justice Centre would be brought under the control and management of the NSW Department of Corrective Services. In the press release that accompanied the announcement, the Minister stated that detainees at the centre were no longer suited to the Juvenile Justice system and that Corrective Services officers, 'more experienced and more suitably trained in managing difficult and serious offenders', would assume full control of the centre within one week of the announcement, on 10 November 2004.⁷⁰

3.3 Minister Beamer indicated that a redeployment strategy was being implemented at the time of the announcement and that a range of options would be presented to clerical, administrative and other Kariong staff. In response to questioning from the Committee, it was clear that neither the Public Service Association (PSA) nor staff were given prior warning of the announcement.⁷¹

3.4 Following the announcement, the Director General and Assistant Director General (Operations) met with Kariong staff and provided them with information packages to explain

⁶⁹ General Purpose Standing Committee No.3, *Inquiry into Kariong Juvenile Justice Centre*, Report 14, November 2004

⁷⁰ Hon Diane Beamer, MP, Minister for Juvenile Justice, *Kariong - A Long Term Solution*, Media Release, 3 November 2004

⁷¹ Former Kariong Staff, Evidence, 17 May 2005, p14; New South Wales Public Service Association (PSA), Evidence, 17 May 2005, p30

their options – principally, that each affected staff member could consider redeployment or voluntary redundancy.⁷²

Displacement and redeployment

3.5 The most recent information available to the Committee regarding outcomes for former employees of Kariong is from 18 March 2005:

Of the 63 permanent officers formerly at Kariong (including one substantive Kariong employee previously located at Frank Baxter Juvenile Justice Centre):

- 22 have accepted voluntary redundancy
- 15 have been permanently redeployed
- 1 has been medically retired
- 15 are temporarily deployed in the Department
- 7 are in the process of being transferred to the Department of Corrective Services subject to discussions with the Public Employment Office
- 3 are on secondment to an external agency or are supernumery officers

Of the 22 long-term temporary and casual staff (with more than 12 months continuous service):

- 16 have received a severance payment
- 6 have accepted casual employment with the department

Of the 11 casual/temporary employees with less than 12 months service;

- 2 have left the department
- 9 continue at either Yasmar, Cobham or Baxter Juvenile Justice Centres.⁷³

3.6 These facts confirm that the effect of the transfer has been extensive, affecting almost 100 Department of Juvenile Justice (DJJ) employees, and affecting the operational considerations of at least three other centres, most notably the Frank Baxter Juvenile Justice Centre, which has absorbed the majority of displaced employees.

3.7 The Department has indicated that all affected staff members were afforded opportunities to speak with specialist career counsellors to support them in understanding the implications of their decisions in relation to voluntary redundancy and redeployment.⁷⁴ In correspondence with the Committee, the following information from the DJJ confirms that a considerable number of staff benefited from the provision of human resources assistance:

⁷² Submission 3, NSW Department of Juvenile Justice, p95; A copy of the information given to staff immediately after the announcement was provided to the Committee in correspondence, 30 June 2005.

⁷³ NSW Department of Juvenile Justice, responses to Questions on Notice, 7 April 2005

⁷⁴ Submission 3, NSW Department of Juvenile Justice, p95

IPS, our employee assistance provider, counselled 25 Kariong staff during the period 1 October to 31 December 2004, with a further 3 enquiries from Kariong staff from 1 January to 31 March 2005. Interim Pty Ltd conducted 18 training sessions on career decision-making, how to self manage through the redeployment process, responding to selection criteria and interview techniques with a total 129 attendances. Interim Pty Ltd provided 106 one to one career coaching sessions involving 49 people.⁷⁵

Uncertainty and loss of permanency

- 3.8 The fact that few guarantees were possible in relation to the permanent future employment of those staff affected by the transfer created a feeling of uncertainty. The Department of Juvenile Justice Chaplains⁷⁶ reflected on the outcomes for staff, stating:

Forced disruption of employment circumstances has resulted in financial and emotional instability that in turn greatly affects family and community relationships.⁷⁷

- 3.9 The perception from those staff involved in redeployment has been similarly pessimistic. Of the 63 permanent staff employed at Kariong prior to the transfer, 15 are currently occupying temporary positions and are clearly frustrated that they have been unable to regain a substantive permanent post.⁷⁸ Mr Menser, a former youth officer at Kariong expressed his disappointment at having to accept a position with the Juvenile Justice Transport Unit in order to regain the security of a permanent job:

I went back up [to the Frank Baxter Juvenile Justice Centre] on 11 November last year when Kariong closed. I went into the units there as a youth worker. I was a permanent member at Kariong, not a casual permanent. When I went up there I enjoyed working at Baxter very much. I loved working in the units there. No one was able to give me any guarantees as to longevity as far as my employment went. Consequently, there were two positions advertised for the Juvenile Justice Transport Unit that I applied for. I was successful in gaining one of those. So I am now working in the transport unit. Had I had a permanent position available to me at the Baxter Centre as a youth officer, I would have much preferred to have worked with the boys in that scene.⁷⁹

- 3.10 A number of witnesses were also concerned that the Minister for Juvenile Justice has seen this decision as an opportunity to deselect some Kariong staff. The Minister's press release confirmed that 'efforts will be made to transfer **suitable** Kariong staff to other areas of Juvenile Justice'.⁸⁰
- 3.11 Following the announcement, however, the DJJ did act positively to develop procedures to manage the redeployment of staff. This process was conducted in collaboration with the Public

⁷⁵ NSW Department of Juvenile Justice, correspondence with the Committee, 30 June 2005, p1

⁷⁶ Representatives of the Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee

⁷⁷ Submission 7, Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee, p5

⁷⁸ Mr Peter Hawthorne, former Kariong Staff, Evidence, 17 May 2005, p7

⁷⁹ Mr Glen Menser, former Kariong Staff, Evidence, 17 May 2005, p6

⁸⁰ Hon Diane Beamer MP, 'Kariong – A long term solution', Press Release, 3 November 2004; emphasis added by the Committee

Service Association of NSW (PSA) and under the supervision of the Public Employment Office. The Committee recognises the collaborative spirit of these negotiations. As the PSA explain:

Since [the transfer] considerable effort has been made to relocate and redeploy staff. So there has been an effort made by the Department since then, which we must recognise.⁸¹

- 3.12** Furthermore, while the PSA conceded that there remained some individual issues outstanding, they were content that the interests of former staff would remain protected under Government regulations:

We have been able to obtain positions for the vast majority of those members who did not seek a voluntary redundancy...the particulars of the situation, however, are that currently a small group of staff are not redeployed into permanent positions with the Department of Juvenile Justice. However, they have been redeployed into long-term temporary positions, positions which will be ongoing until the end of this year. Under the State Government's current policy these staff will have no forced redundancy. They will have their employment conditions and their status as workers protected on an ongoing basis.⁸²

- 3.13** The DJJ has further assured the Committee in written evidence that in the filling of substantive youth officer vacancies within the Department, 'first preference [will be given] to displaced officers'.⁸³

Inhibited career prospects

- 3.14** According to the PSA, the concomitant effect of the redeployment of staff to other centres, not least the Frank Baxter Juvenile Justice Centre, has been that the:

...exercise [has] resulted in many staff at other centres failing to get permanent positions or promotionary [sic] positions.⁸⁴

- 3.15** Former Kariiong youth officers felt that the termination of a number of permanent positions at Kariiong will make it difficult for them to secure permanent positions. Furthermore, the impression has been that career progression has been inhibited as a result of the redeployment exercise.

- 3.16** This is particularly felt by staff at the Frank Baxter Juvenile Justice Centre, which has incorporated a number of displaced officers into its staffing compliment. Mr Ball, an employee at the Baxter centre, elucidates on the views of some Baxter staff:

⁸¹ Mr Andrew Wilson, Industrial Officer, Public Service Association of NSW (PSA), Evidence, 17 May 2005, p28

⁸² Mr Andrew Wilson, Evidence, 17 May 2005, p29

⁸³ Correspondence from Mr David Sherlock, Director General, Department of Juvenile Justice, 20 June 2005, p1-2

⁸⁴ Submission 19, Public Service Association of NSW (PSA), p8

[The relocation of ex Kariong workers] has also had a great impact on some of the staff at the Frank Baxter Centre; some have lost the chance to proceed to a higher grade because Kariong staff have taken available positions.⁸⁵

Frank Baxter Juvenile Justice Centre

3.17 Staff at Baxter, then, have clearly been affected by the transfer, where all the same complications and difficulties encountered by former Kariong staff, because of their redeployment have impacted materially on them. There are similar issues surrounding job security and lack of career progression, combined with feelings of resentment that opportunities may have been lost to accommodate staff from Kariong. It is clear that the transitional period for all staff at these centres has been problematic.

3.18 In general, the integration of Kariong employees appears to have come at some cost to the personal well being of those involved. Mr Ball, a youth officer at Baxter, suggested that:

...the impact on staff from Kariong in the main was quite disastrous...this situation has left them angry and frustrated, the morale and self-esteem of both ex-Kariong and Baxter staff has plummeted.⁸⁶

3.19 Testimony from former Kariong staff exemplifies the varying experiences as to the success of their integration into the Baxter Centre. On the one hand, ex-Kariong staff intimated that their arrival has been handled smoothly and that they were welcomed because they brought with them considerable experience in managing young offenders. Mr Brian Fitzpatrick remarked:

I have become close friends with a couple of Baxter people up there and they were saying that the improvement of knowledgeable staff up there is terrific because they had a lot of casuals who were still only learning the ropes, but here is us experienced people walked straight in and they just loved it because things were getting done. They were experienced people on the floor.⁸⁷

3.20 On the other hand, the impression from other former staff has been that they have experienced negative, even hostile treatment from their new colleagues. Mr Hawthorne, a former Kariong youth officer, explained:

A lot of the staff at Frank Baxter harbour animosity towards us because we have taken their positions. We have come down and we pose a threat to their jobs. Our relationship with them and finding out what happened before and what happens now is up in the air because, at the end of the day, we don't know whether we have got jobs; they don't know whether they have got jobs. Nobody knows where they really stand.⁸⁸

⁸⁵ Submission 26, Mr Edward Ball, p3

⁸⁶ Submission 26, Mr Edward Ball, p3

⁸⁷ Mr Brian Fitzpatrick, former Kariong Staff, Evidence, 17 May 2005, p9

⁸⁸ Mr Peter Hawthorne, Evidence, 17 May 2005, p5

Speed of the transfer and lack of consultation with staff

- 3.21** Aside from the criticism of the decision itself, it is clear that the haste with which the transfer was expedited, and the passage of the Act that followed, may have exacerbated the impact on staff in Kariong and across the DJJ. The Committee notes that the period of time between the announcement and the implementation of the transfer was just one week. It is self-evident that this leaves little time for those affected by the transfer to fully assess its implications.
- 3.22** Brian Fitzpatrick, former Kariong youth officer, suggested that staff may have felt pressurised into making decisions about their future, not just because of the speed of the transfer but also because of the uncertainty about their employment prospects:

A lot of people lost their jobs, a lot resigned, a lot have taken redundancy money because they were forced into a corner where they had the choice to take redundancy or chance it and stay at Baxter when permanents are not assured of a job, so they took the redundancy.⁸⁹

- 3.23** The PSA said that more notice should have been given:

The Association believes that our members should have been given more notice under the circumstances. We were left in a situation where, in a very short space of time, we were forced to deal with the impacts of the decision to move the Centre on a large number of staff, and in light of the troubles that had existed within the Centre for some time. So it was a very difficult scenario to deal with. We do not believe we received sufficient notice.

We believe they [Kariong staff] should have been given more notice.⁹⁰

- 3.24** The lack of consultation in the decision-making process is considered in Chapter 11.

Other effects

- 3.25** The impact of the transfer and redeployment on the personal lives of many former Kariong staff has been profound in some instances. Mr Mark Fitzpatrick, an ex-Kariong employee, has provided anecdotal evidence to the effects of feelings of job insecurity and instability following the transfer:

Many find themselves depressed and gutted to the extent of marriage strains and breakdowns of their family unit. [One worker] has just split with his wife of twenty-three years, all because of the strain this has had on the family.⁹¹

- 3.26** Mr Mark Fitzpatrick also testified in evidence to his own personal circumstances:

I feel responsible for probably being a catalyst for the downfall of Kariong and I have lost a lot of friends in the interim...just thinking about what has transpired and what has happened has really made me feel guilty, which I should not feel.⁹²

⁸⁹ Mr Brian Fitzpatrick, Evidence, 17 May 2005, p23

⁹⁰ Mr Andrew Wilson, Evidence, 17 May 2005, p28

⁹¹ Submission 20, Mr Mark Fitzpatrick, p1

3.27 The PSA have also commented on the general impression that:

...the transfer has had a significant impact on staff confidence and morale. It has created a climate of fear and loathing with staff genuinely afraid that their jobs are at risk.

This [the *Juvenile Offenders Legislation Amendment Act 2004*] undercut the employment security of staff working within the system. The demoralisation of staff that has arisen out of the Kariong transfer is a major issue for the Department [of Juvenile Justice] to deal with.⁹³

Conclusion

- 3.28 Many inquiry participants criticised the decision-making process and the speed with which it was given effect. The Committee shares these concerns and is extremely disappointed that the significant effects of the transfer on staff at Kariong were exacerbated by the haste shown by the Government in this regard. The Committee concurs with the PSA that more notice should have been given to Kariong staff. The Committee believes it is understandable for staff to feel aggrieved at being informed of this decision through the media and not through official channels.
- 3.29 The Committee sympathises with the frustrations felt by some former staff that have yet to secure their favoured permanent positions at other centres. It is regrettable that a number of staff remain in temporary positions and that salary maintenance continues to be required for those people.
- 3.30 The Committee is especially concerned that the Minister for Justice has seen this decision as an opportunity to deselect some of the Kariong staff. As noted in this chapter, the Minister's press release confirmed that 'efforts will be made to transfer **suitable** Kariong staff to other areas of Juvenile Justice'.⁹⁴
- 3.31 There does appear, however, to have been considerable efforts to ensure satisfactory outcomes for all Kariong employees and the Committee believes that the provisions and entitlements afforded to displaced staff through the *Managing Displaced Employees Policy Premier's Memoranda*, as detailed in correspondence from the DJJ, are sufficient to protect their interests.
- 3.32 Some former Kariong staff have also suggested to the Committee that they feel targeted for their role in speaking out about mismanagement at Kariong in 2004 prior to the transfer.

⁹² Mr Mark Fitzpatrick, former Kariong Staff, Evidence, 17 May 2005, p26

⁹³ Submission 19, PSA, pp8-9

⁹⁴ Hon Diane Beamer MP, Minister for Juvenile Justice, 'Kariong – A long term solution', Media Release, 3 November 2004; emphasis added

Impact on the operation of Kariong

- 3.33** This section considers whether the transfer of Kariong has addressed the past management problems. In this section the Committee considers the effectiveness of the DCS in restoring order and control at Kariong and a number of immediate changes made at the Centre.

Has the transfer addressed management problems?

- 3.34** In Chapter 2, the Committee examined the reasons for the transfer, including an assessment of the underlying management and staffing problems at Kariong Juvenile Justice Centre that have been well documented. Term of reference (b) invites the Committee to investigate whether the decision to transfer the administration of Kariong to the DCS has addressed those problems.
- 3.35** Evidence to the Committee has expressed scepticism about the extent to which the decision addresses management problems at the centre:

The Legislative Amendments [contained in the *Juvenile Offenders Legislation Amendment Act 2004*] appear simply to reconfigure the problems as opposed to the NSW Government taking responsibility for instituting effective management systems within the Department of Juvenile Justice. Accordingly, this transition is likely to be ineffective and leave in place a legislative regime that inhibits the stated objectives of the Department of Juvenile Justice.⁹⁵

The Act is an inappropriate response to a management failure at Kariong...the Government [is not] taking responsibility for effecting improved management systems within the Department of Juvenile Justice.⁹⁶

- 3.36** In attempting to address the underlying causes of problems at the Centre, many witnesses have questioned whether the transfer will actually solve the management crises at Kariong. Rather than tackling issues such as staffing, training, and departmental oversight, the implication has been that:

Rather than solving the problem, it shifts the challenge to [another] Department.⁹⁷

- 3.37** Some former staff commented that those occupying positions within senior management at the Centre have been redeployed elsewhere within the Department. Furthermore, the remainder of former Kariong staff who have continued employment within the DJJ appear to have had little re-training or re-orientation following their redeployment. The Committee believes that to address the underlying causes of mismanagement by those engaged at Kariong, the very minimum requirement would have been for a thorough appraisal of the performance of all staff and management to be undertaken. Further to that, to institute mandatory management and other training to ensure that the erroneous application of departmental policies and directives are not repeated elsewhere within the system. The issue of staff training is discussed in detail in Chapter 9.

⁹⁵ Submission 12, National Children's and Youth Law Centre, p3

⁹⁶ Submission 13, NSW Council of Social Services (NCOSS), p2

⁹⁷ Submission 13, NCOSS, p6

Has the transfer been effective?

- 3.38** Fundamentally, one purpose of the decision appears to have been to institute a reinvigorated sense of discipline and order to the Centre in the wake of repeated disturbances. The Minister for Juvenile Justice, in her second reading speech to the Legislative Assembly, stated the intention of the legislation before the House was to:

Institute a strict discipline system of privileges and sanctions. Officers will have the disciplinary and use of force powers of the counterparts in the adult system...a strict system of hierarchy of sanctions and privileges has been instituted that requires inmates to behave appropriately, comply with directions and undertake necessary education and programs.⁹⁸

- 3.39** Assuming, then, that the measure of effectiveness of the transfer is the extent to which Corrective Services officers have established discipline and compliance with rules and routines at the centre, almost all participants in the inquiry, regardless of their view on the appropriateness of the regime, have conceded that the DCS has been effective in undertaking its new responsibilities at the centre.

Credit where credit is due: the Department of Corrective Services is doing a good job in what it does well, that is, the management of the [Kariong Juvenile Justice] centre.⁹⁹

With the introduction of Corrective Services into Kariong, they actually instituted a structure and a disciplinary system whereby these young offenders actually knew exactly what they could and could not do; they know what would and what would not be tolerated...the transfer to Corrective Services saw almost an immediate change.¹⁰⁰

Immediate change

- 3.40** Following a turbulent and escalating series of well publicised incidents at Kariong, it was essential to restore order and reclaim control of the Centre. The Committee is happy to acknowledge the Department of Corrective Services' unquestionable success in achieving this objective. In addition, the management of the Centre has benefited enormously from the professionalism and cohesion of the officers who have been charged with implementing change at the Centre. The Committee would like to recognise a number of particular achievements made in Corrective Services' short tenure to date.

George Anderson Walpole School

- 3.41** During the Committee's visit to Kariong on 25 February 2005, we were generously afforded an opportunity to speak to all members of staff at the Centre, including Corrective Services officers, detainees, clerical staff, the Chaplain and teachers at the George Anderson Walpole School. The Committee met with the Principal of the school and spoke to a number of

⁹⁸ Hon Diane Beamer, MP, Legislative Assembly, New South Wales, *Hansard*, 18 November 2004, p13194

⁹⁹ Reverend Ian Duncan, Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee, Evidence, 14 March 2005, p54

¹⁰⁰ Mr Howard Brown, Deputy President, Legal Affairs Officer, Victims of Crime Assistance League [VOCAL], Evidence, 3 March 2005, pp35-36

individual teachers who expressed their satisfaction at the results of the transfer in relation to detainee participation and commitment in educative programs. They reported that not only was participation in educational activities at capacity, but that additional places were being sought to satisfy demand for courses.

- 3.42** The Committee was encouraged by the wide range of education opportunities available to detainees, including high school qualifications, TAFE courses and vocational and art classes. This is especially pleasing because it continues to reflect the DJJ aspirations for provision of age-appropriate and culturally based programs, acknowledging the need for educational opportunities to extend beyond high-school qualifications.
- 3.43** In addition to the school, the Committee notes the increased availability of employment opportunities for detainees who opt not to pursue educational qualifications, and that places on these programs have been received enthusiastically by detainees.¹⁰¹ Whichever pathway detainees choose to follow, it is clear that a structured daily routine, one which reinforces the need for education and otherwise productive use of detainees' time, is important to the successful management of the centre. It is evident to the Committee that detainees who are fully occupied in a structured activity pose less of a security risk than those who are bored and frustrated.

Hierarchy of Privileges

- 3.44** Related to the participation in programs mentioned above, is the new incentive scheme in place at Kariong. The Hierarchy of Privileges follows a three-stage formula similar to that which operated prior to the transfer, where detainees may enjoy increasing level of privilege and access to programs depending on an assessment of their behaviour and participation. Essentially, the three stages of the program are:

Stage 1 (Induction and Assessment) – all detainees are to undergo this initial induction assessment to ascertain level of risk, behaviour modification needs and suitability for programs;

Stage 1 (Management), for provision of basic services and provisions (access to telephone calls etc) and required to participate in structured programs. Detainees are evaluated for progression every month.

Stage 2 (Programs), intended to be the 'normal' management stage for detainees who have shown themselves to be compliant with centre protocol and routine. Detainees are encouraged to pursue education and employment but access to programs remains limited until stage 3. Progress is evaluated every month.

Stage 3 (Low Risk), detainees are to continue high level participation and good behaviour with a view to possible reclassification for return to the Juvenile Justice Centre or to the adult correctional system.¹⁰²

¹⁰¹ Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, p9. Employment positions include ground maintenance, laundry, kitchen-hand, painter, health and hygiene and general cleaning.

¹⁰² Answers to questions on notice, Hon John Hatzistergos, MLC, Minister for Justice, 14 June 2005

- 3.45 The Department has also instituted a 'buy-up' system, which enables detainees to purchase canteen items weekly as reward for their participation in programs. The Minister for Justice expanded on the benefits of this approach:

This will encourage budgeting and responsibility and will enable [detainees], if they wish, to be able to purchase additional items above those that are currently supplied to them.¹⁰³

- 3.46 The purpose of any incentive scheme is to foster and promote positive behaviour and performance from detainees in custody, to instil the importance of adhering to Centre routines and management requirements. The Committee is pleased to note the DCS's submission that confirms the positive outcomes of this system in terms of detainee behaviour modification and program participation.¹⁰⁴ Having a successful and well-managed incentive scheme has been recognised by the NSW Ombudsman as essential for behaviour management. As the NSW Ombudsman observed:

When staff spoke of their loss of control over the detainees, many described a breakdown in the incentive scheme as a major contributing factor.¹⁰⁵

- 3.47 Also of particular note here is the view of the detainees themselves, who have expressed their satisfaction at the implementation of this scheme and the new level of consistency with which it is applied in practice across the Centre.

Juvenile inmates...generally commented favourably upon the transfer, stating that Department of Corrective Services officers are consistent and fair in their treatment. Although the Department of Corrective Services is operating the centre with almost half the number of staff previously employed by the Department of Juvenile Justice at the centre, it appears to be functioning well. The number of incidents within the centre has also reduced.¹⁰⁶

- 3.48 The Corrective Services' officers have exemplified the benefits of consistency and transparency in their application of the Hierarchy of Privileges and the Committee applauds the implementation of this system in the Centre.

Staffing

- 3.49 The consistent application of Centre policy and protocol has been one of the most striking and impressive achievements of the DCS, which is directly attributable to the professionalism of the Corrective Services staff. A number of witnesses have praised the training, discipline and uniformity of Corrective Services officers who impress the need for discipline and routine upon detainees by observing that approach in their own performance. The Committee believes that the importance of setting an example for detainees in this environment cannot be underestimated.

¹⁰³ Hon John Hatzistergos, Evidence, 14 March 2005 p8

¹⁰⁴ Submission 2, NSW Department of Corrective Services, p3

¹⁰⁵ NSW Ombudsman, *Investigation into Kariong Juvenile Justice Centre*, March 2000, p181

¹⁰⁶ Submission 6, NSW Ombudsman, p1

3.50 The DCS has reported just one instance of sick leave, no instances of matters involving workers compensation and very minimal overtime.¹⁰⁷ When this record is compared to the kind of figures provided to the Committee by other participants – such as 282 instances of workers compensation claims in 2004¹⁰⁸, and an increase in sick leave at Kariong of 69 per cent in 2003-2004¹⁰⁹ – these reports are encouraging. They certainly reinforce the Department's own claim of having 'proved extremely effective and cost-efficient' since taking over the administration of Kariong in November 2004.¹¹⁰

3.51 Overall, the success of the DCS has been praised even by former staff at the Centre. Mr Menser, ex-Kariong employee, told the Committee:

I believe that one of the biggest failures of Kariong was that there was no uniformity of methods. The goalposts kept getting moved all the time. The reason why Corrective Services is doing a good job there now is that they are all in the same uniform; they all work under the same rules. The boys are no different. They might have committed some heinous offences, but they are no different to any other boy. They need boundaries set; they need to know that the same thing is going to recur the next day, that if they do this today it is going to be the same tomorrow. But while we kept moving the goalposts, they did not know from one day to the next what they were going to do. I have heard the boys say that.¹¹¹

3.52 The testimony of both former staff and detainees at Kariong has provided the Committee with ample evidence that in terms of custodial management, the DCS has proven successful in bringing about positive change in a short period of time.

3.53 Perhaps one of the reasons for this success has been the freedom afforded to the DCS to implement wide-ranging changes to the operation of the centre. The DCS has benefited enormously from having a 'blank canvass' to work on, and there have unquestionably been some lessons to be learnt from the strategies employed by the Department to better manage the Centre.

Structural improvements

3.54 The Kariong site has been long regarded as unsuitable for a maximum-security facility. Significant concerns relate to the poor design and inadequate physical security of the site, including multi-level residential units, irregular perimeter fences and the disrepair of security equipment.¹¹² While these have been improved through upgrading of the closed circuit security system, basic procedures and lack of discipline and training of staff at Kariong before the transfer appeared to undermine this progress.

¹⁰⁷ Submission 2, NSW Department of Corrective Services, p4

¹⁰⁸ Mr Howard Brown, Evidence, 14 March 2005, p34

¹⁰⁹ Newbery, J., *Review of Department of Juvenile Justice Industrial Relations and Human Resources Practices*, December 2004, p9

¹¹⁰ Submission 2, NSW Department of Corrective Services, p4

¹¹¹ Mr Glen Menser, Evidence, 17 May 2005, p19

¹¹² Father Ramsay Nuthall, Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee, Evidence, 14 March 2005, p50; see also the NSW Ombudsman Report, March, 2000, p11

3.55 While accepting that the DCS has also benefited hugely by the allocation of substantial capital funding, the Committee recognises the effectiveness of the Corrective Services team in utilising their expertise and knowledge to attend to the functional deficiencies at the centre. This \$2.1 million investment has enabled considerable upgrading of a number of crucial areas of the Centre. Notable improvements include the upgrading of all residential units, the visitor reception and visiting area, as well as the recreational areas. The Committee believes that this additional investment in the infrastructure of the Centre is long overdue. We see these improvements as both necessary and welcome.

Chapter 4 Consequences of the transfer – the legislation

This chapter provides a summary of the consequences of the *Juvenile Offenders Legislation Amendment Act 2004* in terms of legislative, administrative and operational changes at Kariong. It further details the main objections of inquiry participants to the legislative amendments.

The *Juvenile Offenders Legislation Amendment Act 2004*

The amendments in brief

4.1 The *Juvenile Offenders Legislation Amendment Act 2004* amended the following three Acts:

<i>Children (Criminal Proceedings) Act 1987</i>	Regulates the conduct of criminal proceedings against, and sentencing of, young offenders.
<i>Children (Detention Centres) Act 1987</i>	Regulates the detention of young offenders and young persons on remand in detention centres. The Department of Juvenile Justice is responsible for managing detention centres.
<i>Crimes (Administration of Sentences) Act 1999</i>	Regulates the administration of offenders in adult correction, periodic and transitional centres, and in the community by the Department of Corrective Services.

4.2 In brief, the legislative amendments provide for:

- the establishment of juvenile correctional centres, which are to be administered by the Department of Corrective Services (DCS) in accordance with the *Crimes (Administration of Sentences) Act 1999*. The Kariong Juvenile Justice Centre has been proclaimed as a juvenile correctional centre.
- transfers of juvenile detainees/juvenile inmates between detention centres and juvenile correctional centres and between juvenile correctional centres and adult correctional centres. With respect to transfers ‘up’ and ‘down’ the amendments allow for the following:
 - The Director General of the Department of Juvenile Justice may order the transfer of a detainee who is of or above the age of 16 from a detention centre to a juvenile correctional centre if (a) the detainee was convicted of, or charged with, a serious offence; or (b) the detainee’s behaviour warrants a transfer.
 - The Minister for Justice may order the transfer of a juvenile inmate from a juvenile correctional centre to an adult correctional centre on certain grounds if recommended by the Commissioner for Corrective Services or –

in the case of inmates below the age of 18 – by the Serious Offenders Review Council.

4.3 The changes are outlined in detail below.

Juvenile correctional centres

4.4 Prior to the legislative amendments, juvenile offenders (i.e. persons who committed an offence before the age of 18 and who were charged with the offence before the age of 21) could be sentenced to detention in a juvenile detention centre or – in the case of serious offenders – to imprisonment in an adult correctional centre.

4.5 The new section 225A of the *Crimes (Administration of Sentences) Act 1999* provides for the establishment of juvenile correctional centres. It states (in part):

- (1) The Governor may, by the proclamation by which any premises are declared to be a correctional centre or by a subsequent proclamation, declare the correctional centre to be a juvenile correctional centre for the purposes of this Act.

4.6 The former Kariong Juvenile Justice Centre is the only premises that have been declared to be a juvenile correctional centre for the purposes of the Act.

4.7 The Kariong Juvenile Correctional Centre is to be administered by the DCS, in accordance with the *Crimes (Administration of Sentences) Act 1999*. The Minister for Juvenile Justice, the Hon Diane Beamer MP, stated that:

Kariong Juvenile Correctional Centre will be a specialist facility for offenders in the 16 to 21 years category. The Centre will accept transfers from the Department of Juvenile Justice of those older detainees who no longer fit into the juvenile justice system. These individuals have previously been in the adult prison system, charged with a serious children's indictable offence, or are detainees whose behaviour is such that the Director General of the Department of Juvenile Justice is satisfied that it warrants their transfer to the adult prison system.¹¹³

4.8 The type of juvenile offenders who will be transferred into the Kariong Juvenile Correctional Centre is very similar to the type of offenders who were held in the Kariong Juvenile Justice Centre prior to the legislative amendments (i.e. those over the age of 16 who were charged with, or convicted of, the most serious offences or who could not be managed in other centres due to their behaviour).¹¹⁴

4.9 The Kariong Juvenile Correctional Centre appears to be a hybrid between a justice centre and an adult correctional centre. On the one hand, the Minister stated that:

¹¹³ Hon Diane Beamer, MP, Legislative Assembly, New South Wales, *Hansard*, 18 November 2004, p8

¹¹⁴ See below as to who can be transferred to Kariong according to the amendments

The Department of Corrective Services will institute a strict discipline system of privileges and sanctions. Officers will have the disciplinary and use of force powers of their counterparts in the adult system.¹¹⁵

4.10 On the other hand, the Minister stated that:

The Department of Corrective Services will implement the same standards as those applied to juvenile detention centres, the Australasian Standards for Juvenile Custodial Facilities, with only slight variations.¹¹⁶

4.11 The Minister did not elaborate on what those variations would be but the Memorandum of Understanding relating to the transfer of the administration of Kariong to the Department of Corrective Services outlines certain variations to the *Standards*. The stated variations are outlined in Appendix 4.¹¹⁷

Change to section 19 orders: court may order that a juvenile offender serve sentence of imprisonment *as a juvenile offender*

4.12 The District Court and Supreme Court hears and determines proceedings for the most serious offences allegedly committed by juveniles. These courts can sentence a juvenile offender to a term of imprisonment. Prior to the amendments, if the court imposed a sentence of imprisonment, it could make an order under section 19 of the *Children (Criminal Proceedings) Act 1987* directing that the juvenile offender serve the whole or part of the sentence of imprisonment (up to the age of 21) *in a detention centre*. Juveniles guilty of serious children's indictable offences could not remain in a detention centre after the age of 18 unless the court was satisfied that there were special circumstances.

4.13 Following the amendments, the court may now only make an order under section 19 directing that a young offender serve the whole or part of a sentence of imprisonment (up to the age of 21) *as a juvenile offender*. The effect of such an order is that 'the person to whom the order relates will be committed to a detention centre... There he or she will be detained as specified in the order. In certain circumstances, he or she may subsequently be transferred to a juvenile correctional centre pursuant to an order under section 28 of the *Children (Detention Centres) Act 1987*'.¹¹⁸

Transfers 'up': changes to section 28 and the new section 41C

Section 28 before the amendments

4.14 Section 28 of the *Children (Detention Centres) Act 1987* allowed the Minister for Juvenile Justice (with the consent of the Minister for Justice) to transfer certain types of detainee from a

¹¹⁵ Hon Diane Beamer, MP, Legislative Assembly, New South Wales, *Hansard*, 18 November 2004, p8

¹¹⁶ Hon Diane Beamer, MP, Legislative Assembly, New South Wales, *Hansard*, 18 November 2004, p8

¹¹⁷ See Chapter 7, Human rights issues

¹¹⁸ Note to section 19(1) inserted by *Juvenile Offenders Legislation Amendment Act 2004*

detention centre to a correctional centre if the Minister was satisfied that the detainee was (a) not profiting from the discipline and instruction in the detention centre; or (b) was not, for any other reason, a suitable person for detention in a detention centre.

- 4.15** Section 28 did not allow for the transfer of detainees who were the subject of a control order made under section 33(1)(g) of the *Children (Criminal Proceedings) Act 1987*. A control order is an order made by a court committing a juvenile offender to a detention centre for a time not exceeding two years (control orders cannot be made in relation to juveniles who have been found guilty of serious children's indictable offences). Section 28 only allowed for the transfer of detainees who were given a section 19 order to serve their sentence of imprisonment in a detention centre (as outlined above), and juveniles (both convicted offenders and those on remand) who had previously been transferred from a correctional centre to a detention centre pursuant to an order under section 10 of the *Children (Detention Centres) Act 1987* (as outlined below).

Section 28 after the amendments and the new section 41C

- 4.16** As a result of the 2004 amendments, section 28 does not now provide for the transfer of a juvenile detainee from a detention centre to an adult correctional centre. It provides for the transfer of 'older detainees' (i.e. detainees who are of or above the age of 16) from a detention centre to a juvenile correctional centre. The new section 41C then provides for the transfer of a juvenile inmate (an inmate who is under the age of 21) from a juvenile correctional centre to an adult correctional centre. The two new provisions are outlined below under separate headings.

Transfer from juvenile detention centre to juvenile correctional centre

- 4.17** The new section 28 provides that the Director General of the Department of Juvenile Justice (DJJ) may (with the consent of the Commissioner of Corrective Services) direct the transfer of an older detainee (i.e. a detainee of or above the age of 16 years¹¹⁹) from a detention centre to a juvenile correctional centre if either (a) the older detainee belongs to one the specified categories of detainee or (b) the Director General is satisfied that the older detainee's behaviour is or has been such as warrants the making of such an order.
- 4.18** The specified categories of older detainee are as follows:
- (a) he or she is a person on remand or a person subject to control by reason of an order in force under section 10, or
 - (b) he or she is a person on remand in relation to a serious children's indictable offence within the meaning of the *Children (Criminal Proceedings) Act 1987*, or
 - (c) he or she is a person subject to control by reason of an order in force under section 19 of the *Children (Criminal Proceedings) Act 1987*.
- 4.19** Detainees who are the subject of a control order under s 33(1)(g) *Children (Criminal Proceedings) Act 1987* cannot be transferred under section 28 (as was the case under section 28 before the

¹¹⁹ *Children (Detention Centres) Act 1987*, s 3(1)

amendments). As noted above, a control order is an order made by a court committing a juvenile offender to a detention centre for a time not exceeding two years (control orders cannot be made in relation to juveniles who have been found guilty of serious children's indictable offences).

4.20 The Committee notes that while the Act did not previously provide for the transfer of a detainee to a juvenile correctional centre (because there were no juvenile correctional centres), it did allow the Director General of the DJJ to place a juvenile offender in the Kariong Juvenile Justice Centre;¹²⁰ and to transfer a juvenile detainee into the Kariong centre from another juvenile justice centre.¹²¹

Transfer from juvenile correctional centre to adult correctional centre

4.21 The new section 41C of the *Crimes (Administration of Sentences) Act 1999* provides:

- (2) The Minister [for Justice] may order that a juvenile inmate be transferred from a juvenile correctional centre to an adult correctional centre if:
 - (a) the Commissioner, in the case of a juvenile inmate who is of or above the age of 18 years, or
 - (b) the Review Council, in the case of a juvenile inmate who is under the age of 18 years,
recommends to the Minister that the inmate should be transferred.
- (3) A recommendation for the transfer of a juvenile inmate from a juvenile correctional centre to an adult correctional centre may not be made unless the Commissioner or Review Council, as the case may be, is satisfied that:
 - (a) the inmate wishes to be transferred, or
 - (b) the inmate's behaviour is or has been such that he or she should be transferred, or
 - (c) it is in the inmate's best interests that he or she be transferred, or
 - (d) the association of the inmate with other juvenile inmates at the juvenile correctional centre constitutes, or is likely to constitute, a threat to:
 - (i) the personal safety of any other person, or
 - (ii) the security of the juvenile correctional centre, or
 - (iii) good order and discipline within the juvenile correctional centre.

¹²⁰ *Children (Detention Centres) Act 1987*, section 11

¹²¹ *Children (Detention Centres) Act 1987*, section 13. See below as to transfers from a juvenile correctional centre to a detention centre

4.22 The new section 41D provides that on the application of the Commissioner, the Serious Offenders Review Council (SORC) is to conduct an inquiry for the purpose of deciding whether or not to recommend the transfer of a juvenile inmate under the age of 18 years. Section 41D also outlines the procedure that the SORC must follow. The SORC must include a person who is, or was, a Children's Magistrate; or a legal practitioner of at least seven year's standing who has experience as an advocate on behalf of children.¹²² The SORC must allow the juvenile inmate to be present, and to be heard, at the hearing.¹²³ The inmate may be represented by a legal practitioner of his or her choosing.¹²⁴ The Commissioner may also be represented by a legal practitioner.¹²⁵ The SORC is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate.¹²⁶ The SORC is outlined in more detail in Appendix 3.

4.23 Prior to the amendments, section 23 of the *Crimes (Administration of Sentences) Act 1999* allowed the Commissioner for Corrective Services to transfer inmates between correctional centres in certain circumstances:

- (a) because the correctional centre is being or is about to be repaired, altered, enlarged or rebuilt, or
- (b) because of an outbreak or threatened outbreak in the correctional centre of an infectious disease, or
- (c) because the correctional centre has ceased or is about to cease to be a correctional centre, or
- (d) because the correctional centre is overcrowded, or
- (e) because inmates in the correctional centre need to be separated in compliance with the requirements of the regulations, or
- (f) because of any other reason specified in the order.

¹²² *Crimes (Administration of Sentences) Act 1999*, s 41D(7)

¹²³ *Crimes (Administration of Sentences) Act 1999*, s 41D(4)

¹²⁴ *Crimes (Administration of Sentences) Act 1999*, s 41D(5)

¹²⁵ *Crimes (Administration of Sentences) Act 1999*, s 41D(6)

¹²⁶ *Crimes (Administration of Sentences) Act 1999*, s 41D(2). See also Part 9 Division 2 of the Act

- 4.24** The amendments inserted a new subsection to provide that an inmate who is under the age of 18 cannot be transferred from a juvenile correctional centre to an adult correctional centre on the grounds referred to in (d), (e) or (f).¹²⁷ Thus, apart from grounds (a)-(c), a juvenile inmate who is under the age of 18 can only be transferred from a juvenile correctional centre to an adult correctional centre in accordance with section 41C(2) (see above).

Transfers ‘down’: changes to section 10 and the new section 41C

Section 10 before and after the amendments

- 4.25** Section 10 of the *Children (Detention Centres) Act 1987* allowed the Minister for Justice (with the consent of the Minister for Juvenile Justice) to make an order directing the transfer of an inmate under the age of 21 (whether convicted or on remand) from an adult correctional centre to a juvenile detention centre. The legislative amendments did not change this provision but also made provision for transfers from a juvenile correctional centre to a detention centre and from an adult correctional centre to a juvenile correctional centre, as outlined below.

Transfer from juvenile correctional centre to detention centre

- 4.26** A new subsection was added to section 10 allowing the Commissioner for Corrective Services (with the consent of the Director General of the DJJ) to make an order directing the transfer of a juvenile inmate (i.e. an inmate under the age of 21) from a juvenile correctional centre to a detention centre.¹²⁸ Such an order can only be made in respect of a juvenile inmate who has previously been transferred from a detention centre to a juvenile correctional centre pursuant to an order under section 28 of the *Children (Detention Centres) Act 1987*.¹²⁹

Transfer from adult correctional centre to juvenile correctional centre

- 4.27** The new section 41C(1) of the *Crimes (Administration of Sentences) Act 1999* provides that ‘the Commissioner [of Corrective Services] may order that a juvenile inmate be transferred from an adult correctional centre to a juvenile correctional centre for any reason specified in the order.’

¹²⁷ *Crimes (Administration of Sentences) Act 1999*, s 23(2)

¹²⁸ *Children (Detention Centres) Act 1987* (NSW), s 10(2)

¹²⁹ As to which, see above

Concerns about the new legislative powers

Potential for more juvenile correctional centres

- 4.28 A number of participants expressed concern that the legislation is not limited to Kariong and that, under the new section 225A, other juvenile correctional centres can be proclaimed or established.¹³⁰ For example, the Combined Community Legal Centres' Group (NSW) Inc stated:

Unfortunately, the Act does not limit the number of Juvenile Correctional Centres that may be established...As the legislation is not articulated to apply only to Kariong there is a real risk that it could be extended to other Juvenile Justice Centres in NSW, to the detriment of the centres and the juvenile detainees within them.¹³¹

- 4.29 Ms Elizabeth Moore, a lecturer at Charles Sturt University, suggested that one of the risks was 'the establishment of a scattered system of juvenile correctional centres within the adult correctional system.'¹³² Similarly, the Indigenous Law Centre stated that there 'is a real possibility that juvenile correctional centres will be established as annexes to adult correctional centres.'¹³³ The Indigenous Law Centre explained that this created real risks for Indigenous juveniles:

Many Indigenous young people regard a period of (adult) incarceration as a rite of passage. An association between juvenile detention and adult imprisonment may be regarded by Indigenous juveniles as, simply, their inevitable entry into the adult justice system.¹³⁴

Removal of court's discretion under section 19

- 4.30 A number of participants expressed concern about the changes to section 19 of the *Children (Criminal Proceedings) Act 1987* and section 28 of the *Children (Detention Centres) Act 1987*, which, they submitted, have removed the court's discretion to direct where a young offender will serve a sentence of imprisonment and have vested this discretion in the Director General of the Department of Juvenile Justice.¹³⁵
- 4.31 The court's discretion has only been removed to a certain extent. The court retains a discretion under section 19 to direct that a juvenile offender serve the whole or part of a sentence of imprisonment *as a juvenile offender* but it cannot order that a juvenile offender serve a sentence of

¹³⁰ An amendment was moved in the NSW Legislative Council during debate on the Juvenile Offenders Legislation Amendment Bill 2004 to make the legislation Kariong-specific, but this amendment was defeated.

¹³¹ Submission 16, Combined Community Legal Centres' Group (NSW) Inc, p3

¹³² Submission 18, Ms Elizabeth Moore, p6

¹³³ Submission 4, Indigenous Law Centre, p1

¹³⁴ Submission 4, Indigenous Law Centre, p1

¹³⁵ See Submission 16, Combined Community Legal Centres' Group (NSW) Inc, p3; Submission 13, Council of Social Service of NSW (NCOSS), p 4; and Submission 10, The Youth Justice Coalition, p 3, 9-10

imprisonment in a detention centre. The juvenile offender will be committed to a detention centre but under the new section 28 of the Act the Director General can transfer the detainee who receives a section 19 order and who is of or above the age of 16 to a juvenile correctional centre. Note that prior to the amendments, a court's section 19 order could be undermined if the Minister for Juvenile Justice made an order under section 28 of the Act transferring a detainee to an adult correctional centre.

Transfer powers generally

- 4.32** Many submissions expressed concerns about the powers created by the legislative amendments to transfer a detainee from a juvenile detention centre to a juvenile correctional centre and from a juvenile correctional centre to an adult correctional centre. These concerns are outlined in detail below. In short, the concerns relate to the broad scope of the transfer powers, their exercise by administrative rather than judicial authorities¹³⁶, and to the absence of any right of judicial review in respect of a transfer order. In other words, 'the relative ease with which juvenile detainees can move into the adult correctional system.'¹³⁷ In evidence to the Committee, the Minister for Justice stated:

The regime is structured under the legislation to have a difference between those people aged 16 to 18 and those who are 18 and above. As you would be aware, 18 and above can go into the adult system anyhow: they get a choice. They get an induction program and they are advised. Aged 16 to 18 is in a different circumstance. That requires a recommendation to me by the Serious Offenders Review Council in which the offender has rights of participation in a hearing of the Serious Offenders Review Council and can be legally represented. So there is a fairly full inquiry that takes place before a person between 16-18 can actually go into the adult system, and so far we have not had to move anyone in that category, and hopefully that will continue.¹³⁸

- 4.33** Some issues raised by participants to the inquiry are that: (a) juveniles will experience a harsher environment in a correctional centre, including being subject to a more punitive disciplinary regime; (b) that there will be less emphasis on rehabilitation and juveniles will not have access to the same type of programs; and (c) that juveniles who are placed in adult correctional centres will be at risk of abuse, exploitation and negative influence from adult offenders.

Power to transfer from detention centre to juvenile correctional centre

Section 28 does not specify any criteria for making an order

- 4.34** Concerns were expressed that section 28 does not specify any criteria that the Director General must have regard to in deciding to transfer an older detainee who falls into one of the specified categories. It was submitted that this gives the Director General a wide discretion and it means

¹³⁶ See Appendix 3 for information regarding the involvement of SORC and SYORP in transfer decisions.

¹³⁷ Ms Elizabeth Moore, Evidence, 14 March 2005, p31

¹³⁸ Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, p7

that decisions will lack transparency.¹³⁹ It was also submitted that the section allows the Director General to transfer detainees to a juvenile correctional centre based on their age and offence type, without any requirement to consider their personal circumstances and needs.¹⁴⁰ Consideration of the background and circumstances of juvenile offenders was said to be one of the core principles of juvenile sentencing.¹⁴¹

- 4.35** NCOSS stated that the Director General's new power under section 28 'should only be used on the basis of a transparent and fair classification system.'¹⁴² NCOSS referred to the new Objective Classification System being implemented by the DJJ and it expressed the view that this system 'may be the appropriate tool but it will need careful and independent evaluation as it is implemented.'¹⁴³ The new Objective Classification System (OCS) is discussed in Chapter 5.

The power to transfer if 'behaviour warrants' is too broad

- 4.36** Participants also expressed concern about the Director General's broad discretion under section 28(2)(d) to transfer an older detainee whose 'behaviour is or has been such as warrants the making of such an order.' For example, the Youth Justice Coalition stated, 'we are particularly concerned about the breadth of s 28(2)(d), and the lack of guidance as to what sorts of behaviours would warrant a transfer order'.¹⁴⁴
- 4.37** It is relevant to note that section 28, as it existed prior to the amendments, also contained a broad discretion. It permitted the Minister for Juvenile Justice to transfer certain detainees to an adult correctional centre if the Minister was satisfied that the detainee was not profiting from the discipline and instruction of the detention centre; or was not, for any other reason, a suitable person for detention in a detention centre.

Power should be vested in Minister not Director General

- 4.38** Both NCOSS and the National Children's and Youth Law Centre submitted that the power to transfer a detainee from a detention centre to a juvenile correctional centre should be vested in the Minister for Juvenile Justice rather than being vested in the Director General.¹⁴⁵ The

¹³⁹ See Submission 16, Combined Community Legal Centres' Group (NSW) Inc, p3; Submission 13, NCOSS, p 4; and Submission 10, The Youth Justice Coalition, p 3, 9-10

¹⁴⁰ See Submission 10, The Youth Justice Coalition, p9-10; and Submission 13, NCOSS, p5

¹⁴¹ Submission 10, The Youth Justice Coalition, p9. See also Submission 14, Legal Aid Commission of NSW, p7; Submission 16, Combined Community Legal Centres' Group (NSW) Inc, p2; and Mr Andrew Haesler SC, Solicitor, NSW Public Defenders, Evidence, 17 May 2005, p40

¹⁴² Submission 13, NCOSS, p8

¹⁴³ Submission 13, NCOSS, p8. The OCS is outlined in Submission 3, NSW Department of Juvenile Justice, p59 and by Mr David Sherlock, former Director General of the NSW Department of Juvenile Justice, Evidence, 9 March 2005, p11-12

¹⁴⁴ Submission 10, The Youth Justice Coalition, p 10. See also Submission 8, Shopfront Youth Legal Centre, p2 and Ms Jane Irwin, Solicitor, Shopfront Youth Legal Centre, Evidence, 9 March 2005, p46. See also Submission 12, National Children's and Youth Law Centre, p7

¹⁴⁵ Submission 13, NCOSS, p5 and Submission 12, National Children's and Youth Law Centre, p4. See also Mr Gary Moore, Director, NCOSS, Evidence, 12 April 2005, p13

Committee notes that the former section 28 vested the discretion to transfer a detainee to an adult correctional centre in the Minister for Juvenile Justice.

Transfers should only apply to inmates who are aged 18 or over

- 4.39 The National Children's and Youth Law Centre submitted that the definition of 'older detainee' should be amended to mean 'an inmate who is of or above the age of 18 years.'¹⁴⁶ This would mean that only juveniles who are aged 18 or above could be transferred from a detention centre to a juvenile correctional centre.

Section 28 allows for females to be transferred to Kariong

- 4.40 The NSW Juvenile Justice Advisory Council (JJAC) and Ms Sally Peyou expressed concern that young women who are classified A1 might be transferred to the Kariong Juvenile Correctional Centre.¹⁴⁷ They pointed out that the legislative amendments are gender neutral. While making this submission, JJAC noted that the Minister assured the Council that 'there was no plan to alter the way girls and young women who are charged with serious indictable offences are held in the juvenile justice centres.'¹⁴⁸ The Minister for Justice affirmed this position in evidence to the inquiry.¹⁴⁹ Despite these assurances, witnesses were concerned about the potential for young women to be transferred to Kariong.

The transfer power will fast-track Aboriginal detainees into adult system

- 4.41 Professor Cunneen, Professor of Criminology and Chairperson of JJAC, stated that:

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 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.¹⁵⁰

- 4.42 Issues relating to Indigenous young offenders are discussed in Chapters 6 and 8.

There should be a mechanism for judicial review

- 4.43 A further concern that was raised by several participants is that there is no mechanism for judicial review of a Director General's decision to transfer a detainee.¹⁵¹ Witnesses felt that this should be remedied to allow detainees the opportunity to have their cases re-examined in the

¹⁴⁶ Submission 12, National Children's and Youth Law Centre, p7

¹⁴⁷ Submission 9, NSW Juvenile Justice Advisory Council, p4 and Submission 21, Ms Sally Peyou

¹⁴⁸ Submission 9, NSW Juvenile Justice Advisory Council, p4

¹⁴⁹ Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, p19

¹⁵⁰ Professor Chris Cunneen, Chair, NSW Juvenile Justice Advisory Council, Evidence, 9 March 2005, p39

¹⁵¹ See Submission 16, Combined Community Legal Centres' Group (NSW) Inc, p3; Submission 13, NCOSS, p 4; and Submission 10, The Youth Justice Coalition, p3, 9-10

event that they feel they have been wrongly transferred. The Indigenous Law Centre submitted that, ‘the overall absence of judicial review is a serious oversight of the legislation’.¹⁵²

4.44 In evidence to the Committee, the Minister for Justice stated:

Aged 18 and above requires a recommendation to me by the Commissioner for Corrective Services. As I say, I think they are the people you are talking about in terms of informed consent. They are people who have a right to request it, as two have. In one case an individual was moved because it was a better option in terms of dealing with the issues of that individual, and also for the safety and security of other detainees.¹⁵³

Director General can delegate transfer decision to detention centre staff

4.45 NCOSS was concerned that section 39A of the *Children (Detention Centres) Act 1987* permits the Director General to delegate to any person any of the Director General’s functions under the Act; and that the Director General could therefore delegate the decision-making power under section 28 to detention centre staff.¹⁵⁴ Witnesses felt that such discretion is inappropriate and open to abuse.

Power to transfer from juvenile correctional centre to adult correctional centre

Juveniles under the age of 18 should never be transferred to an adult correctional centre

4.46 Mr Haesler SC from the NSW Public Defenders submitted that juveniles who are under the age of 18 should never be in an adult correctional centre.¹⁵⁵ Several other participants also opposed the placement of under 18s in adult correctional centres on the basis that it breaches Article 37(c) of the UN Convention on the Rights of the Child.¹⁵⁶

The transfer powers undermine a court’s section 19 orders

4.47 Mr Haesler SC submitted that the transfer powers vested in the Commissioner and the Minister for Justice by section 23 and the new section 41C of the *Crimes (Administration of Sentences) Act 1999* effectively allows for a court’s section 19 orders to be undermined.¹⁵⁷ He states:

It is wrong for there to be, on the one hand, legislation which requires a court after a full and open hearing to find there are ‘special circumstances’ requiring young offenders [to] stay in juvenile detention until they are 21, and on the other, to allow for administrative transfer to an adult gaol on the order of the Commissioner for Corrective Services.¹⁵⁸

¹⁵² Submission 4, Indigenous Law Centre, p3

¹⁵³ Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, p7

¹⁵⁴ Submission 13, NCOSS, p5

¹⁵⁵ Submission, 22, NSW Public Defenders, p1

¹⁵⁶ This is discussed below in Chapter 7

¹⁵⁷ Submission 22, NSW Public Defenders, p2

¹⁵⁸ Submission 22, NSW Public Defenders, p3

- 4.48** The Committee notes that the Commissioner for Corrective Services can make a transfer order under section 23 only in relation to an inmate who is aged 18 or over. Pursuant to section 41C, the Commissioner can also recommend to the Minister for Justice that an inmate who is aged 18 or over be transferred to an adult correctional centre. In relation to an inmate who is under the age of 18, the Minister can make a transfer order only on the recommendation of the Serious Offenders Review Council (the Commissioner can make an application to the SORC).

Transfer decision should be made by a judicial officer or by an independent body

- 4.49** Professor Cunneen argued that the decision to transfer a juvenile inmate to an adult correctional centre should be a judicial decision rather than being an administrative decision.¹⁵⁹ Ms Moore and the Youth Justice Coalition also submitted that it should be a judicial decision to transfer a juvenile into an adult correctional centre.¹⁶⁰ The Youth Justice Coalition stated:

The appropriateness of allowing young adults to remain in juvenile facilities depends on a wide range of factors, including the length of their sentence, their maturity, their background and the way they have behaved whilst in detention as a juvenile. We contend that the judiciary with access to social work, health and other expert reports are best placed to make such an assessment.¹⁶¹

- 4.50** In the alternative to it being a judicial decision, Professor Cunneen said that, at the very least, it should be a decision that is made by an independent organisation like the Serious Young Offenders Review Panel.¹⁶²
- 4.51** Ms Martha Jabour, representative of the Homicide Victims Support Group, referred in evidence to the Serious Offenders Review Council and its role in transfer decisions:

I am not aware of a serious offender actually being transferred from a juvenile detention centre into an adult gaol. This is my second appointment to the Serious Offenders Review Council [SORC]. I have been a member for three years and I have not had that experience, although I suppose one of the biggest things for a juvenile offender would be a somewhat daunting one and that would be going from a juvenile detention centre into an adult gaol. Obviously their security would be something that they would be quite frightened about. I think that for the person who is in a juvenile detention centre, the Serious Offenders Review Council should still have that same monitoring role where they still meet with the independent council at the juvenile detention centre that they are at so that when the time came that they went into an adult gaol, the transition was not going to be one where it is very alien and they do not know any of the faces. We could guide them right from the very start and that is from the day that they start their sentence. Apart from that, I really have not had any experience of what the transition would be except to say that now that we know there are possibly about six serious offenders who would fall under the guidelines of a SORC inmate, that would be the way that I would do it.¹⁶³

¹⁵⁹ Professor Chris Cunneen, Evidence, 9 March 2005, p34

¹⁶⁰ Ms Elizabeth Moore, Evidence, 14 March 2005, p28

¹⁶¹ Submission 10, The Youth Justice Coalition, p9

¹⁶² Professor Chris Cunneen, Evidence, 9 March 2005, p34

¹⁶³ Ms Martha Jabour, Evidence, 14 March 2004, p37

Transfers should only be permissible with consent of Minister for Juvenile Justice

- 4.52 The National Children's and Youth Law Centre submitted that transfers of juvenile offenders to an adult correctional centre should 'only be permissible with the express consent of the Minister for Juvenile Justice.'¹⁶⁴ The Committee notes that this was the position under section 28 of the *Children (Detention Centres) Act 1987* prior to the amendments. NCOSS also had concerns about the decision being left to the Minister for Justice rather than the Minister for Juvenile Justice. NCOSS stated that section 41C:

...removes the responsibility of the Minister for Juvenile Justice for considering applications to transfer a young person to [an] adult prison. This is transferred to the Minister for Justice. It posits the issue of what is in the best interests of the child into a purely corrections framework and could have the unintended consequence of allowing young people with the highest support needs to be transferred into the adult prison system without adequate consideration of the full circumstances of the young person.¹⁶⁵

SYORP should make recommendation rather than SORC

- 4.53 Professor Cunneen said that it was 'far more appropriate' that the Serious Young Offenders Review Panel (SYORP), rather than the Serious Offenders Review Council (SORC), play the role in making determinations about transfers to adult correctional centres.¹⁶⁶

The Commissioner's transfer powers are too wide

- 4.54 Mr Haesler SC raised similar concerns to those outlined above in relation to the powers of the Director General of Juvenile Justice under the new section 28 of the *Children (Detention Centres) Act 1987*. Mr Haesler SC states:

The powers given to the Commissioner are very extensive. Those powers can be exercised without the benefit of a hearing or any form of judicial determination. The Commissioner's decision is not bound by any of the critical requirements in s. 19 *Children's (Criminal Proceedings) Act 1987*.

As there is no...review of the Commissioner's decisions the Commissioner can, in effect, do as he or she likes. This is simply not just...

It is our experience with clients in adult gaols that the Commissioner has transferred prisoners from one correction[al] centre [to another] without providing reasons. This same regime will now apply to transfers of juveniles to adult gaols.¹⁶⁷

¹⁶⁴ Submission 12, National Children's and Youth Law Centre, p4

¹⁶⁵ Submission 13, NCOSS, p 5

¹⁶⁶ Professor Chris Cunneen, Evidence, 9 March 2005, p 38

¹⁶⁷ Submission 22, NSW Public Defenders, pp2-3. Note that these remarks relate only to the power to transfer inmates who are aged 18 or over because the Commissioner cannot transfer inmates who are under 18

Transfer at the request of inmate

- 4.55** Several participants also raised concerns about s 41C(3)(a), which permits the Minister to transfer a juvenile inmate to an adult correctional centre if ‘the inmate wishes to be transferred’. It was submitted that there are dangers in allowing young offenders to self-select into the adult prison system.¹⁶⁸
- 4.56** Ms Moore stated that, ‘a recent NSW survey of the health of juvenile detainees provides evidence that a large percentage will likely lack the emotional, intellectual and educational competence to give informed consent’.¹⁶⁹ Ms Moore also said that, ‘as the legislation does not include a requirement for independent counselling, legal advice or advocacy juvenile inmates would be unable to access all the relevant information or to understand the possible implications’.¹⁷⁰
- 4.57** The Youth Justice Coalition submitted that:
- ...some inmates may make uninformed ‘choices’. For example they may be motivated to transfer for the perceived benefits of an adult prison (i.e. – less rigidity in programming, the availability of cigarettes, or because it marks them out as ‘real men’).¹⁷¹
- 4.58** However, the NSW Ombudsman recently produced a ‘Discussion Paper: Review of the *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*’¹⁷², which indicates the problems associated with preventing detainees from transferring to the adult system if they wish to do so. The NSW Ombudsman notes that a number of detainees who had been transferred between 2002 and 2003 reported at interview that they had deliberately committed offences whilst in juvenile detention, including keeping staff as hostages, in order to be moved into the adult prison.¹⁷³
- 4.59** The NSW Ombudsman’s Discussion Paper usefully included testimony from nine young offenders who had been removed to the adult system by the end of September 2003. Interviews were conducted to determine how they were faring in their new environment and for evidence of their experiences since moving to corrective services. The NSW Ombudsman reports a somewhat mixed set of experiences. Of the nine, four had been held on ‘protection non-association’ orders at a remand institution for a number of months following their transfer. At the time of the initial interview, all of the detainees reported that they were ‘unsettled and bored’ and complained about being on the non-association orders which meant they were only allowed out of their cell for very limited amounts of time. According to the NSW Ombudsman, at a later interview at a maximum-security institution, these four, plus two other young

¹⁶⁸ Submission 13, NCOSS, p5; Submission 18, Ms Elizabeth Moore, p5; Submission 10, Youth Justice Coalition, p10

¹⁶⁹ Submission 18, Ms Elizabeth Moore, p5

¹⁷⁰ Submission 18, Ms Elizabeth Moore, p5

¹⁷¹ Submission 10, The Youth Justice Coalition, p10

¹⁷² NSW Ombudsman, *Discussion Paper: Review of the Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*, April 2004

¹⁷³ NSW Ombudsman, *Discussion Paper: Review of the Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*, April 2004, p17

offenders, were associating together and were much more settled. The Discussion Paper also says:

Most complained about having ‘nothing to do’, except for the one who was working. All six reported smoking more cigarettes in prison, not using illicit drugs, and not having been assaulted. All reported that the rules were more straightforward in adult prison and that ‘you know where you stand with the workers’; several said they were ‘treated like a kid’ in juvenile detention but that in prison you needed to ‘treat the screws with respect.’¹⁷⁴

4.60 Other experiences have been less favourable. Detainees are reported to have been depressed in their new environment and having been scared, intimidated and even assaulted. Importantly, the NSW Ombudsman noted that most of these interviewees concluded that they felt it would preferable to move to corrective services only at an older age than 18 years.

4.61 The Committee notes that there is no specific provision in the Act that allows an inmate who has selected to be transferred from a juvenile correctional centre to an adult correctional centre to select back into a juvenile correctional centre. Section 41C(1) merely provides that the Commissioner of Corrective Services may order that a juvenile inmate be transferred from an adult correctional centre to a juvenile correctional centre for any reasons specified in the order.

4.62 The Indigenous Law Centre submitted that the provision allowing inmates to self-select into the adult prison system:

...could be seen as having a particular impact upon Indigenous juveniles, given...that incarceration in an adult prison is seen by many Indigenous juveniles as conferring adult status. Anything that too readily and easily facilitates the entry into an adult correctional centre of an impressionable 16 year old should not be part of a progressive juvenile justice regime.¹⁷⁵

4.63 The NSW Ombudsman’s 1996 report on the *Inquiry into Juvenile Detention Centres* discussed the issue of juvenile detainees wanting to be transferred into the adult system. The report states:

A number of [detainees] may have been motivated by fairly basic concerns such as the right to smoke, or to be seen as ‘men/women’ doing it ‘hard’ in the adult system as opposed to the ‘soft’ juvenile system. Others clearly stated that their developmental, educational and/or vocational needs were not being met within the juvenile system.¹⁷⁶

4.64 The NSW Ombudsman’s Report (1996) also noted a suggestion made by young women that older detainees should be told what is available in both systems and should have a choice to transfer to the adult system. The NSW Ombudsman commented:

The Inquiry cannot agree with this suggestion. Detainees should not be ‘invited’ to transfer to the adult system – particularly as there are few guarantees that they will stay separate from the mainstream prison population, or that they will have access to specialised young adult programs. Currently, many detainees who would be unsuitable

¹⁷⁴ NSW Ombudsman, *Discussion Paper: Review of the Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*, April 2004, p20

¹⁷⁵ Submission 4, Indigenous Law Centre, p3

¹⁷⁶ NSW Ombudsman, *Inquiry into Juvenile Detention Centres*, December 1996, p269

for placement in adult gaols may be attracted by the comparatively greater options and freedoms available in the adult system, and may not appreciate their increased risk of abuse, exploitation and brutalisation in the adult system. It is relevant to note that this suggestion came from young women for whom the risks of abuse are less pronounced than for young men.¹⁷⁷

- 4.65** Section 41C(3)(a) appears to be based on a recommendation in the Dalton Report.¹⁷⁸ This recommendation was made having regard to the practice that had apparently developed at Kariang whereby detainees had assaulted staff members in order to be transferred to the adult system.¹⁷⁹

Transfer if in inmate's best interests

- 4.66** The Indigenous Law Centre expressed concern about section 41C(3)(c), which permits the Minister to transfer a juvenile inmate to an adult correctional centre if it is in 'the inmate's best interests.' The Indigenous Law Centre submitted that, 'it is difficult to see how it could be in the inmate's 'best interests' that he or she be transferred to an adult correction centre.'¹⁸⁰ Witnesses were concerned that this term is vague and open to wide interpretation and it may be desirable to make it more specific as to what those 'best interests' might include.

There should be a mechanism for judicial review

- 4.67** Several participants submitted that a decision to transfer a juvenile detainee to an adult correctional centre should also be subject to judicial review. Mr Haesler SC from the NSW Public Defenders stated that:

Transfer to an adult gaol creates, in effect, a fundamentally more severe sentence. Any power to transfer those in juvenile detention to adult gaols must be able to be appealed or reviewed.¹⁸¹

- 4.68** Similarly, Ms Sanders from the Shopfront Youth Legal Centre submitted that judicial review should be available even in a case where the SORC has made a transfer recommendation, after a hearing, in relation to an inmate under the age of 18. Ms Sanders said:

I would like to see an avenue of appeal 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.¹⁸²

¹⁷⁷ NSW Ombudsman Report, December 1996, p 273

¹⁷⁸ Dalton V, *Report on Kariang Juvenile Justice Centre*, October 2004, p10 (rec. 4)

¹⁷⁹ Dalton Report, p10 (rec. 4)

¹⁸⁰ Submission 4, Indigenous Law Centre, p3

¹⁸¹ Submission 22, NSW Public Defenders, p2

¹⁸² Ms Jane Sanders, Evidence, 9 March 2005, p 54. See also Submission 12, National Children's and Youth Law Centre, p4

Conclusion

- 4.69** The Committee believes that many of the concerns raised by inquiry participants are valid and need to be addressed. As noted in Chapter 1, while several witnesses suggested the decision to transfer Kariong should be immediately overturned, and the legislation repealed, the Committee believes that it would be counterproductive in the short-term to the effective management of Kariong, and importantly, to the wellbeing of young offenders at the Centre, to immediately return its administration to the DJJ.
- 4.70** The Committee has therefore made the key recommendation that the NSW Government should continue the current management arrangements for Kariong while undertaking an evaluation of the operation and management of the Centre. Reflecting on the concerns raised during the inquiry and outlined in this chapter, the Committee believes that the NSW Department of Juvenile Justice should consult the JJAC and AJAC with a view to making immediate legislative amendments and changes to Departmental procedures to ensure the appropriate management of juveniles at Kariong. The detailed recommendations in relation to this can be found in Chapter 12.

Chapter 5 Classification

This chapter explains the purpose and effect of the Department of Juvenile Justice's Objective Classification System. It further considers the effect of the *Juvenile Offenders Legislation Amendment Act 2004* in relation to reclassification and the transfer of detainees between juvenile justice and correctional centres.

Classification and placement

5.1 The risk assessment and subsequent placement of detainees is critical to the system of detention. It enables the Department of Juvenile Justice (DJJ) to filter detainees according to factors that affect, or are likely to affect, their past and future conduct. It will help classification officials to devise appropriate programs and also to determine the level of supervision required. This is clearly a complex process and has been recognised as such by the Department in its development of a more sophisticated instrument for assessment. Precisely because of the complexity and significance of classification and placement within the juvenile justice system, it is a process that demands close scrutiny.

Purpose of classification

5.2 'Classification' is the process of assigning offenders to custody levels and treatment/rehabilitation programs based on assessment of the offenders' supervision requirements and service needs. For the DJJ this involves first determining whether the detainee's initial classification is appropriate through the consideration of each detainee's offence history and behaviour in prior placements. It then entails determining the type of programming that is required within a given custody level based on the detainee's educational, vocational, psychological, substance abuse and other treatment needs. By attempting to simultaneously consider prior record, outcomes of past interventions and service needs, the DJJ is working to achieve goals of protecting public safety, ensuring offender accountability and fostering offender rehabilitation.¹⁸³

5.3 In essence, classification is important because it can evaluate not only the risks posed by a juvenile offender, but also identify the needs of that young person based on other factors such as maturity, emotional, mental and psychological development and intellectual capacity. These are factors in young people that evolve throughout teenage years and beyond, often into early adulthood. Flexibility in sentencing arrangements for juvenile offenders also seeks to reflect the significance of these stages of development, and to allow discretion to the courts in this regard.

Old for new

5.4 The DJJ spent a number of years preparing the new Objective Classification System and implemented the program in November 2004. Among the many considerations in this exercise was to develop a more sophisticated assessment strategy to respond to a range of factors, not just the nature of the offence or age of the offender, which had typically informed the previous

¹⁸³ For an overview of the DJJ Classification System see Appendix 6.

two-tier system. Rather, the new framework is designed to link classification to risk assessment and programming needs. The Department referred to this process as an ‘actuarial approach to risk assessment’¹⁸⁴. Mr Peter Muir, Assistant Director General Operations at the DJJ informed the Committee that this determines an initial security rating based on a range of factors:

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.¹⁸⁵

5.5 Prior to this enlarged system, the DJJ’s classification scheme consisted of just two categories; ‘A’ and ‘B’.¹⁸⁶ The intended benefit of the new system is that it classifies detainees according to their personal risk factors and emphasises the safety of public, staff and other detainees where previously the focus had been on offender’s needs only.¹⁸⁷ To enable this process, it provides those conducting the assessments a suite of objective decision-making apparatus to inspire greater confidence in the appropriateness, consistency and equity of their classification decision-making:

- the initial instrument considers - the severity of their current offence, offence history including severity and number of prior convictions; current and previous institutional violence, escape history and community stability factors such as drug and alcohol use, mental health issues and employment/school attendance;
- the reclassification instrument considers - the severity of their current offence, severity of prior convictions, current and previous institutional violence, escape history, number and severity of disciplinary matters for the reclassification period and level of participation in programs to address their offending behaviour and to enhance their rehabilitation.¹⁸⁸

5.6 In evidence to the Committee, Mr Muir went on to elaborate:

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.

¹⁸⁴ Mr Peter Muir, Assistant Director General – Operations, NSW Department of Juvenile Justice, Evidence, 9 March 2005, p11

¹⁸⁵ Submission 3, NSW Department of Juvenile Justice, p11

¹⁸⁶ ‘A’ classification detainees were those charged or convicted of Serious Children’s Indictable Offence of murder, manslaughter and sexual assaults and some high profile detainees; and those detainees presenting management problems in Juvenile Justice Centres including violence and abuse towards staff or other detainees, persistent or violent escapees. ‘B’ classification detainees were ‘all other detainees. Source: Submission 3, NSW Department of Juvenile Justice, p60

¹⁸⁷ Submission 3, NSW Department of Juvenile Justice, p60

¹⁸⁸ Submission 3, NSW Department of Juvenile Justice, p61

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.

New security classification categories

- 5.7 The 'five-tier' system to which Mr Muir referred is founded on the principle that detainees should be placed in the least restrictive custodial environment consistent with the detainee's risk to public safety, safety of staff and other detainees, escape risk and institutional adjustment.¹⁸⁹ The expansion of the range of categories enables the system to distinguish more clearly between detainees. It now consists of the following classification categories:

A1 (High) – 'A' classification category has two sub-categories, where the detainee is assessed as high risk due to Offence (classification A1(o)) and Behaviour (classification A1(b)).

A2 (High/Medium): A detainee can be reclassified from A1(o) or A1(b) to an A2 classification. Conversely, a detainee may due to an incident be reclassified from B classification to A2.

B1 (Medium): Likewise, a detainee may be reclassified from A2 or B2.

B2 (Low/Medium)

B3 (Low)¹⁹⁰

Reclassification

- 5.8 As intimated above, the system allows for reclassification of offenders depending on the level of risk posed by that detainee at a given time. This requires an individual case review for each detainee, which identifies that person's behaviour and progress towards addressing their offending behaviour through participation in programs and adherence to program goals, as well as additional detainee needs and program requirements. The two functions of risk assessment and program review are designed to work in tandem. In doing so, this will enable a determination to be made of whether the movement to a new classification category is warranted.
- 5.9 It is important to note that the process of reclassification can either be regularly scheduled (every three months for example) as well as event driven. In doing so, it is expected to provide incentives and disincentives for detainees to modify their behaviour, encourage participation and to hold detainees accountable for their actions while serving periods in custody.

Classification, transfers and the *Juvenile Offenders Legislation Amendment Act 2004*

- 5.10 The Minister for Juvenile Justice, in supporting the Bill through Parliament, asserted that this legislation sought only to transfer those detainees that were no longer suited to the juvenile

¹⁸⁹ NSW Department of Juvenile Justice Objective Detainee Classification Policy, July 2004 p4

¹⁹⁰ For an overview of the DJJ Classification System see Appendix 6.

justice system. Principally, the Minister asserted, this Bill would affect ‘older, more serious’ offenders:

It is the Government’s view that those older, more serious offenders are best managed in the secure disciplined environment of Corrective Services.

Kariong Juvenile Correctional Centre will be a specialist facility for offenders in the sixteen to twenty-one years category. The centre will accept transfers from the DJJ of those older detainees who no longer fit into the juvenile system.¹⁹¹

- 5.11** The Committee has received evidence that criticises this assertion because detainees in Kariong will not always be older, more serious or more suited for the adult system. Furthermore, it has been argued that the legislation, and the management arrangement itself, does not provide sufficient flexibility for the protection of older detainees who are likely to respond well to rehabilitation programs, or for detainees under the age of 18.
- 5.12** The specific legislative changes effected by the *Juvenile Offenders Legislation Amendment Act 2004* are dealt with in detail in Chapter 4 of this report, including a critique of the various concerns expressed by participants. Objections to the new provisions largely relate to transfer arrangements between the newly proclaimed Kariong Juvenile Correctional Centre and other juvenile and adult facilities. In particular, they can be summarised as objections to the:
- scope of the transfer powers
 - broad discretion to the Director General and Ministers to exercise transfer powers
 - lack of judicial oversight or role for the SYORP
 - absence of a right of appeal or judicial review.
- 5.13** Insofar as these legislative changes, and objections to them, relate to the issue of classification and placement there is one central and recurrent theme; that the regime instituted at Kariong may be inappropriate for juvenile offenders and that the Act provides no protection for detainees over the age of 16 who may find themselves at that Centre. The importance of decision-making for the classification and placement of detainees is even more critical since it relates not only to a detainee’s access to programs but also to the appropriateness of their custodial environment under either the juvenile or adult systems.
- 5.14** Mr Rod Blackmore, former Children’s Magistrate has pointed out that:
- ...a primary undesirable result of this action has been to deprive the Juvenile Justice detention centre system of a secure unit for juveniles (those aged under 18) who are denoted as being management difficulties.¹⁹²
- 5.15** The transfer has radically reduced the flexibility of the Department to manage all juvenile offenders within its detention centre system, removing as it does the only maximum-security facility for over-16 A-classified detainees. The *Children (Criminal Proceedings) Act 1987* provides

¹⁹¹ Hon Diane Beamer, MP, Legislative Assembly, New South Wales, *Hansard*, 18 November 2004, p13194

¹⁹² Submission 1, Mr Rod Blackmore, p1

for all young people under the age of 18 at the time of their offence an entitlement to treatment under different conditions to that provided for adults, regardless of the offence.¹⁹³

- 5.16** The implication of these provisions is clear; that to be sentenced in the adult system amounts to a harsher punishment.¹⁹⁴ Moreover, it reflects the established presumption that children are less responsible for their actions because of their relative lack of social, emotional and psychological maturity.¹⁹⁵ The DJJ objectives are clearly defined as focusing on rehabilitation and reintegration for juvenile offenders.
- 5.17** Currently, the only option for the detention of over-16 A1 classified offenders is at Kariiong under the management of the DCS. The dominant feeling from evidence to the Committee is that the management of the Centre as an adult facility may undermine the objectives of the DJJ and may be detrimental to the rehabilitative prospects of the detainees. These issues are discussed in Chapter 6. Reclassification for detainees to this Centre will expose those offenders to a radically different management approach, including increased hours in their cells and less recreation time, for example.
- 5.18** In its submission to the Committee, NCOSS quotes from the DJJ acknowledging that ‘the effectiveness of interventions with juvenile offenders depends on a number of factors including engaging with a wide range of other organisations and agencies that have responsibilities in supporting and addressing the needs of families, children and young people’.¹⁹⁶
- 5.19** This engagement with external agencies and focus on rehabilitation appears unlikely under the management of DCS, which has already made clear its intention not to allow detainees private access to advocates for young people as stipulated under Standard 2.5 of the *Australasian Juvenile Justice Administrators’ Standards for Juvenile Custodial Facilities*. Consideration of the DCS’s adherence to international human rights principles and the *Standards* is provided at Chapter 8.

Abuse of the system

- 5.20** Former Director General of the DJJ, Mr Sherlock, in reflecting on the operation of the new classification system under the present management arrangements, has sought to allay some fears by insisting that efforts are being made to ensure the integrity of the system is maintained by consistent application across the two Departments:

At Kariiong 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 [from Juvenile Justice Centres] 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 [of Juvenile Justice]. If their classification is going to be downgraded they consult with us about

¹⁹³ See Chapter 1 for more on the aims and objectives of the NSW Department of Juvenile Justice

¹⁹⁴ Submission 22, NSW Public Defenders, p2

¹⁹⁵ Submission 22, NSW Public Defenders, p4

¹⁹⁶ Submission 13, NCOSS, p8

that and we jointly make that decision and the young person can be transferred back to a juvenile justice centre.¹⁹⁷

- 5.21** The Committee is encouraged to see that both Departments recognise the need to be able to re-classify detainees and transfer between Juvenile Justice and Juvenile Correctional Centres efficiently and equitably within a coherent system, even those convicted of the most serious offences. However, the Juvenile Justice Advisory Council have raised concerns about having already received reports of the system breaking down. It reproduced one report, which read:

‘The new classification system is the latest in further eroding any input from specialist staff. Classification is determined by seven questions on the young persons convictions, escapes or behaviour in custody for the last 5 years, with one question assessing the young persons current involvement in counselling. If a young person is involved in an incident that tips them over the scale they are sent to Kariong Corrections Centre, there is no case review, or input from counsellor re the appropriateness of the placement...

[an example is as follows] the extremely traumatised state ward, who abuses staff to be placed in confinement so he can hide finally gains enough points to be sent to Kariong. A highly inappropriate placement, no appeal process or advocacy available for the young person. This is a first committal juvenile on property offences, in need of intensive assistance that has now been pushed into the waiting room for the adult correctional system.

The current process for juveniles reaching A1 classification is to be placed in the confinement cells but as ‘segregation’. They stay in the cell until paper work is completed, last detainee staying there 6 days; currently we have a detainee in his fifth day. I believe this is an abusive practise.¹⁹⁸

- 5.22** Another member of the JJAC had received complaints from DCS staff concerning:

the use of Kariong as a dumping ground for youth whom the Department has reclassified due to the young person's angry reaction and iatrogenic offending (eg damage to DJJ property, or assault of staff or inmate) following poor management of DJJ centres. It is very easy for a person in authority to elicit bad behaviour out of a resistant youth, to give evidence of a criminal offence and/or have them reclassified.¹⁹⁹

Conclusion

- 5.23** The NSW Ombudsman summed up the Committee’s assessment of the new Objective Classification System in general when he pointed out in his submission to the inquiry:

While the new more detailed system appears an improvement, it is too early to comment upon its effectiveness.²⁰⁰

¹⁹⁷ Mr David Sherlock, former Director General, NSW Department of Juvenile Justice, Evidence, 9 March 2005, p21

¹⁹⁸ Quoted in Submission 9, NSW Juvenile Justice Advisory Council, pp5-6

¹⁹⁹ Quoted in Submission 9, NSW Juvenile Justice Advisory Council, pp5-6

²⁰⁰ Submission 6, NSW Ombudsman, p3

- 5.24** That the JJAC have already received allegations of system dysfunction is of concern for the Committee. If not because of the immediate problems associated with a breakdown of the new system itself – it is in its infancy and such problems may hopefully be eradicated – but because of the possible wider ramifications of any transfer where detainees are inappropriately provided for under the DCS regime at Kariong. Any administrative actions that undermine the classification system and the long-term overall objective of the Department of Juvenile Justice, which is to foster rehabilitation and reintegration into the community, may have more severe and far-reaching consequences, with detainees being sent to Kariong under adult prison management without thorough assessment of their needs and deeds.
- 5.25** The Committee believes the decisions that relate to classification, and also reclassification, must have transparency to retain credibility and confidence with all juvenile justice stakeholders. Administration of the new Objective Classification System must also demonstrate strict adherence to legislation and departmental policy. It is for this reason that in the Committee's major conclusions, we have recommended immediate amendments to be made to address the many concerns that have been raised. Additionally, the Committee believes the DJJ should take stock of its new Objective Classification System to ensure it is providing transparent and consistent outcomes for detainees.

Recommendation 1

That, in recognition that the new Objective Classification System has only been in effect for six months, the Department of Juvenile Justice undertake a full evaluation of the effectiveness of the system. This evaluation should include an assessment of outcomes for detainees and whether the delivery of effective programming has been assisted.

Chapter 6 Rehabilitation and recidivism

This chapter considers part of the term of reference (h) regarding whether incarcerating juveniles in juvenile correctional centres achieves reduced recidivism, rehabilitation and compliance with human rights obligations. This term of reference is specific in its questioning of whether placing juveniles in a juvenile correctional centre reduces recidivism. A number of witnesses who chose to address this term of reference suggested that this question can only be addressed following thorough longitudinal research.²⁰¹ This chapter considers the impact on recidivism of placing juveniles in juvenile correctional centres, but also looks at the broader issue of the incarceration of young offenders and recidivism, and the need for effective and targeted rehabilitation programs. The compliance with human rights obligations is discussed in Chapter 8.

Rehabilitation for juvenile offenders

- 6.1** The evidence to this inquiry suggests that there is considerable scepticism about the success of rehabilitating offenders who have experienced incarceration, within either the juvenile or adult system. In his submission to the inquiry former Chief Magistrate of the Children's Court Mr Rod Blackmore said, from his 44 years of experience in the courts system:

I am able to say I have never encountered an instance of a person having been 'rehabilitated' as a result of incarceration, whether as an imprisoned adult or a detained juvenile.²⁰²

- 6.2** In evidence to the Committee, Mr Blackmore expanded on this statement:

The fact that a person does not offend again does not necessarily mean that he is rehabilitated. He might well be deterred; he does not want to be caught; he does not want to go back to gaol. That is not rehabilitation.²⁰³

- 6.3** Ms Jabour, from the Homicide Victims Support Group, expressed concern that many young offenders do not take the rehabilitation process seriously:

They go into doing programs thinking 'Well, that's going to help me get my parole' not necessarily because they want to be rehabilitated. Rehabilitation is not mandatory, it is a voluntary thing. So whether they take on the rehabilitation programs that are made available to them—and I know they are made available continually for these offenders—is entirely up to them. It is a form of frustration for a lot of our victims when these offenders sometimes come back out being juveniles or adults a whole lot worse off than when they went in.²⁰⁴

- 6.4** The majority of inquiry participants believe that incarceration remains a necessary measure for frequently repetitive or serious offenders. Other measures with a rehabilitation focus, especially

²⁰¹ See for example, Submission 6, NSW Ombudsman, p4

²⁰² Submission 1, Mr Rod Blackmore, p5

²⁰³ Mr Rod Blackmore, former Chief Magistrate, Children's Court, Evidence, 8 April 2005, p19

²⁰⁴ Ms Martha Jabour, Executive Director, Homicide Victims Support Group, Evidence, 14 March 2005, p35

in the case of juveniles, remains a goal to be achieved for those who have not been frequent or serious offenders. There are a number of measures currently offered by the juvenile justice system aimed at addressing this goal, including youth conferencing, cautions and warnings. As discussed in Chapter 1, these measures have been evaluated and found to have had a much better success rate in rehabilitation and reducing recidivism for young people than those going through a court process for similar offences.²⁰⁵

- 6.5** The Children's Magistrate, Magistrate Crawford told the Committee that for rehabilitation to work, a number of factors need to be taken into account. He suggests that staff must be adequately trained and incentives should be offered to offenders.

Rehabilitation is not necessarily going to be confined to a subjective change of mind in the way you want to follow your lifestyle. There have to be opportunities for improvement. Realistically, in a gaol setting there have to be incentives as well. They might be minor rewards or privileges but you can go a long way with them because they become very important within a closed environment.²⁰⁶

- 6.6** Despite the pessimism about the success of rehabilitation programs for incarcerated juveniles, numerous inquiry participants expressed their broad support for the provision of effective rehabilitation options for young offenders. The Shopfront Youth Legal Centre and Youth Justice Coalition suggest that:

Rehabilitation is a vital aspect of managing juvenile offenders. It is important not only for the offender, but for the community as a whole. A young person will emerge from detention whilst still young. Therefore, it is in the community's interest to maximise a young offender's capacity to become a law-abiding and productive member of society.²⁰⁷

- 6.7** A former alcohol and other drug counsellor at Kariong, Ms Carolyn Delaney told the Committee that the therapeutic approach taken at Kariong in the past has been a vital part of the rehabilitation of young offenders. Ms Delaney also suggested that incarceration provided a 'window of opportunity' to address young offenders' criminogenic needs and 'maximise their potential to become pro-social law abiding adults'.²⁰⁸

The role of the DJJ and the DCS in rehabilitation

- 6.8** As discussed in Chapter 1, the primary objectives of the DJJ are rehabilitation of offenders and the diversion from the criminal justice system with an aim of reintegrating young people back into society. In relation to the aims of the DJJ, the former Director General said that:

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

²⁰⁵ Mr David Sherlock, former Director General, NSW Department of Juvenile Justice, Evidence, 9 March 2005, p19

²⁰⁶ Magistrate John Crawford, Children's Magistrate, Children's Court, Evidence, 8 April 2005, p26

²⁰⁷ Submission 8, Shopfront Youth Legal Centre, p6

²⁰⁸ Submission 28, Ms Carolyn Delaney, pp1-2

with the ultimate goal of reducing offending. ... 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.²⁰⁹

6.9 In its submission to the inquiry, the DJJ provided information on the programs and services in detention centres. The DJJ provides these programs in partnership with the Department of Education and Training and Justice Health. The programs and services include:

- school program to assist in the attainment of the School Certificate and Higher School Certificate
- TAFE program for vocational education
- adolescent health specialists to assist with physical and mental health needs
- Chaplains to assist with spiritual and religious needs
- provision for access to family and community members
- living skills programs to assist with developing personal responsibility
- leisure and sporting activities to deal with boredom and fitness
- offending focused programs aimed at addressing anti-social behaviour.²¹⁰

6.10 The Department of Corrective Services (DCS) manages over 500 juvenile offenders (under 21 years of age) in the adult correctional system. According to its submission, the DCS has run programs for young offenders for some time 'which have shown reduced recidivism rates for program graduates'.²¹¹ According to DCS, a study of graduates of the Gurnang Life Challenge Program at Oberon Correctional Centre aged between 18 and 25 revealed a recidivism rate of 10% for graduates with no prior incarceration (state average approximately 30%), and a recidivism rate of 30% for graduates with prior incarceration (state average approximately 46%).²¹²

6.11 Numerous witnesses commented generally on the success or otherwise of each Department in rehabilitation and reducing recidivism. NCOSS notes that the NSW adults corrections system has the second highest rated for prisoners returning to prison after two years (recidivism) in Australia.²¹³ According to Mr Andrew Haesler SC from NSW Public Defenders:

The success of Juvenile Justice, if only by comparison with Corrective Services, in preventing recidivism and keeping numbers in custody low is remarkable. They should be applauded for their efforts not criticised. They should be given more control over young offenders not less.²¹⁴

²⁰⁹ Mr David Sherlock, Evidence, 9 March 2005, p2

²¹⁰ for more detail on these programs see, Submission 3, NSW Department of Juvenile Justice, pp62-66

²¹¹ Submission 2, NSW Department of Corrective Services, p6

²¹² Submission 2, NSW Department of Corrective Services, p6

²¹³ Submission 13, NCOSS, p11

²¹⁴ Submission 22 (supplementary), NSW Public Defenders, p2

- 6.12** Inquiry participants noted the importance of the DJJ's post-release facilities that assist young offenders to reintegrate into the community. Witnesses described the vital role these facilities play in assisting young people and ensure they are not vulnerable to committing further offences. In answers to questions on notice, the Minister for Juvenile Justice, the Hon Diane Beamer MP, explained:

The Department's case management process places great emphasis on preparing detainees for release. Successful reintegration relies on a number of factors including the frequency and quality of contact with family and community whilst in custody, the living skills acquired in custody, and the arrangements for ongoing support for the young person in the first few weeks after release.²¹⁵

DCS and its management of Kariong Juvenile Correctional Centre

- 6.13** The appropriateness of the transfer of management responsibility for Kariong to DCS, and its transition into a juvenile correctional centre has been discussed throughout this report. Many witnesses commented on the capacity of DCS to deliver appropriate rehabilitation services targeted at juvenile offenders. The Youth Justice Coalition argues that placing juveniles in correctional facilities under the management of DCS will 'significantly compromise the ability to rehabilitate those young people'.²¹⁶ The Legal Aid Commission of NSW suggests that while the DCS outlines a broad commitment to rehabilitation and the re-settlement of offenders, in its 2004-2007 corporate plan, 'there is currently no reference to specific commitments for the management of children and young adult inmates'.²¹⁷

- 6.14** Police Association members made the following observations about whether incarcerating juveniles in juvenile correctional centres achieves rehabilitation:

'No, depending on the level of criminality. Inside correctional centres, they are interacting and networking with other criminals (usually older and more experienced) and are learning and being introduced to other crimes i.e. drugs.'

'No, due to the learning factor and criminal schooling.'²¹⁸

- 6.15** Another concern among inquiry participants is the diversity of offenders located at Kariong. Witnesses queried the wisdom of locating young people on remand for serious indictable offences awaiting a court appearance alongside offenders serving long-term sentences for serious crime, and others for behavioural management reasons.

- 6.16** Another objection put forward by participants is that there needs to be greater distinction between the needs of the two categories of A1 detainees. As NCOSS observed:

²¹⁵ Answers to questions on notice, The Hon Diane Beamer, MP, Minister for Juvenile Justice, 17 June 2005, p9

²¹⁶ Submission 10, The Youth Justice Coalition, p11

²¹⁷ Submission 14, Legal Aid Commission of NSW, p5

²¹⁸ Submission 25, Police Association of NSW, p4

These are clearly two distinct groups, as difficult to manage detainees may not be serious offenders. Difficult to manage detainees may have a disability and/or learning difficulties and so require additional resources and programs.²¹⁹

- 6.17** The classification status of these two groups does not denote identical needs. Witnesses noted that serious offenders with long sentences are often not the worst behaved and should be entitled to enjoy the same protection under juvenile justice as all other juvenile offenders.²²⁰ As discussed in Chapter 5, it is hoped that the new classification system will provide flexibility to ensure reclassification for offence-related A1 detainees to provide a safeguard from detention under Corrective Services.
- 6.18** In relation to detainees displaying behaviour management issues, the legislation can apply to any offender over the age of 16 who could be reclassified and transferred to Kariong because of a 'detention-centre' offence. Their sentences may be short, their crimes less serious yet under the current legislation those detainees would be subjected to transfer into an adult corrections environment wholly unsuited to their needs. This is especially the case if these detainees, as many of them do, display intellectual or other disability.²²¹ It has been argued that detainees whose behavioural transgressions lead to their transfer to Kariong arguably need more intensive and more focussed intervention, not less.²²² Furthermore, these detainees might be ill suited to an adult system, and transfer to Kariong further stigmatises them. The regime under Corrective Services also appears to be less capable of addressing the underlying factors of their offending or behavioural profile.
- 6.19** While some witnesses felt the rehabilitation needs of these categories were different, Father Ramsay Nuthall, Department of Juvenile Justice Chaplain noted the need for an individualised response:
- ... I think every individual has different rehabilitation challenges as we all have different needs. Again perhaps as inadequate as the Department of Juvenile Justice response to that is, at least, it is better resourced to attempt to cope with the individual needs of detainees and to determine them.²²³
- 6.20** In relation to Indigenous offenders, the Aboriginal Justice Advisory Council argues that incarcerating Aboriginal young people in a juvenile correctional centre will not achieve reduced recidivism and rehabilitation.²²⁴
- 6.21** The National Children's and Youth Law Centre suggests that:

²¹⁹ Submission 13, NCOSS, p8

²²⁰ Professor Rob White, Head of School of Sociology, Social Work and Tourism, University of Tasmania, Evidence, 12 April 2005, p5

²²¹ For more information, see NSW Department of Juvenile Justice, *2003 Young People in Custody Health Survey*

²²² Father Ramsay Nuthall, Juvenile Justice Sub-Committee of the Civil Chaplaincies Committee, Evidence, 14 March 2005, p52

²²³ Father Ramsay Nuthall, Evidence, 14 March 2005, pp52-53

²²⁴ Submission 23, Aboriginal Justice Advisory Council, p14

...to incarcerate juveniles in juvenile correction centres under the control of the Department of Corrective Services runs counter to fundamental principles of juvenile justice and actively inhibits the ability of the NSW Government to ensure that the stated objectives of the Department of Juvenile Justice are realised.²²⁵

- 6.22** The National Children's and Youth Law Centre is concerned that the lack of focus on rehabilitation will lead to increased recidivism by juveniles, as some of the interventions that should have been provided for young offenders will not be available. For these reasons the Centre and others believe that the juvenile justice system is the most appropriate place to protect against the stigmatisation of juvenile offenders and facilitate their reintegration into society. The majority of witnesses suggest that the DJJ is best placed to facilitate the relevant rehabilitation programs for young offenders.²²⁶ The Youth Justice Coalition said:

Rehabilitation and reintegration into the community requires a wide range of special programs and facilities; educational programs, cultural programs, opportunities for normal peer contact and social activities; and the availability of appropriate health and welfare services to try and address any underlying risk factors. Young people have a right to these special facilities in international law, and the *Children (Detention Centres) Act 1987* and the management protocol of the Department of Juvenile Justice ensures that these needs are somewhat met.²²⁷

- 6.23** Former employee at Kariong, Ms Delaney argued that it was a 'huge step backwards' handing over Kariong to DCS as it is much less likely that the 'intensive programmatic approach that is vital to make positive change in young offenders will occur under Corrective Services management with its predominantly adult focus.'²²⁸

- 6.24** Commenting on the recent changes at Kariong, Ms Jane Sanders from the Shopfront Youth Legal Centre said:

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.²²⁹

- 6.25** Ms Sanders went on to say that her organisation has heard reports that, in relation to Kariong, there seems to be a move towards reduced access to educational and rehabilitation programs, and also a reduction in the visits by counsellors and juvenile justice caseworkers.²³⁰

²²⁵ Submission 12, National Children's and Youth Law Centre, p5

²²⁶ Submission 7, Juvenile Justice Sub-Committee of the Civil Chaplaincies Committee, p9

²²⁷ Submission 10, The Youth Justice Coalition, p11

²²⁸ Submission 28, Ms Carolyn Delaney, p1

²²⁹ Ms Jane Sanders, Principal Solicitor, Shopfront Youth Legal Centre, Evidence, 9 March 2005, p46

²³⁰ Ms Jane Sanders, Evidence, 9 March 2005, p46

- 6.26** As discussed earlier in this report, the Committee acknowledges that Kariong was not being adequately managed prior to the transfer. The poor management created problems around safety and security, which no doubt had a negative impact on the capacity to deliver rehabilitation programs and services. The Committee also recognises the recent efforts of the DCS to improve the education facilities at Kariong. In a site visit to Kariong, Committee members spoke to staff and young offenders about the improvements in access to TAFE programs, and programs assisting offenders with their Higher School Certificate and School Certificate. The Committee met one young person doing an accountancy course and some of the Indigenous students doing arts and crafts courses.²³¹ This is also discussed in Chapter 3.
- 6.27** In evidence to the Committee, the Minister for Justice, the Hon John Hatzistergos MLC, disputed the concerns raised by various stakeholders about Kariong and its provision of rehabilitation and education programs:
- We do focus on programs, education and rehabilitation. All the offenders participate in a structured day, during which they go to school, complete assessment, participate in programs, have activities and also attend programs to affect their offending behaviour. We provide employment opportunities, such as ground maintenance and laundry and kitchen hand duties. We will be expanding that eventually to include traineeships for those offenders who want to go down the vocational route.²³²
- 6.28** In relation to the DCS's requirements to provide similar programs at Kariong to those offered prior to the transfer, the Committee notes that the Memorandum of Understanding between the Departments includes an obligation on the DCS to provide certain programs including education programs, alcohol and drugs counselling, anger management, personal development and team building. In response to questions from the Committee, the Justice Minister wrote:
- At Kariong Juvenile Correctional Centre, the Department of Corrective Services provides a variety of programs as part of the structured programs with the Centre. If a program has been identified as potentially beneficial for a juvenile inmate's rehabilitation, then program attendance is compulsory for that juvenile inmate.²³³
- 6.29** The Minister listed the programs operating or currently being considered as new programs, including alcohol and other drugs programs, the young offender satellite program,²³⁴ anger regression and sex offender programs, and education and religious programs.²³⁵
- 6.30** A number of witnesses suggested ways in which the delivery of rehabilitation services could be improved. The Public Service Association of NSW felt the DCS must ensure that there are appropriate programs for detainees at Kariong. In addition, the Association stressed the need

²³¹ Site visit to Kariong, 25 February 2005

²³² The Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, p20

²³³ Answers to questions on notice, Hon John Hatzistergos, MLC, Minister for Justice, 14 June 2005, Qu2, p1

²³⁴ This program is for detainees due for release. Conferences are conducted with various Centre staff and family members to assist with the detainees pre and post release needs, in Answers to questions on notice, Hon John Hatzistergos, MLC, Minister for Justice, 14 June 2005, Question 6, p1

²³⁵ Answers to questions on notice, Hon John Hatzistergos, MLC, Minister for Justice, 14 June 2005, Qu2, p1

for both DCS and DJJ to continue to work together to ensure there is a coherent approach to the management and rehabilitation of juvenile offenders.²³⁶

- 6.31** According to other inquiry participants, considerable resources will be required to allow DCS to develop the necessary specialist programs.²³⁷ Some participants felt there would be an unnecessary duplication of resources across the Departments of Corrective Services and Juvenile Justice. The NSW Public Defender, Mr Haesler SC told the Committee that as numbers of young offenders are low, and while the Department of Juvenile Justice could always do with more resources, there is still considerable scope for DJJ to focus resources on specific programs for each young offender. Mr Haesler SC expressed concern that Corrective Services, with responsibility for thousands of prisoners, will not have the resources to devote to young offenders.²³⁸
- 6.32** A small number of witnesses, including the Police Association of NSW felt that changes had to be made to Kariong to achieve rehabilitation by removing privileges and adopting a more punitive approach. Comments from Police Association members included:

‘Juvenile offenders would be far less likely to re-offend if subjected to more strict and regulated conditions.’

‘The punishment must be relevant to the crime. Incarcerating juveniles must have a purpose – punishment and rehabilitation, not rewarding them i.e. television etc.’²³⁹

Conclusion

- 6.33** The Committee believes that there are some valid concerns about the ability of the DCS, in its management of Kariong to provide a rehabilitative focus in the management of young offenders. As many witnesses argue, a central problem is the location of young offenders within a large organisation whose core business does not relate to the supervision, rehabilitation or re-integration of young offenders.
- 6.34** The Committee applauds the DCS and the current management and staff at Kariong for restoring order and structure to the Centre. In addition, the improvements in access to education programs are noteworthy. Nevertheless, the Committee is concerned with the DCS capacity to balance security and control with effective casework and rehabilitation. We note the comments made by Mr Sherlock, former Director General of DJJ that these two aspects of management need to co-exist. As noted early in the report, there are clear cultural and practical differences between the two Departments and, as the majority of inquiry participants have said, one of the most significant differences is in their approach to rehabilitation. While accepting the information provided by the Minister for Justice that rehabilitation programs are being offered at Kariong as per the Memorandum of Understanding, the Committee is concerned by some evidence to this inquiry that suggests a number of these programs are not currently being offered to detainees.

²³⁶ Submission 19, Public Service Association of NSW (PSA), p18

²³⁷ see for example, Submission 14, Legal Aid Commission of NSW, p5

²³⁸ Submission 22 (supplementary), NSW Public Defenders, p3

²³⁹ Submission 25, Police Association of NSW, p6

- 6.35** The Committee firmly believes that, while it has the management responsibility for Kariong, the DCS must ensure there is a balanced approach to the management of juvenile offenders, whereby order and discipline is provided alongside opportunities to participate in a variety of activities aimed at addressing underlying offending behaviour and other behavioural problems. Providing access to rehabilitation programs is critical to the overall objective of assisting these young people to take responsibility for their actions and reintegrate into the community upon release. Central to this will be access to adequate resources for the development and delivery of the necessary rehabilitation programs. The need to ensure programs are effective is addressed below.
- 6.36** Prior to the transfer, the Department of Juvenile Justice had an operating budget of \$6.822m for Kariong Juvenile Justice Centre.²⁴⁰ The Department of Corrective Services currently has a full yearly operating budget of \$3.872m.²⁴¹ It should be noted there is an additional provision of \$2.1m for capital works to be undertaken at the Centre to attend to security and other site-related improvements.²⁴²

Recommendation 2

That the Department of Corrective Services, in its management of juvenile correctional centres, continues to ensure that security and control coexist with effective casework and rehabilitation.

Recommendation 3

That the NSW Government continues to ensure that the Department of Corrective Services is provided with adequate resources to allow it to provide the necessary rehabilitation programs to young offenders incarcerated at Kariong.

The need for effective rehabilitation programs

- 6.37** The Committee notes that in relation to recidivism and rehabilitation in both the juvenile and adult system, the availability of appropriate programs such as the Gurnang Life Challenge Program and post-release support (mentioned above and in Chapter 11) is important to the success of reducing recidivism rates. While these programs are well supported and have been shown to work, several witnesses expressed concern with the lack of research and evaluation that exists in Australia on the success of programs aimed at rehabilitating offenders.
- 6.38** As noted above, while the juvenile justice system appears to have a better track record than the correctives system in rehabilitation and reducing recidivism, the rate of recidivism of

²⁴⁰ Department of Juvenile Justice, Answers to Questions on Notice, 7 April 2005

²⁴¹ The budget for the remainder of the calendar year 2004/5 was \$2.498m. Minister for Justice, Answers to Questions on Notice, p3

²⁴² The average cost per juvenile per day in custody in NSW in 2003/04 was \$582, in Minister for Justice, Legislative Council Questions and Answers No. 97, Tuesday 5 April 2005

incarcerated young offenders is still very high. A recent study by the NSW Bureau of Crime Statistics and Research (BOCSAR) found that a majority of juveniles appearing in court reoffend. Nearly 70 per cent of the 5,476 juveniles examined in this study reappeared in court within eight years.²⁴³ According to the authors, this research is consistent with international literature on juvenile offending, although conflicts with a 1994 study which found that about 30 per cent of juveniles appearing in the NSW Children's Court between 1982 and 1986 had more than one juvenile court appearance.²⁴⁴ The authors of the recent BOCSAR study argue that the policy implication of their findings is that efforts to reduce the risk of re-offending should not be delayed in the belief that the majority of young offender will not offend again.²⁴⁵

- 6.39** The authors also suggest there is a critical need for research that provides 'more precise delineation of which juveniles are most at risk of re-offending'. The study found an alarming recidivism rate amongst Indigenous young people, and particularly Indigenous males. More than 90% of Indigenous juvenile offenders who were aged 16 at their first court appearance ended up in an adult court and more than 85 per cent of this group with two or more Children's Court appearances went on to appear in an adult court.²⁴⁶

It is safe to assume that virtually all Indigenous males and a large majority of Indigenous females will reoffend and reappear in court unless something is done to assist them. The position is less clear for non-Indigenous young people coming before the courts. The age of a juvenile at their first court appearance provides some guidance on who is more at risk of re-offending but even here our ability to predict who will reoffend is limited.²⁴⁷

- 6.40** In its submission to the inquiry, the Aboriginal Justice Advisory Council (AJAC) outlined the over-representation of Aboriginal people in the criminal justice system. This issue is discussed in detail in Chapter 9. AJAC argues that appropriate and effective rehabilitation is critical to addressing the problem of the over-representation of Aboriginal young people and the high rates of recidivism. Ms Lydia Miller, Executive Officer with the Aboriginal Justice Advisory Council told the Committee:

If we are going to talk about programs as part of the rehabilitation principle, if programs are able to tackle the criminogenic needs of young people, the multiple disadvantages within communities means we have fractured families, chaotic families, dysfunctional families, kids coming from a long involvement with the welfare system where the system has been a non-effective form of intervention. The moment that kids from naught to 9 years old come to the age of criminal responsibility, 10, they are picked up and immediately absorbed into the criminal justice system, and so begins the commencement of their institutionalisation and ongoing disadvantage.

²⁴³ Chen, Shuling Tania Matruggio, Don Weatherburn and Jiuzhao Hua, 'The transition from juvenile to adult criminal careers,' in *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research, Number 86, May 2005, p10

²⁴⁴ The BOCSAR paper suggests reasons for the discrepancy, including the differences in the methods by which juveniles were selected for inclusion in the two studies. For more on this, see Shuling Chen et al, *Crime and Justice Bulletin*, May 2005, p10

²⁴⁵ Shuling Chen et al, *Crime and Justice Bulletin*, May 2005, p10

²⁴⁶ NSW Bureau of Crime Statistics and Research, 'The transition from juvenile to adult criminal careers', *Media Release*, 26 May 2005

²⁴⁷ Shuling Chen et al, *Crime and Justice Bulletin*, May 2005, p11

I guess the system is saying that it can offer a range of programs, and that is admirable, important and necessary, but ultimately those children do not seek the same benefits from the appalling infrastructure that exists once they get outside the centre. If we are going to look at how to stop the involvement of children in the criminal justice system, how to stop Aboriginal people being institutionalised, it is about what is the most effective intervention, whether that is diversion, whether it is stopping the Indigenous arrest rate, or whether it is preventative programming. But that needs to happen within the community. In essence, there are too many problems within the criminal justice system impacting upon an entire generation, on multiple generations actually. As a result, we lose a lot of people aged from 10 to 11 up to about 35 or 40 to the criminal justice system who could be contributors to their own community.²⁴⁸

- 6.41** The BOCSAR study also discusses the need to identify the programs that work in reducing recidivism. While very few Australian programs have been evaluated, the authors note that overseas research has identified the programs that have been effective in reducing recidivism. These include:
- rehabilitation programs that target known criminogenic risk factors (eg. antisocial attitudes, poor impulse control)
 - cognitive behavioural therapy
 - community employment
 - drug treatment
 - incapacitation of offenders who continue to commit crimes at very high rates.²⁴⁹
- 6.42** The Department of Juvenile Justice has included in its research agenda for the next few years, the examination of recidivism rates and trends across DJJ clients.²⁵⁰ The Committee is pleased to note that DJJ have made this issue a priority, and encourages both the DJJ and DCS to include in its research an examination of the success or otherwise of current rehabilitation programs aimed at reducing recidivism. The research should include a thorough examination of juvenile recidivism with an aim to identify those juveniles most of risk of re-offending.
- 6.43** The Committee concurs with the comments made in the BOCSAR article that there is little point knowing who is most likely to reoffend, 'if we cannot do anything to reduce the risk of re-offending'. In view of this, the Committee is very keen to see the Departments of Juvenile Justice and Corrective Services invest in effective and appropriate programs targeted at those offenders most at risk of re-offending. As the BOCSAR research has shown, these programs should be aimed particularly at Indigenous young people. In addition, we believe the Departments should consider programs from other jurisdictions, including other States and overseas, that have shown to be successful in addressing recidivism rates in young offenders.

²⁴⁸ Ms Lydia Miller, Executive Officer, Aboriginal Justice Advisory Council, Evidence, pp21-22

²⁴⁹ Shuling Chen et al, *Crime and Justice Bulletin*, May 2005, p11

²⁵⁰ Submission 3, NSW Department of Juvenile Justice, p32

Recommendation 4

That the Departments of Juvenile Justice and Corrective Services ensure further research is conducted on the effectiveness of current rehabilitation programs aimed at reducing recidivism. The research should include a thorough examination of those juveniles most of risk of re-offending.

Chapter 7 Adults in juvenile justice

Although some previous legislative efforts have been made to reduce the impact of adults in a juvenile centre, management of juveniles and adults together will remain a difficulty even under Corrective Services control.²⁵¹

Term of reference (c) requires the Committee to examine the issue of adult detainees sentenced as juvenile offenders at Kariong Juvenile Correctional Centre and elsewhere in the juvenile detention centre system. This chapter considers how young adults over the age of 18 end up in the juvenile system, and assesses the possible consequences of accommodating juveniles and adults together in detention centres.

Principle of separation

- 7.1 The legal determination of adulthood within criminal law is provided for in various domestic Acts, giving effect to the internationally agreed definition of when individuals are considered to have reached the age of ‘majority’. The *UN Convention on the Rights of the Child*, for example, defines a ‘child’ to be ‘every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier’.²⁵² By inference, any person over the age of 18 is considered to be an adult. This inquiry has heard from a number of people concerned about locating juveniles and adults in the same physical environment and under the same management.
- 7.2 There is an established principle in both international and domestic law, therefore, which instructs the separation of juveniles from adults in detention. As Rod Blackmore, former Chief Magistrate of the Children’s Courts stated:

The fact remains that it is wrong in principle for adults and juveniles to be detained in the one facility, whether it be a juvenile detention centre or an adult correctional centre.²⁵³

International obligations

- 7.3 Evaluation of Australia’s international obligations to children reveals clear and direct instructions on the importance of this issue. Article 37(c)²⁵⁴ of the *UN Convention on the Rights of the Child* (CROC) states:

²⁵¹ Submission 1, Mr Rod Blackmore, p2

²⁵² *UN International Convention on the Rights of the Child*, Article 1

²⁵³ Submission 1, Rod Blackmore, p2

²⁵⁴ Australia, in ratifying the Convention, maintained a reservation to the provisions of this Article, stating that it would not be possible to comply completely with this obligation, ‘having regard to the geography and demography of Australia’. Source: Parliament of NSW, *Legislation Review Committee, Legislation Review Digest No. 17 of 2004*

In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so.²⁵⁵

7.4 In addition, the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ('The Beijing Rules') provide:

Clause 13.4 – Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

Clause 26.3 – Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

7.5 While the intention of these rules is to prevent juveniles being imprisoned in adult facilities, it is also pertinent to the administration of the Department of Juvenile Justice because a significant numbers of young adults are detained in juvenile detention centres.²⁵⁶ Other international treaties contain references to obligations in respect of juveniles and are considered in Chapter 8.

Domestic law

7.6 The distinction between the practical and rehabilitative needs of juveniles and adults has been given effect by the NSW Government by the creation of two distinct departments; Juvenile Justice and Corrective Services. Each is charged with responsibility for the administration of its respective custodial facilities. As the Justice Action submission suggests:

The importance of the structural separation of juvenile and adult corrections was emphasised when the government, a few years ago, ensured that the portfolios of Minister for Juvenile Justice and Minister for Corrective Services [sic] were held by two different Ministers.²⁵⁷

7.7 This structural separation of the departments followed extensive consultation in the early 1990's. Among the many reasons for this delineation is recognition that the age of maturity in adolescents is variable and the opportunities for successful diversion from criminal activity depend to a large extent on the physical, emotional and psychological development of the offender. With this in mind, provision of rehabilitation programs attempt to target groups who are of similar ages and have similar developmental needs.

7.8 Only through the development of bespoke age-appropriate programming can the Department of Juvenile Justice's aim of 'breaking the cycle of crime' be achieved. Alongside this broad strategic aim is an implicit acknowledgement that adults, who are old enough to assume full responsibility for their actions, are generally poor influences on younger offenders.

²⁵⁵ This right is often qualified by allowing for certain circumstances where it may be appropriate to mix adults and juveniles, for example, where they are detained with a parent or adult family member. Source: *UN Rules for the Protection of Juvenile Deprived of their Liberty*, Rule 29, 1990

²⁵⁶ Submission 1, Mr Rod Blackmore, p8-9

²⁵⁷ Submission 5, Justice Action, p1. The Minister responsible for adult corrections is properly referred to as the Minister for Justice.

How do adults enter the juvenile justice system?

7.9 A recent NSW Ombudsman discussion paper, *Review of the Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*, reported the number of adults in the juvenile system in 2003 to be 88, approximately 28.2 per cent of the total juvenile detention centre population.²⁵⁸ The Committee notes that as at 25th February 2005, 15 of the 31 detainees held at Kariong were between 18 and 21 years of age. Of the remainder, a further 12 will be 18 by the end of 2005.²⁵⁹

7.10 An offender who is over the age of 18 can appear in the juvenile justice system in a number of ways:

- having been sentenced by the courts either: by virtue of a ‘section 19’ order under the *Children (Criminal Proceedings) Act 1987*, made by a District or the Supreme Court in respect of a Serious Children's Indictable Offence; or a ‘control order’ made under section 33 of the *Children (Detention Centres) Act 1987* by the Children’s Court in respect of other indictable offences.²⁶⁰ Those sentenced in this way may then become an adult (having attained the age of 18) before the end of the control order or term of imprisonment.
- young people who commit offences while under the age of 18, but are under the age of 21 when charged, are considered to be entitled to treatment as a juvenile and to be sentenced in a detention centre, even if they are over 18 at the time of sentencing.
- adults under the age of 21 may be transferred from a correctional centre to a detention centre in accordance with s10 of the *Children (Detention Centres) Act*.²⁶¹

7.11 Prior to 2001, young adults who had committed offences before turning 18 were entitled to serve their entire term of imprisonment in juvenile facilities under a section 19 order. Young offenders with long sentences could therefore remain in detention well into adulthood, which was generally felt to inhibit the Department’s objectives in relation to rehabilitation. Amendments in 2001 to Section 19 of the *Children (Criminal Proceedings) Act 1987*²⁶² sought to restrict the number of young adults in the system as a whole. The Committee notes the NSW Ombudsman is currently undertaking a review of the operation and effect of the *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*, which is due to report at the end of 2005.²⁶³

²⁵⁸ NSW Ombudsman, *Discussion Paper: Review of the Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*, p12

²⁵⁹ Information provided by Mr Peter Maa, Governor of Kariong Juvenile Correctional Centre on Committee Site Visit to Kariong, 25 February 2005

²⁶⁰ The Higher courts may also impose a control order in respect of other indictable offences where a matter is referred to it by the Children’s Court.

²⁶¹ These sentencing and transfer arrangements are explained in detail in Chapter 4.

²⁶² *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*

²⁶³ This review project is monitoring the operation and effects of the Act. The discussion paper from April 2005 forms part of a process of consultation with community and government stakeholders. The NSW Ombudsman is due to report by the end of 2005.

- 7.12** These amendments added the following age limits for young offenders who receive a section 19 order:
- (2) Young offenders are not eligible to remain in a detention centre after the age of 21 unless their non-parole period or term of imprisonment will end within 6 months after they attain that age.²⁶⁴
 - (3) Young offenders who are guilty of serious children's indictable offences are not eligible to remain in a detention centre after the age of 18 unless:
 - (a) the non-parole period or term of imprisonment will end within 6 months after the young offender attained that age; or
 - (b) the court is satisfied that there are special circumstances justifying the young offender's detention in a detention centre after the age of 18 (but only up until the age of 21).²⁶⁵
- 7.13** In determining whether there are special circumstances for the purposes of the Act, the court may have regard to the degree of vulnerability of the young offender (for example physical, emotional or psychological maturity), the availability of appropriate services or programs at the place where the person will serve the sentence of imprisonment, and any other matter that the Court thinks fit.²⁶⁶
- 7.14** Mr Blackmore, former Children's Magistrate in NSW, has contended that these 'special' or exceptional reasons have been overused by courts and have contributed to a widespread problem of having large numbers of young adults in the juvenile justice system.²⁶⁷ He further suggests that the 2001 amendments to the *Children (Criminal Proceedings) Act 1987* should have gone further, arguing that the Act should specify a presumption (in the light of the *Beijing Rules*) that juvenile offenders should remain in detention only up to the age of 18, and that those over 18 at the age of sentencing, should be imprisoned.²⁶⁸
- 7.15** In general, the Committee believes that affording some discretion to the courts in the sentencing of juveniles rightly recognises limitations of any approach that relies on age alone as the principal determinant for classification and placement. The *Children (Criminal Proceedings) Act 1987* demonstrates a rather more thoughtful approach to sentencing that provides protection to vulnerable young offenders who, despite their age, may be unsuited to the adult penal system. It also provides discretion to allow those who committed crimes under the age of 18 a chance for rehabilitation under the supervision of the Department of Juvenile Justice. It provides for more sophisticated assessments of a wide variety of factors, including severity or nature of the crime, length of sentence, maturity, background and other risk factors.

²⁶⁴ Section 19(2)

²⁶⁵ Section 19(3)

²⁶⁶ Section 19(4)

²⁶⁷ Submission 1, Mr Rod Blackmore, p8

²⁶⁸ Submission 1, Mr Rod Blackmore, p8

Appropriateness of adults in the juvenile justice system

Problems with the current system

7.16 While many witnesses believe there are good reasons for the courts' discretion, a number of witnesses suggested that the mixing of adults and juvenile detainees has proved to be problematic. The challenges presented by the presence of adults in the system are twofold. Firstly, there is a prevailing view, reflected by international obligations, that the presence of adults in detention with juveniles is deleterious to the young offender.

7.17 The principal reason why this is felt to be the case is the potential for 'criminal contamination'. This relates to the impression that the presence of older detainees can lead to permeation of negative peer influences. The PSA suggest that adult offenders are a threat to the juvenile justice system:

...due to the likelihood that their criminal behaviour is more entrenched and their propensity to manipulate, bully or otherwise frustrate the rehabilitation of younger detainees.²⁶⁹

7.18 Other witnesses suggested that some young adults may be highly inappropriate role models for children who are more susceptible to the influences of their peers. Mr Blackmore argued that continuing to treat young adults in juvenile facilities may create 'eminence' in the eyes of younger offenders, and this may have a pervasive effect if older offenders choose to abuse their influence.²⁷⁰

7.19 During the passage of the *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001* the former Minister for Juvenile Justice, the Hon Carmel Tebbutt MLC, acknowledged this view when she suggested that continuing to hold young adults in detention centres into adulthood 'may jeopardise the chances of rehabilitating younger, less serious offenders'.²⁷¹

7.20 In relation to the 2001 amendments generally, the Hon Carmel Tebbutt MLC said:

The presence of a significant proportion of older, more serious offenders serving long sentences can compromise the good order and rehabilitation focus of detention centres. The intent of this Bill is to see those offenders placed within the appropriate programs in Corrective Services.²⁷²

7.21 Secondly, another of the principal challenges for the Department of Juvenile Justice is in providing age-appropriate programming for detainees of a potentially wide range of ages and more significantly, those displaying different stages of maturity. Mr Elliott-Rudder from the PSA elaborated on this view:

²⁶⁹ Submission 19, Public Service Association of NSW (PSA), p12

²⁷⁰ Submission 1, Mr Rod Blackmore, p6

²⁷¹ Hon Carmel Tebbutt, MLC, Legislative Council, New South Wales, *Hansard*, 13 December 2001, p 20161

²⁷² Hon Carmel Tebbutt, MLC, Legislative Council, New South Wales, *Hansard*, 13 December 2001, p20161. See also initial part of speech or a discussion of the problem of rehabilitating young offenders if more serious offenders with them.

In theory, we could have a 10-year-old at our centre mixing with a detainee who may be 15, 16, 17 or 18 years old because we do not have the facilities to separate the young people into appropriate categories and management areas.²⁷³

- 7.22** The NSW Public Defenders are one of many participants who have highlighted concerns that the breadth of the legislation extends beyond the most serious offenders.²⁷⁴ They submitted that juvenile offenders under the age of 18 should never be under Corrective Services management and that they should be protected by both domestic legislation and international obligations, which seek to put the rights of the child at the fore in decisions relating to their custody and rehabilitation.²⁷⁵

Benefits of the current system

- 7.23** The Committee accepts, however, that the influence of older detainees need not necessarily be harmful to the rehabilitative prospects of their younger counterparts. Father Nuthall, Department of Juvenile Justice Chaplain, notes the potential benefits of the current system, where older peers are in a position to facilitate the personal development of younger detainees. However, this should not be taken as unequivocal support for the presence of young adults, as he suggests that:

This is an issue that must be evaluated on a case-by-case basis...[and] whether the particular detainee in question is affecting a positive or deleterious influence on younger detainees. Younger detainees need older peers in order to facilitate normal personal development; however, where the influence is negative, then a swift transfer to the adult system should be facilitated.²⁷⁶

- 7.24** The Minister for Justice also indicated that he felt that there were some clear benefits to be derived from having some older detainees at Kariiong:

The spread of ages impacts to some extent upon the success of the sentence in the sense that it can operate as a more maturing influence. I should make it clear that some of the detainees who may be in Kariiong, and who may be in the adult system ultimately for a lengthy period of time, are not necessarily management problems. They are quite reconciled after a number of years to their sentences. They behave, they understand the routine, and they can act as a settling influence. I think that is our experience.²⁷⁷

- 7.25** The parallel concerns associated with the presence of some young adults in adult prisons have also been repeated in submissions to the Committee.²⁷⁸ A number of participants expressed their concern about the increased risk of assault and sexual assault in adult prisons for

²⁷³ Mr Glenn Elliott-Rudder, Public Service Association of NSW, Evidence, 17 May 2005, p34

²⁷⁴ see also National Children's and Youth Law Centre, p7, Shopfront Youth Legal Centre, p9 for example

²⁷⁵ Submission 22, NSW Public Defenders, p2

²⁷⁶ Submission 7, Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee, p6

²⁷⁷ Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, p13

²⁷⁸ Submission 13, NSW Council of Social Services (NCOSS), p7; Submission 10, The Youth Justice Coalition, p8

vulnerable young adults.²⁷⁹ The current system attempts to protect these young people from the potentially serious and traumatic consequences of transferring young adults into the adult corrections system.

The risks associated with mixing children and adults relate to negative peer influence as well as high rates of assault and sexual assault in adult facilities. Younger detainees, people with intellectual disability, and mental illness are especially vulnerable to these risks.

Placing such a class of young adults in adult facilities exposes them to a range of significant risks.²⁸⁰

Other issues

Do adults provoke misbehaviour?

- 7.26** Evidence shows that there has perennially been a presence of young adult offenders in the system. As noted above, statistics published by the NSW Ombudsman indicate that between 1995 and 2003, the number of males over the age of 18 in detention in NSW fluctuated between 21.2 and 28.2 per cent of the total detainee population.²⁸¹ This is notable because it illustrates that centres other than Kariong were also managing juveniles over the age of 18, so while Kariong may have suffered from significant disturbances at the centre, it appears that the presence of young adults should not be cited as the principal cause of those problems. It is noteworthy that neither of the NSW Ombudsman reports, nor the Johnston and Dalton Report in 2002, identify adult-age detainees as major factors in the management of the centre.
- 7.27** The DCS confirm that there have been no ‘disturbances’ at Kariong since Corrective Services officers assumed the administration of the centre.²⁸² This further affirms the view of previous reports that problems at Kariong were primarily staff and management related and little to do with the make up of the detainee population.

When is an adult not an adult?

- 7.28** Among the other questions posed about the issue of adults in the system is the whether the decision to sentence an offender as a ‘juvenile’ or an ‘adult’ should be based on the age of the offender at the time of sentencing rather than at the time of committing the offence.²⁸³
- 7.29** Regardless of the age of the offender at the time of sentencing, subject to the terms of the Act, it is the age and maturity of the offender at the time of the offence that is important. Factors

²⁷⁹ Heilpern, D., *Fear or Favour*, 1998, p7

²⁸⁰ Submission 10, The Youth Justice Coalition, p8

²⁸¹ NSW Ombudsman, *Discussion Paper: Review of the Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*, April 2004, p12

²⁸² Submission 2, NSW Department of Corrective Services, p2; correct as at 24 February 2005.

²⁸³ Submission 1, Mr Rod Blackmore, p3

such as impetuosity, susceptibility to peer influences and a lack of maturity and an underdeveloped sense of responsibility are considered to be mitigating factors in juvenile crime, and are transient qualities likely to diminish over time.²⁸⁴

7.30 The Committee agrees that in most cases, it would be inappropriate to impose adult punishment upon juveniles who committed their offence as a minor, and who are therefore considered more able to benefit from rehabilitation. While there is always a degree of arbitrariness in determinations of age of criminal responsibility for example, the Committee is not persuaded at this stage that it is a necessary or desirable change.

Options

7.31 In relation to other options available for the management of young adults in custody in the future, Chapter 11 considers a number of alternatives to the transfer, including the creation of a separate facility for 18-24 year olds. The Committee believes that consideration should be given to whether the principle of separation might be better achieved through the creation of a separate, intermediate facility for those young adults who a) would benefit from juvenile justice programs and b) may be vulnerable in the adult system. Such a facility would accommodate these offenders away from younger detainees in the main juvenile justice population.

7.32 Another alternative solution to this problem is to enable centres to develop separate residential units for young adult offenders, so that they might benefit from the programs available to all juvenile offenders, while maintaining effective separation from younger detainees.

Conclusion

7.33 The Committee recognises the well-established principle that stipulates the need to separate adults and juveniles in detention, which is accounted for in an array of international rules and conventions in this area. These international treaties provide guidance for the operation of member states and the distinction made in NSW between the Departments of Juvenile Justice and Corrective Services is predicated on this principle. The Committee wholeheartedly supports the continued existence of these two Departments in their current form and recommendations at the end of this report reinforce this view.

7.34 The Committee accepts the general view that large numbers of adults in the juvenile justice system is not desirable and, worse, may be to the detriment of younger offenders. The presence of disruptive or harmful older offenders is likely to work against the objectives of the Department of Juvenile Justice and in this respect, measures included in legislation to facilitate the removal of violent or disruptive detainees from the system remain important to safeguarding the interests of younger offenders.

7.35 However, there does appear to be considerable difficulty in providing appropriate accommodation for young offenders once they reach the age of 18. Sentencing arrangements under the current legislative framework provide flexibility for the courts so that a range of factors can be considered prior to making decisions about placement. This process aims to protect vulnerable juveniles from exposure to risks in the adult system by permitting them to serve their sentence in juvenile detention. Similarly, it provides for young offenders considered

²⁸⁴ Submission 22, NSW Public Defenders, p4

likely to respond to the rehabilitative focus of the Department of Juvenile Justice to serve their sentence in juvenile detention for as long as possible.²⁸⁵ These young adult offenders, in particular, may serve to be a stabilising force for younger detainees and their influence can be harnessed as mentors.

- 7.36** The process, therefore, considers factors additional to age as determinants for the most appropriate placement of juvenile offenders. The Committee believes it is right to provide protection to those who have committed crimes prior to the age of 18, however serious. This is a well-established principle and one that the Committee takes seriously. Proper assessment of risk and vulnerability should continue to provide safeguards against the inappropriate placement of juvenile offenders who are vulnerable to assault or who suffer from mental health or intellectual disability.
- 7.37** The Committee acknowledges that the Government has a difficult and delicate task in seeking to balance the needs of the individual against the needs of the system in terms of managing juvenile offenders. As some participants informed us, it is often appropriate for young adults to remain in juvenile detention to prevent exposure to the range of risks associated with adult correctional facilities.
- 7.38** Overall, the Committee believes the appropriateness of allowing young adults to remain in the juvenile justice system depends on a wide range of factors and requires sensitive and objective decision-making. Transfers between juvenile and adult centres and the role of classification have been discussed in Chapters 4 and 5 respectively.
- 7.39** As noted earlier in this chapter, the NSW Ombudsman is currently reviewing the operation and effect of the *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001* and is due to report at the end of 2005.

²⁸⁵ Both these options remain age-restricted, and no detainee can be accommodated in juvenile detention beyond 21 years of age.

Chapter 8 Human rights issues for juveniles

The chapter considers the second part to term of reference (h) regarding incarcerating ‘juveniles in juvenile correctional centres’ achieves compliance with human rights. The chapter provides an overview of the various international human rights instruments that apply to the treatment of children and young people. In this chapter the Committee outlines the views of inquiry participants and then considers whether the decision to transfer management responsibility for Kariong to the Department of Corrective Services is in breach of these standards and conventions.

International human rights instruments

The relevant instruments

8.1 The human rights of juveniles in custodial facilities are primarily set out in the following three international human rights instruments:

- *UN Convention on the Rights of the Child*
- *UN Standard Minimum Rules for the Administration of Juvenile Justice (1985)* (known as the ‘Beijing Rules’) ²⁸⁶
- *UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)*.²⁸⁷

8.2 These were the only instruments referred to in submissions. Other international human rights instruments relevant to juveniles in custodial facilities include:

- *International Covenant on Civil and Political Rights (ICCPR)* (in particular Article 10, which is reflected in the Convention on the Rights of the Child)
- *Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*
- *UN Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment (1988)*.

The status of these instruments in Australia

8.3 This section considers the status of the standards and conventions as they relate to Australia.

The Convention on the Rights of the Child, ICCPR and CAT are binding

8.4 The *Convention on the Rights of the Child*, *ICCPR* and *CAT* are treaties that have been ratified by the Australian Government. The Australian Government is therefore bound under international law to implement these treaties, subject to any reservations that were made at the time of ratification. A reservation is a statement that purports to exclude or modify the legal effect of

²⁸⁶ Adopted by UN General Assembly Resolution 40/333 of 29 November 1985

²⁸⁷ Adopted by UN General Assembly Resolution 45/113 of 14 December 1990

certain provisions of a treaty.²⁸⁸ The Australian Government also has an obligation to ensure that States and Territories implement treaties that it has ratified.²⁸⁹

- 8.5 Article 4 of the *Convention on the Rights of the Child* requires that, ‘States parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the...Convention.’
- 8.6 UN treaty bodies monitor State parties’ compliance with these treaties. The Committee on the Rights of the Child monitors compliance with the *Convention on the Rights of the Child*; the Human Rights Committee monitors compliance with the *ICCPR*; and the *CAT* Committee monitors compliance with *CAT*. States Parties submit periodic reports (every five years) to the Committee on the Rights of the Child and the Human Rights Committee. The Committees examine these reports and issue concluding comments, which may contain recommendations. These recommendations are not binding. There is a mechanism for individuals to lodge complaints to the relevant Committee in relation to breaches of the *ICCPR* and *CAT* but not in relation to breaches of the *Convention on the Rights of the Child*.

The treaties have no direct legal force in Australia

- 8.7 These treaties have no legal force in Australia. In other words, breaches of such treaties cannot be directly pursued in Australian courts. To have direct legal effect in Australia it is necessary for the treaty to be incorporated into law by domestic legislation. The Commonwealth Government has stated that, rather than taking this course, ‘the general approach taken in Australia to human rights and other conventions is to ensure that domestic legislation, policies and practice comply with the convention prior to ratification.’²⁹⁰
- 8.8 Under the *Human Rights and Equal Opportunity Commission Act 1986*, complaints can be made to the Human Rights and Equal Opportunity Commission about acts or practices of the Commonwealth Government that are said to be in breach of the *Convention on the Rights of the Child* or the *ICCPR*.²⁹¹ However, the Commission cannot make any enforceable orders. Its powers are limited to inquiring into a complaint, attempting conciliation and making recommendations.²⁹² The Commission may report the results of an inquiry to the Minister and the Minister must table the report in Parliament.²⁹³

²⁸⁸ Vienna Convention on the Law of Treaties, Art 2, paragraph 1(d), quoted in Parliament of New South Wales, *Legislation Review Committee, Legislation Review Digest, No 17 of 2004*, 6 December 2004, p7, hereafter, NSW Parliament, Legislation Review Committee, December 2004

²⁸⁹ See Vienna Convention on the Law of Treaties, Art 27. See also UN Committee on the Rights of the Child, General Comment, No. 5, General Measures on the Implementation of the Convention on the Rights of the Child, 27 November 2003, p.10, paras 40-41

²⁹⁰ Australian Government, Australia’s First Report under the Convention on the Rights of the Child, Commonwealth of Australia, 1995, paragraph 6

²⁹¹ Human Rights and Equal Opportunity Commission Act 1986, s 11(f)

²⁹² Human Rights and Equal Opportunity Commission Act 1986, s29(2)(b), (c)

²⁹³ Human Rights and Equal Opportunity Commission Act 1986, ss 11 (1) (f) (ii), 29 (2) (d), and 46

The UN Rules are not binding

- 8.9** The *Beijing Rules*, the *Rules for the Protection of Juveniles Deprived of their Liberty*, and the *Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment*, are non-binding rules adopted by the UN General Assembly. In its 1996 report on the *Inquiry into Juvenile Detention Centres* the NSW Ombudsman made the following comment about such Rules:

Whilst the Rules create no legally binding obligations on New South Wales, there is a growing recognition of the need to accord young people, especially young people who become involved in the juvenile justice system, special protection. As well there is growing legitimate expectation that administrators in juvenile justice will have regard to these Rules.²⁹⁴

- 8.10** In addition, the Committee notes that UN treaty bodies may rely upon these Rules as guidance on the interpretation of provisions in binding treaties such as the *Convention on the Rights of the Child* and the *ICCPR*.²⁹⁵

Relevant Articles in the Convention on the Rights of the Child

- 8.11** Several submissions referred to the following three Articles in the Convention.

Article 3.1:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 37(c):

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

- 8.12** It is noted that Australia maintains a reservation to Article 37(c) in these terms:

...the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children maintain contact with their families, having regard to the geography and demography of Australia.²⁹⁶

- 8.13** Article 40.1 of the Convention states that every child who is accused of, or recognised as having infringed, the penal law is to be treated:

²⁹⁴ NSW Ombudsman, *Inquiry into Juvenile Detention Centres*, December 1996, p41.

²⁹⁵ See Giffard, C., 'International Human Rights Law Applicable to Prisoners', in Brown, D. and Wilkie, M. (ed), *Prisoners as Citizens: Human Rights in Australian Prisons*, The Federation Press, 2002

²⁹⁶ Quoted in NSW Parliament, Legislation Review Committee, December 2004, p7

in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Relevant rules in the Beijing Rules

8.14 The following rules in the *Beijing Rules* were referred to in submissions.

Rule 1.2:

Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when he or she is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

Rule 5.1:

The juvenile justice system shall emphasize the well being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Rule 13 (in part):

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality.

Rule 26 (in part):

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance – social, educational, vocational, psychological, medical and physical – that they may require because of their age, sex, and personality in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

Relevant rules in the Rules for Protection of Juveniles Deprived of their Liberty

8.15 A number of inquiry participants referred to Rule 28, which states:

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

- 8.16 Several witnesses also referred to Rules 65 to 68, on the use of force and disciplinary procedures. These Rules are discussed later in this chapter in relation to the concerns raised by inquiry participants on compliance with human rights.

Australasian Standards for Juvenile Custodial Facilities

The Standards

- 8.17 A national working party of the Australasian Juvenile Justice Administrators developed *Standards for Juvenile Custodial Facilities (1999)*. The *Standards* are based on, and refer to, the *Beijing Rules* and the *UN Rules for the Protection of Juveniles Deprived of their Liberty*.

- 8.18 The *Standards* were developed in view of the comment in the *Beijing Rules* that:

Little or no difference has been found in terms of the success of institutionalisation as compared to non-institutionalisation. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences.²⁹⁷

- 8.19 The introduction to the *Standards* states that:

...the objective of juvenile custodial facilities should be to provide a humane, safe and secure environment, which assists young people to address their offending behaviour and to make positive choices about their lives, both during custody and upon their return to the community.

The quality of services provided to young people in custody is fundamental to the achievement of the above objective. One way to define 'quality' is through standards. Common standards with a general application in New Zealand and Australia have the potential to:

1. fully and systematically describe the rights and needs of young people in custodial care.
2. create a shared commitment across Australia and New Zealand to quality practices.
3. encourage the exchange of information about quality practices.

²⁹⁷ Quoted in Australian Juvenile Justice Administrators, *Standards for Juvenile Custodial Facilities*, Revised Edition, March 1999, p5-6

4. provide benchmarks for comparison with the industry
5. be a springboard for further development and innovation.²⁹⁸

8.20 The Standards contain 46 standards grouped into eleven major areas of service including basic entitlements, rights of expression, entry, personal and social development, family and community, health, behaviour management, security and safety, built environment, human resources and quality leadership.

Stated variations to standards under the Department of Corrective Services

8.21 As noted above, the Minister for Juvenile Justice stated that the Department of Corrective Services would implement the Standards, with only ‘slight variations.’ The Minister for Justice gave an example of these variations in evidence to the Committee:

The standards that Australian juvenile jurisdictions have adopted are the *Australasian Juvenile Justice Administrator’s Standards*. They are effectively guidelines for the management of offenders, and overwhelmingly we comply with those. There are some areas that we will not, I make that quite clear. One of the *Standards* says we have to give preference to what juveniles want to eat. We will not do that. We will always put the needs of good nutrition ahead of what people demand. We do not resile from that.²⁹⁹

8.22 The Memorandum of Understanding between the Department of Corrective Services and the Department of Juvenile Justice refers to the variations to the *Standards* and is attached at Appendix 4.

8.23 As well as concerns about these stated variations to the Standards, concerns were expressed that, under the new regime, the Department of Corrective Services would breach Standard 7.3 and other standards. These concerns are outlined below.

Concerns about compliance with human rights obligations and Standards

The transfer of children into adult correctional centres

8.24 In its review of the 2004 legislative amendments, the Legislation Review Committee (LRC) considered whether section 41C of the *Crimes (Administration of Sentences) Act, 1999* breaches Article 37(c) of the *UN Convention on the Rights of the Child*.³⁰⁰ Article 37(c) states that, ‘...every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so.’ Section 41C allows the Minister for Justice to transfer an inmate between the ages of 16 and 18 from a juvenile correctional centre to an adult correctional centre in certain circumstances. The Minister can only make a transfer order if the Serious Offenders

²⁹⁸ Australian Juvenile Justice Administrators, *Standards for Juvenile Custodial Facilities*, Revised Edition, March 1999, p6

²⁹⁹ Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, p94

³⁰⁰ NSW Parliament, Legislation Review Committee, December 2004, p7

Review Council (SORC) makes a recommendation to this effect. The SORC can only make such a recommendation on one of four grounds and it must conduct a hearing.

8.25 As explained above, the Legislation Review Committee noted that Australia maintains a reservation to Article 37(c). However, the LRC stated that, Article 37(c) ‘nevertheless provides an important source of international ‘best practice’ with respect to children’.³⁰¹ In the LRC’s view, section 41C ‘appears to conflict with article 37(c) by allowing children to be accommodated with adults for reasons *other* than the best interests of the child...’³⁰² For example, one of the grounds upon which the SORC can make a recommendation to transfer a juvenile to an adult correctional centre is if the ‘inmate’s behaviour is such as to warrant the transfer.’ The LRC referred to Parliament whether section 41C ‘trespasses unduly on the right of young offenders to be detained separately from adult offenders’.³⁰³ Several participants in this inquiry referred to a breach of Article 37(c) as a matter of concern.³⁰⁴

8.26 It is relevant to note that prior to the 2004 legislative amendments, section 28 of the *Children (Detention Centres) Act 1987* allowed for the transfer of a juvenile detainee who was under the age of 18 from a detention centre to an adult correctional centre if the Minister for Juvenile Justice was satisfied that he or she was not profiting from the discipline or instruction in the detention centre or that he or she was not otherwise a suitable person for detention in a detention centre. Similar concerns could have been raised about this power having regard to Article 37(c) of the Convention.

Management of juveniles by the Department of Corrective Services

8.27 Several participants expressed concerns about breaches of human rights obligations associated with the management of juvenile offenders by the Department of Corrective Services. In particular, the concerns related to the extent to which the Department of Corrective Services would:

- be aware of human rights obligations
- take account of children’s best interests and their ages and needs; and be committed to their rehabilitation and reintegration
- select appropriate staff and provide them with relevant training
- respect cultural diversity
- be able to use force and adult disciplinary powers
- deny access to official visitors and non-legal advocates
- deny time out of cells
- change the physical environment.

³⁰¹ NSW Parliament, Legislation Review Committee, December 2004, p7

³⁰² NSW Parliament, Legislation Review Committee, December 2004, p7

³⁰³ NSW Parliament, Legislation Review Committee, December 2004, p8

³⁰⁴ See for example, Submission 12, National Children’s and Youth Law Centre, p.6; Submission 13, NCOSS, p11

Awareness of human rights obligations

- 8.28** Professor Cunneen, Professor of Criminology at the University of Sydney, and Chairperson of the Juvenile Justice Advisory Council, expressed concern about possible breaches of human rights by transferring the juvenile justice centre to the Department of Corrective Services because:

...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...I think it is of obvious concern that the institution has [been] 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.³⁰⁵

- 8.29** The Council of Social Services in NSW (NCOSS) stated that it was ‘an extraordinary state of affairs’ that the Department of Corrective Services was not required to learn about or ensure compliance with human rights principles before taking over control of Kariong.³⁰⁶
- 8.30** The Committee notes that the submission to this inquiry from the Department of Corrective Services does not appear to show a full appreciation of the human rights principles. The Department’s submission states that, ‘human rights obligations with regard to juvenile inmates are mostly concerned with keeping young inmates separately placed from older inmates.’³⁰⁷ That principle is only one of a number of important human rights principles (see, for example, section directly below).

Taking into account children’s best interests and their ages and needs; and being committed to their rehabilitation and reintegration

- 8.31** Professor Cunneen was also very concerned about possible breaches of human rights obligations as:

...the [human rights] principles...stipulate...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.³⁰⁸

- 8.32** When the Committee asked officers of the Legal Aid Commission what concerns they had about human rights obligations arising from the transfer of management of Kariong to the Department of Corrective Services, Mr Grant said:

I suppose you could start first with the legislation. The *Children (Criminal Proceedings) Act* and the *Children (Detention Centres) Act* really have [the] United Nations conventions and other documents in mind. You can see that reflected in the principles of the legislation. Part of the concern we have...is that that does not necessarily apply to

³⁰⁵ Professor Chris Cunneen, Chair, Juvenile Justice Advisory Council, Evidence, 9 March 2005, p34

³⁰⁶ Submission 13, NCOSS, p11

³⁰⁷ Submission 2, NSW Department of Corrective Services, p6

³⁰⁸ Professor Chris Cunneen, Evidence, 9 March 2005, p34

adult facilities. In fact, we had a look and could not find anything that legislatively underpins the sorts of things that are contained in those conventions and that are found in the juvenile justice area. So I think our concern is that the starting point is not necessarily the same...That was our first concern. Referring to our ongoing concerns, time will tell how the Department of Corrective Services adheres to the principles contained in those international instruments.

...We are concerned about issues such as rehabilitation and the programs that are available. We just have to wait and see because it's too early for us to form any views.³⁰⁹

- 8.33** The Legal Aid Commission suggested that the *Children (Detention Centres) Act 1987* reflected a commitment to the principles of the *Convention on the Rights of the Child* and the *Beijing Rules*. The Commission stated that, in meeting the requirements of section 4 of the Act, the Department of Juvenile Justice had 'developed and implemented specific programs that cater for juvenile offenders including post-release facilities that assist young offenders to reintegrate into the community.'³¹⁰
- 8.34** The Commission then noted that there was no equivalent provision to section 4 in the *Crimes (Administration of Sentences) Act 1999*, which governs the Department of Corrective Services. It also stated that, 'while the...Department of Corrective Services outlines a commitment to rehabilitation and re-settlement of offenders, in its corporate plan there is currently no reference to specific commitments for the management of children and young adult inmates.'³¹¹ The Commission commented that, in order to comply with obligations under the Convention, 'a significant commitment of resources will be required to allow the...Department of Corrective Services to develop and provide specialist programs equivalent to that available to detainees in juvenile justice centres.'³¹²
- 8.35** The Youth Justice Coalition submitted that the 'best interests of the child' principle, in Article 3.1 of the *Convention on the Rights of the Child*, had been enshrined in a range of laws and instruments that govern the NSW Juvenile Detention Centre system.³¹³ It referred in particular to section 4(2)(a) of the *Children (Detention Centres) Act 1987*, which states that, in the administration of the Act, the welfare and interests of persons on remand or subject to control shall be given paramount consideration. The Youth Justice Coalition also submitted that Rule 1.2 of the *Beijing Rules* is 'at the heart of the juvenile detention centre system in NSW.'³¹⁴ It referred in particular to the object section 4(1)(a) of the *Children (Detention Centres) Act 1987*.
- 8.36** The Youth Justice Coalition submitted that:

...placing juveniles in correctional facilities under the management of the Department of Corrective Services will significantly compromise the ability to rehabilitate those young people and represents an abrogation of a range of human rights.

³⁰⁹ Mr Bill Grant, Chief Executive Officer, Legal Aid Commission NSW, Evidence, 12 April 2005, p41

³¹⁰ Submission 14, Legal Aid Commission of NSW, p4

³¹¹ Submission 14, Legal Aid Commission of NSW, p5

³¹² Submission 14, Legal Aid Commission of NSW, p5

³¹³ Submission 10, Youth Justice Coalition, p4

³¹⁴ Submission 10, Youth Justice Coalition, p6

Rehabilitation and reintegration into the community requires a wide range of special programs and facilities; educational programs, cultural programs, opportunities for normal peer contact and social activities; and the availability of appropriate health and welfare services to try and address any underlying risk factors. Young people have a right to these special facilities in international law and the Children (Detention Centres) Act 1987 and the management protocol of the Department of Juvenile Justice ensures that these needs are somewhat met.³¹⁵

- 8.37** In support of this statement, it cited Article 37(c) of the *Convention on the Rights of the Child*, Rule 26 of the *Beijing Rules* and Part IV (Section D) of the *Rules for the Protection of Juveniles Deprived of their Liberty*.³¹⁶
- 8.38** The National Children's and Youth Law Centre (NCYLC) referred to Article 3.1 of the *Convention on the Rights of the Child* and stated, 'it is difficult to see how the Legislative Amendments, which reduce the protection accorded to juvenile offenders, make the best interests of those offenders a primary consideration.'³¹⁷ NCYLC also referred to Articles 37(c) and 40 of the Convention and to Rule 28 of the *Rules for the Protection of Juveniles Deprived of their Liberty*. NCYLC suggested that the amendments involved a breach of these human rights principles because juvenile offenders were now being addressed 'in a purely corrective services framework', without taking into account their ages and their 'unique requirements'.³¹⁸
- 8.39** Along similar lines, the Aboriginal Justice Advisory Council submitted that transferring control of Kariiong to the Department of Corrective Services involved a breach of Article 37(c) of the *Convention on the Rights of the Child*. The Advisory Council submitted that juvenile justice legislation reflected the principles in Article 37(c), namely that children should be treated in ways that are appropriate to their stage of maturity and that rehabilitation was fundamentally important.³¹⁹
- 8.40** NCOSS expressed concern that the Kariiong transfer offends a number of children's human rights principles including those contained in Articles 3.1, 37(c) and 40 of the Convention.³²⁰ The Shopfront Youth Legal Centre submitted that, a major consequence of the introduction of the Act is a direct breach of the *Rules for the Protection of Juveniles Deprived of their Liberty*. The Centre's submissions focused on breaches of Rules relating to the use of force and discipline (see below). The Centre also submitted that there was a breach of Rule 28, referring to the use of force and to the adult disciplinary system.³²¹

³¹⁵ Submission 10, Youth Justice Coalition, p11

³¹⁶ Submission 10, Youth Justice Coalition, p11

³¹⁷ Submission 12, National Children's and Youth Law Centre, p5. Similarly, the NSW Commissioner for Children and Young People stated that 'in transferring Kariiong to the Department of Corrective Services, I do not believe the best interests of the young people were the primary consideration.', in Submission 12, p1. Note that Article 3.1 requires the best interests of the child to be 'a' not 'the' primary consideration.

³¹⁸ Submission 12, National Children's and Youth Law Centre, p6

³¹⁹ Submission 23, Aboriginal Justice Advisory Council, p6

³²⁰ Submission 13, NCOSS, p11

³²¹ Submission 8, Shopfront Youth Legal Centre, pp6-7

- 8.41** The submissions that suggested that the legislation governing juvenile detention centres takes into account relevant human rights principles, whereas the legislation governing correctional centres does not, might also have referred to section 14 of the *Children (Detention Centres) Act 1987*, which states:

The Director-General shall ensure that adequate arrangements exist:

- (a) to maintain the physical, psychological and emotional well-being of detainees
- (b) to promote the social, cultural and educational development of detainees.

- 8.42** The Public Service Association of NSW expressed a contrary view to the submissions outlined above. The PSA stated that ‘the establishment of Kariong as a Juvenile Correction Centre does not require that NSW breach any international treaties or conventions on human rights.’³²² The PSA explained its view, stating, ‘the various treaties and conventions aim to protect juvenile offenders from punishment that is cruel, demeaning or abusive and to promote rehabilitation of offenders...[T]he transfer of Kariong to Corrective Services...would [not] compromise these aims.’³²³

- 8.43** In response to the claim that the Department of Corrective Services would adopt a punitive rather than a restorative approach to juvenile offenders, the Minister for Justice, the Hon John Hatzistergos MLC, stated in evidence (in part):

We do focus on programs, education and rehabilitation. All the offenders participate in a structured day, during which they go to school, complete assessment, participate in programs, have activities and also attend programs to [address] their offending behaviour. We provide employment opportunities, such as ground maintenance and laundry and kitchen hand duties. We will be expanding that eventually to include traineeships for those offenders who want to go down the vocational route.³²⁴

Staff selection and training

- 8.44** The Legal Aid Commission stated that, in recognition of Rule 22 of the *Beijing Rules*, the NSW Department of Juvenile Justice ‘employs officers on the basis of experience and skill in managing juvenile offenders.’³²⁵ Rule 22.1 states:

Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.³²⁶

- 8.45** The NSW Commission for Children and Young People suggested that Corrective Services staff are not used to dealing with young people and stated that it was a priority that the staff based at Kariong receive training. The Commission stated, ‘it is most important that the training covers

³²² Submission 19, Public Service Association of NSW, p18

³²³ Submission 19, Public Service Association of NSW, p18

³²⁴ Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, p20

³²⁵ Submission 14, Legal Aid Commission of NSW, p5

³²⁶ See also Rule 1.6 of the *Beijing Rules*

youth issues, age appropriate services and the differing needs of young people at different stages of their development.³²⁷

- 8.46 The Committee notes that the Minister for Justice said that the Department of Corrective Services has a lot of experience in managing juvenile offenders;³²⁸ and that Corrective Services staff were ‘carefully selected’ to take up positions at Kariong.³²⁹

Respecting cultural diversity

- 8.47 The Indigenous Law Centre is concerned that the Department of Corrective Service’s emphasis on a punitive rather than a restorative approach will result in breaches of standard 2.1 of the *Standards for Juvenile Custodial Facilities* and that Indigenous juveniles will be adversely affected.³³⁰ Standard 2.1 is based on Rules 6 and 38 of the *Rules for the Protection of Juveniles Deprived of their Liberty* and it states:

2.1 Linguistic and Cultural Diversity

The centre recognises and responds appropriately to the linguistic and cultural diversity of young people, their families and significant others.

Using force and disciplinary powers

- 8.48 A number of submissions suggested that the management of juveniles by the Department of Corrective Services would involve breaches of Rules 65, 66 and 67 of the *Rules for the Protection of Juveniles Deprived of their Liberty*. Those Rules state:

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.
66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.
67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in

³²⁷ Submission 15, NSW Commission for Children and Young People, p2. See also Submission 16, Combined Community Legal Centres’ Group (NSW) Inc, p2

³²⁸ Hon John Hatzistergos, MLC, Evidence, 14 March 2005, p4

³²⁹ Hon John Hatzistergos, MLC, Evidence, 14 March 2005, p9

³³⁰ Submission 4, Indigenous Law Centre, p2

preparing him or her for return to the community and should not be imposed as a disciplinary sanction.³³¹

8.49 The following Standards of the *Standards for Juvenile Custodial Facilities* were also referred to in the submissions:

7.1 Personal and Social Responsibility

In their daily interactions with young people, centre staff provide young people with opportunities and support to make decisions, and to responsibly manage their own behaviour.

7.3 Disciplinary Scheme

Disciplinary responses to unacceptable behaviour are in accord with international principles, local laws, and the centre's policies and procedures, which are applied in an impartial and fair manner.³³²

7.6 Separation

Separation of a young person, including separation by means of closed or solitary confinement, is used only in response to an unacceptable risk of immediate harm to the young person or to others.

8.50 The Shopfront Youth Legal Centre stated:

We note that a Juvenile [Correctional Centre] that is under the direction of the Department of Corrective Services has a broad mandate to manage by the use of force considered 'reasonably necessary in the circumstances' (sec 121, *Crimes (Administration of Sentences) Regulation 2001*). This includes, 'the use of a dog to assist in maintaining the good order and security of the correctional centre...' (sec 78 *Crimes (Administration of Sentences) Act 1999*). With the 'concurrence of the governor, a correctional officer may use handcuffs, security belts, batons, chemical aids and firearms for the purpose of restraining inmates', 'ankle cuffs' may also be used (sec 122, *Crimes (Administration of Sentences) Regulation 2001*).³³³

8.51 The Shopfront Youth Legal Centre submitted that the availability of these powers involved a breach of Rule 66. The NSW Commissioner for Children and Young People referred to Rules 65 and 66 and also submitted that:

New provisions for staff at Kariong stipulate, 'a correctional officer may use handcuffs, security belts, batons, chemical aids and firearms for the purposes of restraining inmates' which clearly does not comply with these rules. Whilst I have had some reassurance from the Minister for Justice...that firearms are not to be used in the management of Kariong, the use of [other weapons] go[es] against the principles of behaviour management for juveniles.³³⁴

³³¹ See also Rule 64 as to the use of instruments of force

³³² See also Standards 1.1 and 1.2

³³³ Submission 8, Shopfront Youth Legal Centre, p7

³³⁴ Submission 15, NSW Commission for Children and Young People, p2

- 8.52** Several participants also pointed out that if a juvenile inmate in juvenile or adult correctional centres commits a ‘correctional centre offence’, the governor may confine the inmate to his or her cell for up to seven days.³³⁵ The National Children’s and Youth Law Centre submitted that this power constituted a breach of Rule 67.³³⁶
- 8.53** The Shopfront Youth Legal Centre referred to statements made in the second reading debate by the Minister for Juvenile Justice, the Hon Diane Beamer MP, and the Hon Milton Orkopoulos MP, regarding the establishment of a segregation unit and the types of privileges that could be withdrawn from ill-disciplined inmates in a juvenile correctional centre. The Shopfront Youth Centre commented:

It is our view that the new system which allows for a segregation unit, restriction of contact with other inmates, denial or restriction of...phone call contact and contact with family, and the restriction or denial of reading material and probable use of labour as punishment is in direct breach of *Standard 7.3* of the national *Standards of Juvenile Custodial Facilities*.³³⁷

- 8.54** The Indigenous Law Centre raised concerns that the Department of Corrective Service’s emphasis on a punitive rather than a restorative approach would result in a breach of *Standard 7.6* (separation), and that Indigenous juveniles would, in particular, be adversely affected. The Centre noted that this standard was consistent with a recommendation of the report of the Royal Commission into Aboriginal Deaths in Custody.³³⁸
- 8.55** In evidence to the Committee, the Minister for Justice stated that, ‘confinement to safe cells...is limited to a period of 24 hours. We do not use solitary confinement, reduction of inmate diet or deny access to or contact with family.’³³⁹ The Chair of the Committee asked the Minister for Justice whether he considered that confinement for 24 hours breaches Rule 67 and the Minister said ‘we have only had to use it once, and I do not think it does.’³⁴⁰
- 8.56** The Public Service Association of NSW (PSA) expressed the view that the management of juvenile offenders by the Department of Corrective Services transfer would not breach human rights obligations. According to the PSA:

There is a recognition in international law that juvenile detainees ought to be subjected to reasonable disciplinary provisions and the rule of law. This is a requirement to protect detainees, staff and members of the public from violence – a central aim of our legal system and international law.³⁴¹

³³⁵ See Crimes (Administration of Sentences) Act 1999, s 53(1)(c)

³³⁶ Submission 12, National Children’s and Youth Law Centre, p7

³³⁷ Submission 8, Shopfront Youth Legal Centre, pp8-9

³³⁸ Submission 4, Indigenous Law Centre, p2

³³⁹ Hon John Hatzistergos MLC, Minister for Justice, Evidence, 14 March 2005, p20. It is not clear what the legislative source is for the statement that confinement to safe cells is limited to 24 hours. In the case of inmates who have been found guilty of a correctional centre offence, section 53 (1) of the *Crimes (Administration of Sentences) Act 1999* permits the Governor to impose a penalty of confinement to cell for up to 7 days.

³⁴⁰ Hon John Hatzistergos MLC, Minister for Justice, Evidence, 14 March 2005, p20

³⁴¹ Submission 19, Public Service Association of NSW, p18

Denying access to official visitors and non-legal advocates

- 8.57** The National Children's and Youth Law Centre notes that the Department of Corrective Services will limit access to official visitors and prohibit contact with non-legal advocates. NCYLC considers this to be a breach of Article 37(d) of the Convention, which states, 'every child deprived of his liberty shall have the right to have prompt access to legal and *other appropriate assistance*'.³⁴² Note that clause 10(b) of the Memorandum of Understanding states that 'Corrective Services will not necessarily allow a detainee/inmate to make or maintain confidential contact with advocates for young people within the justice system.'³⁴³

Denying time out of cells

- 8.58** The Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee submitted that the present early 'lock-down' times at Kariong contravened the spirit of Rule 67 of the *Rules for the Protection of Juveniles Deprived of their Liberty*,³⁴⁴ and denied juvenile detainees normal growth experiences that were needed for them to grow toward being pro-social adults.³⁴⁵
- 8.59** During the inquiry, the Committee invited comments and 'the fact that at Kariong under the present regime at 3.30pm everybody is locked into their cells; they have their evening meal at 3.30pm and they are locked there until 7am or 6.30am the following morning.'³⁴⁶ Ms Irwin from the Shopfront Youth Legal Centre responded to this comment by stating that this practice was 'surely in breach of the United Nations Rules in relation to juveniles.'³⁴⁷
- 8.60** In evidence to the Committee, the Minister for Justice said:

The structure that we operate means that cabin doors are opened at 8.00[am]. They get locked in at lunch, except if they are at stage three, and they are let out again, and then lockdown is at 4.00 o'clock in the afternoon. I understand in Juvenile Justice they have a later lock in...³⁴⁸

- 8.61** The Minister for Justice subsequently announced that, 'on a trial basis...stage three inmates will be allowed to stay up till 7.30[pm] before lockdown. We will trial that for three months and see how it goes with behaviour.'³⁴⁹

Changing the physical environment

- 8.62** In evidence to the Committee, the Minister for Justice referred to the physical changes that had been, and would be, made at Kariong in these terms:

³⁴² Submission 12, National Children's and Youth Law Centre, p6

³⁴³ Hon John Hatzistergos MLC, Minister for Justice, Evidence, 14 March 2005, p21

³⁴⁴ Submission 7, Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee, p5

³⁴⁵ Father Ramsay Nuthall, Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee, Evidence, 14 March 2005, p48

³⁴⁶ Rev Hon Dr Gordon Moyes MLC Transcript of Evidence, 9 March 2005, p50

³⁴⁷ Ms Jane Irwin, Shopfront Youth Legal Centre, Evidence, 9 March 2005, p50

³⁴⁸ Hon John Hatzistergos MLC, Minister for Justice, Evidence, 14 March 2005, p6

³⁴⁹ Hon John Hatzistergos MLC, Minister for Justice, Evidence, 14 March 2005, p7

We have filled ...in [the swimming pool] and we have got grass growing over it and the inmates are attending to the maintenance of that and the rest of the grounds concerned...The barbeque has been taken out. There will be an extensive range of works worth \$4 million that will be undertaken...to improve the security of the centre to upgrade the visits area and the gatehouse, amongst others.³⁵⁰

- 8.63** The Shopfront Youth Legal Centre noted that the swimming pool had been filled in and it stated that the physical layout at the new Kariiong Correctional Centre is ‘designed to be like an adult prison, rather than a juvenile facility.’³⁵¹ The Centre submitted that the physical layout at Kariiong was in breach of Standard 9.1 of the *Standard of Juvenile Custodial Facilities*, which states:

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.³⁵²

Conclusion

- 8.64** The Committee believes that many of the concerns raised by inquiry participants in relation to compliance with human rights principles need to be addressed.
- 8.65** Although Australia maintains a reservation to Article 37(c) of the *Convention on the Rights of the Child*, the Committee believes that this widely accepted human rights principle should be adhered to in NSW. This principle recognises the risks to children of being placed with adults, including the risks of abuse and negative influence. Thus, the Committee is of the view that section 41C of the *Crimes (Administration of Sentences) Act 1999* should not allow inmates who are under the age of 18 to be transferred from a juvenile correctional centre to an adult correctional centre, unless it is in their best interests to do so. It is not clear to the Committee why it would be necessary to transfer a child inmate to an adult correctional centre on the grounds of the inmate’s behaviour, when the disciplinary sanctions available in adult correctional centres are also available in juvenile correctional centres.
- 8.66** The Committee is also concerned that the legislation and policies governing the Department of Corrective Services do not adequately reflect the human rights principles that apply in relation to juvenile offenders. In particular, those principles that emphasise the importance of taking into account the ages and special needs of juvenile offenders, and the aims of rehabilitation and reintegration. The Committee believes that the *Crimes (Administration of Sentences) Act 1999* should contain provisions specific to juvenile offenders in terms similar to the section 4 of the *Children (Detention Centres) Act 1987*. It should also contain a provision similar to section 14 of the *Children (Detention Centres) Act 1987*, requiring the Minister for Justice to ensure that adequate arrangements exist to maintain the physical, psychological and emotional well-being of detainees and to promote their social, cultural and educational development. The Department of Corrective Services should also develop specific policies for managing juvenile offenders, which implement the human rights principles referred to above.

³⁵⁰ Hon John Hatzistergos MLC, Minister for Justice, Evidence, 14 March 2005, p8

³⁵¹ Submission 8, Shopfront Youth Legal Centre, p9

³⁵² This Standard is based on Rule 32 of the *Rules for the Protection of Juveniles Deprived of their Liberty*

- 8.67** In relation to staff training, the Committee agrees with inquiry participants that Corrective Services staff should receive training that covers youth issues, age appropriate services and the differing needs of young people at different stages of their development. We note the comments of the Minister for Justice that the Department of Corrective Services has prioritised training for all Karióng staff in these areas. This issue is dealt with in Chapter 9.
- 8.68** The Committee considers that the powers of the Department of Corrective Services under clause 122 of the *Crimes (Administration of Sentences) Regulations 2001* to use weapons such as batons, chemical aids and firearms for the purpose of restraining inmates is inconsistent with Rule 65 of the *UN Rules for the Protection of Juveniles Deprived of their Liberty*. Arguably other instruments of restraint, such as handcuffs and anklecuffs, could also be considered to be weapons under Rule 65 but it is noted that officers in detention centres have the power to use handcuffs under the legislation governing detention centres.³⁵³
- 8.69** The Committee is concerned that the disciplinary sanctions available to the Department of Corrective Services in juvenile correctional centres may be in breach of the relevant human rights principles. For example, the Committee is concerned that the power to punish a juvenile inmate by confining him to a cell for up to seven days breaches Rule 67 of the *UN Rules for the Protection of Juveniles Deprived of their Liberty*, which prohibits ‘placement in a dark cell, closed or solitary confinement and any other punishment that may compromise the physical or mental health of the juvenile concerned.’ It is noted that the legislation governing the Department of Corrective Services prohibits solitary confinement.³⁵⁴ However, it might be said that confinement to a cell for a period of seven days would compromise the physical or mental health of a detainee.
- 8.70** It is relevant to note that juvenile detainees in detention centres can be punished by confinement to a place but only for a period of 3 hours, or in the case of detainees of or above the age of 16, a period of 12 hours.³⁵⁵ In addition, the *Children (Detention Centres) Act 1987* imposes conditions on the exercise of the power to confine a detainee to a place, for example that the detainee is provided with some means of usefully occupying himself or herself, that the physical environment is no less favourable than other places in the detention centre and that the detainee can at all times communicate with an officer.³⁵⁶ Regardless of the length of time for which it is appropriate to confine a juvenile, these conditions should be set out in the legislation governing the Department of Corrective Services.
- 8.71** The Committee is concerned about whether the disciplinary sanction of depriving juvenile inmates of ‘withdrawable privileges’ breaches Rule 67 of the *UN Rules for the Protection of Juveniles Deprived of their Liberty*. If juveniles were restricted or denied contact visits with family members as part of a depriving them of withdrawable privileges, this would clearly be in breach of Rule 67.³⁵⁷

³⁵³ *Children (Detention Centres) Regulations 2000*, cl 3

³⁵⁴ *Crimes (Administration of Sentences) Regulations 2001*, cl 153

³⁵⁵ *Children (Detention Centres) Act 1987*, s 21(1)

³⁵⁶ *Children (Detention Centres) Act 1987*, s 21(2)

³⁵⁷ See Appendix 5 in relation to withdrawable privileges and for a comparison of powers under the Acts relating to the operation of the Departments of Juvenile Justice and Corrective Services.

- 8.72** The Committee notes that the segregation powers available to the Department of Corrective Services under section 10 of the *Crimes (Administration of Sentences) Act 1999* appear to be inconsistent with Standard 7.6 to the extent that it allows juveniles to be segregated other than ‘in response to an unacceptable risk of immediate harm to the young person or others.’ Section 10 allows a juveniles to be segregated if the detainee’s association with other detainees is likely to constitute a threat to the security of the correctional centre or the good order and discipline of the centre. It is also noted that the Department of Corrective Services can segregate a juvenile detainee for a much longer period of time than the Department of Juvenile Justice can segregate a detainee. The legislation governing detention centres also contains some conditions on segregating a detainee. Whether or not the segregation power available to the Department of Corrective Services breaches human rights principles, the differences just mentioned are matters of concern to the Committee.
- 8.73** In all the instances noted above, the Committee believes that considerable work must be done to ensure that our international obligations are met in relation to juvenile offenders under the management of the Department of Corrective Services. Accordingly, the Committee recommends that the *Crimes (Administration of Sentences) Act 1999* be amended to address all concerns related to compliance with human rights and the *Standards*. This issue is addressed in recommendations in Chapter 12.

Chapter 9 Other systemic issues

Throughout this report, a number of systemic issues have been raised in relation to the management of young offenders. In this chapter the Committee considers a number of those systemic issues in greater detail including the over-representation of Aboriginal and Torres Strait Islander people in the NSW correctional and juvenile justice systems, problems for people with a mental illness within the system, State wards and people with an intellectual disability. The chapter also briefly discusses the option of dispersal versus centralised detainment for A-classification detainees.

The second section of the chapter considers wider staffing issues including staff assaults, the casualisation of the workforce, and staff training and recruitment.

Issues concerning Indigenous young people

9.1 In this section, the Committee considers the over-representation of Indigenous young people in the juvenile justice system, the impact of the recent changes at Kariong on ATSI young people and the dislocation of ATSI detainees from their communities. The need for appropriate education and rehabilitation programs designed to reduce recidivism among ATSI detainees is dealt with in Chapter 6.

Over-representation

9.2 It is beyond dispute that there is an appalling over-representation of Aboriginal people in the NSW juvenile justice and corrective services systems. While ATSI people comprise just two per cent of the NSW population, in 2003-04 the number of ATSI young people in contact with the Department of Juvenile Justice (DJJ) represented 24 per cent of all young people under the direct control or supervision of the Department. In relation to the adult system, the Report on Government Services in 2003-04 noted that the NSW adult corrections system had the second highest rate of imprisonment for Indigenous people in the country.³⁵⁸

9.3 The DJJ made this observation in its submission:

Even with the best intentions this over-representation continues to challenge and disappoint juvenile justice administrators across Australia.³⁵⁹

9.4 The DJJ's Annual Report for 2003-04 notes that for that financial year, as well as the previous period, 2002-03, on average 118 ATSI young people were held in custody on any given day. This represents approximately 39 per cent of those in juvenile detention. The DJJ expressed particular concern with the large number of ATSI young people who are subjected to custodial orders (43 per cent).³⁶⁰

³⁵⁸ Quoted in Submission 13, NSW Council of Social Services (NCOSS), p10

³⁵⁹ Submission 3, NSW Department of Juvenile Justice, p22

³⁶⁰ Submission 3, NSW Department of Juvenile Justice, p22

- 9.5 Some inquiry participants expressed concern about the link between the juvenile and adult justice systems for Indigenous people. According to the Indigenous Law Centre, many Indigenous young people regard a period of adult incarceration as a rite of passage. The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that ‘Gaol ... is not seen by [many] young [Aboriginal] people as a deterrent, but rather an initiation.’³⁶¹
- 9.6 The point was made many times that the over-representation of ATSI people in the criminal justice system is a result of the considerable social and economic disadvantage experienced by Aboriginal people. Addressing this disadvantage is central to reducing the high numbers of Indigenous young people and adults in the criminal justice system.

Transfer of Kariiong

- 9.7 As noted elsewhere in the report, there was widespread criticism of the NSW Government for its lack of consultation on the decision to transfer Kariiong to the Department of Corrective Services (DCS). In relation to the impact of the decision on ATSI detainees, the body established to consider matters relevant to Indigenous detainees, the Aboriginal Justice Advisory Council (AJAC) was not consulted on the change. The AJAC was established in 1993 in response to a recommendation made in RCIADIC to provide advice to the NSW Government on the operation of the criminal justice system. When asked by the Committee whether there was any consultation with the AJAC prior to the decision, Mr Lenny Frail, Chair of the AJAC replied ‘none whatsoever’.³⁶² Mr Frail explains that this failure to consult goes against the principle of RCIADIC recommendations.
- 9.8 The Indigenous Law Centre were particularly concerned about whether the DCS will implement the *Australasian Standards for Juvenile Custodial Facilities* (the *Standards*) and in particular the Linguistic and Cultural Diversity Standard 2.1 dealing with Indigenous detainees and Standard 7.6 dealing with separation and isolation of juveniles only as a last resort.³⁶³ In relation to the isolation of offenders, Recommendation 18 of RCIADIC states that:

...unless there are substantial grounds for believing that the well-being of the detainees or other persons detained would be prejudiced, an Aboriginal detainee should not be confined alone in a cell.³⁶⁴

- 9.9 Other inquiry participants were concerned that DCS staff may not have the necessary training in youth specific issues, including Indigenous cultural training.³⁶⁵

Dislocation from communities

- 9.10 One of the major issues of concern for witnesses is the dislocation of ATSI detainees from their communities. As noted in Chapter 1, a central principle of the juvenile justice system in the

³⁶¹ quoted in Submission 4, Indigenous Law Centre, p2

³⁶² Mr Lenny Frail, Chair, Aboriginal Justice Advisory Council, Evidence, 12 April 2005, p25

³⁶³ Submission 4, Indigenous Law Centre, p2

³⁶⁴ quoted in Submission 4, Indigenous Law Centre, p2

³⁶⁵ Submission 16, Combined Community Legal Centres’ Group (NSW) Inc, p2

notion that the reintegration of young people back into their communities is made easier if detainees are located in centres closer to their family homes.³⁶⁶ The Committee understand that this principle is especially significant for Indigenous young people. The RCIADIC Recommendation 21 says that ‘visits by family members or friends should not be unreasonably restricted.’³⁶⁷ The Youth Justice Coalition adds that, as Indigenous people are more likely to come from remote non-urban backgrounds, the ‘centralised’ approach to detaining older and more serious offenders is likely to increase the number of relocations, ‘further isolating Indigenous juveniles from their families and, therefore, increasing the associated risks’³⁶⁸. The issue of dispersal versus centralised options for detainees is discussed briefly below.

Conclusion

- 9.11** To address the over-representation of ATSI people in both the juvenile justice and the adult correctional systems, the Government must provide adequate crime prevention, rehabilitation and education programs tailored to the specific needs of these offenders. As we have discussed in this report, there are some programs designed for Aboriginal offenders, and attempts are being made to divert Aboriginal offenders from custody. Nevertheless, clearly much more needs to be done. The Committee believes the over-representation of Aboriginal people in the NSW juvenile justice and corrective services systems is completely unacceptable. We acknowledge that a significant underlying cause of the over-representation is the multi-disadvantage experienced by Indigenous people. While the Committee accepts it is an immense and complex task, we urge the NSW Government to address the over-representation of Indigenous people in the criminal justice system as a matter of priority.
- 9.12** In relation to the transfer of Kariiong to the DCS, the Committee firmly believes it is essential that the Department adhere to all the standards and international conventions. The Committee notes the importance of these standards and conventions to all offenders, and particularly more vulnerable offenders such as Indigenous young people. As dealt with in Chapters 8 and 12, the Committee urges the NSW Government to comply with all the standards and principles on human rights as they relate to juvenile offenders. The Committee notes that the Royal Commission into Aboriginal Deaths in Custody made 339 recommendations. The Committee believes, as these recommendations remain pertinent to addressing issues facing Indigenous people within the criminal justice system, the NSW Government must ensure it complies with the RCIADIC recommendations.

Recommendation 5

That the NSW Government commission an independent, professional audit of rehabilitation programs directed at Indigenous young offenders; evaluate the effectiveness of those programs and develop new policies to more effectively address over-representation of Indigenous people in the juvenile justice system.

³⁶⁶ Submission 3, NSW Department of Juvenile Justice, p58

³⁶⁷ quoted in Submission 4, Indigenous Law Centre, p2

³⁶⁸ Submission 10, The Youth Justice Coalition, p11

Recommendation 6

That the NSW Government comply with the recommendations of the Royal Commission into Aboriginal Deaths in Custody in order to ensure that the management of Indigenous offenders is both culturally appropriate and aimed at reducing the known risks associated with the incarceration of Aboriginal people.

Mental health issues

9.13 While not specifically referred to in the terms of reference, many inquiry participants addressed the issues surrounding the mental health of young offenders. The mental health of people in detention has received considerable coverage over the last couple of years and is clearly a major issue of concern for all levels of government and the community. In this section the Committee considers the numbers of young people with a mental illness within the juvenile justice system and the adequacy of the system in dealing with these offenders. The section also looks at the impact of the recent changes in the management of Kariong and issues that need to be addressed in relation to mental health.

Numbers of offenders with a mental illness

9.14 In January and February 2003, the DJJ, in conjunction with Justice Health, conducted a comprehensive survey of young people in custody. A total of 242 young people participated in the survey, 223 males and 19 females. Of this survey group:

- 88% reported mild, moderate or severe symptoms consistent with a clinical disorder
- the three most prevalent disorders were Conduct Disorder, Substance Abuse Disorder and Adjustment Disorder
- 30% reported high or very high psychological distress implying that they may have a greater than 50% chance of an anxiety or depressive disorder.³⁶⁹

9.15 In relation to the adult prison system, in 2001, 12% of adult male prisoners had been diagnosed with some form of psychiatric disorder, including depression, anxiety, disorder, schizophrenia or bipolar disorder. A total of 33% had undergone some form of treatment or assessment for emotional and psychological problems.³⁷⁰

Adequacy of the system

9.16 A number of inquiry participants expressed concern, given the large number of people with mental illness in the system, about whether resources are misplaced. In particular, while some witnesses suggested there should be more mental hospital facilities for young juvenile offenders,

³⁶⁹ NSW Department of Juvenile Justice, *2003 Young People in Custody Health Survey*, p9

³⁷⁰ NSW Legislative Council, *Inquiry into mental health services in New South Wales, Final Report*, December 2002, pp256-257

others felt consideration should be given to alternatives to the incarceration of these young people.

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.³⁷¹

- 9.17** During the hearing process, Committee members expressed concern about the impact of locating young people with a range of complex needs together in one facility. In answer to these concerns, Mr Sherlock, former Director General for the DJJ said:

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.³⁷²

- 9.18** Some witnesses felt that there was perhaps a greater level of awareness of mental health issues in the juvenile justice system than in the corrective services system.

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.³⁷³

- 9.19** Many people were concerned about the access to rehabilitation services, and in particular, mental health services since DCS took over the management of Kariong. Ms Jane Sanders from the Shopfront Youth Legal Centre expressed concern that access to mental health programs and mental health professionals may be reduced as a result of the transfer.³⁷⁴

- 9.20** A number of inquiry participants were concerned about the implications of putting people with mental health problems in the corrective services environment. The Department of Juvenile Justice Chaplains attached to Kariong told the Committee that access to mental health professional and counsellors has been 'significantly limited' since the transfer of management.³⁷⁵

³⁷¹ Professor Chris Cunneen, Chair, Juvenile Justice Advisory Council, Evidence, 9 March 2005, p35

³⁷² Mr David Sherlock, former Director General, Department of Juvenile Justice, Evidence, 9 March 2005, p10

³⁷³ Professor Chris Cunneen, Evidence, 9 March 2005, p35

³⁷⁴ Ms Jane Sanders, Principal Solicitor, Shopfront Youth Legal Centre, Evidence, p53

³⁷⁵ Submission 7, Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee, p5

- 9.21** NCOSS notes that mental health problems often emerge in the mid to late teens or early twenties and for this and other reasons, ‘adult prison is not the right environment to treat young people with mental illness’³⁷⁶. Other witnesses suggested that DCS was not adequately resourced to deal with offenders with complex needs, such as offenders with mental illness.³⁷⁷
- 9.22** The Minister for Justice explained the current arrangements for the assessment of offenders at Kariong, particularly in relation to the identification of mental health problems:

Each Kariong offender is individually case managed, just as all other juvenile detainees are. Each offender, upon arrival at Kariong, undertakes a needs and risks assessment. The 14-day assessment covers induction screening, literacy and numeracy skills audit, risk assessment intervention, psychopathy, mental health—the link between mental illness and violence is quite complex, and thus it is compulsory that a mental health examination and screening is conducted as part of the stage to identify the issues and specific characteristics which may determine a detainee’s ability to participate in various programs and activities within the centre—drug and alcohol issues, domestic violence issues, behavioural issues, education needs and needs assessment. That occurs within the 14-day screening period.³⁷⁸

Adults with mental health issues

- 9.23** In relation to adults with mental health issues, the Corrections Health Service (CHS) within NSW Health is responsible for the management of forensic patients. As noted in a report by the Legislative Council’s Select Committee on Mental Health, NSW is the only State in Australia, and one of the few places across the world, that hospitalises forensic patients within correctional facilities and under the supervision of Corrective Services staff. The Committee concluded that, as these arrangements did not comply with national standards, a new hospital facility should be built outside the perimeter of the Long Bay Correctional Complex, and that health professional and non-corrections personnel should staff the facility. The use of Long Bay facilities for young offenders is discussed below.

Addressing mental health issues within the system

- 9.24** As noted by inquiry participants, 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 appears also that there is a growing awareness within the Department of Juvenile Justice about the issue and the need to provide the necessary access to mental health professionals and programs and services.
- 9.25** The Public Service Association of NSW suggested that consideration should be given to the establishment of specialist mental health units within juvenile justice centres with specially trained staff from both Juvenile Justice and Justice Health. In addition, the PSA told the Committee of a proposal to establish a mental health unit at Long Bay for juvenile offenders:

³⁷⁶ Submission 13, NCOSS, p8

³⁷⁷ Mr Andrew Haesler SC, Solicitor, NSW Public Defenders, Evidence, 17 May 2005, p38

³⁷⁸ Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, pp15-16

I am not sure if the Committee is aware, but there is currently a proposal to establish a specialist mental health unit within the Long Bay correctional complex and that within the Long Bay hospital there is apparently going to be a certain number of designated mental health beds for juvenile offenders. So, the latest information which I have at hand is that the Government is already moving towards establishing that. I would suggest that those 17 beds are probably not going to be sufficient at this stage, but I would suggest that they certainly are a step in the right direction.³⁷⁹

- 9.26** The PSA felt that a number of issues must be addressed in relation to this proposal, including how juvenile offenders will be managed, given that Long Bay is under the administration of Corrective Services. In addition, the PSA asks whether access to the unit would be restricted to detainees 16 years of age and over, and if so, what might be done in order to provide those types of services and programs for detainees who are aged 15 years old and younger.
- 9.27** A number of people suggested that, in general, there were not enough appropriate facilities to house young offenders and adults with mental illness and suggested there was a need for a centre, 'purpose-built, designed and staffed to deal with mental health issues.'³⁸⁰

Conclusion

- 9.28** The Committee is pleased to note that the Department of Juvenile Justice and Justice Health have shown a growing awareness of mental health issues amongst young people in detention. We concur with those witnesses who argue alternatives to incarceration should be considered for young people suffering from mental illness. Where there is a need to incarcerate young people, the Committee believes there is merit in considering specialist mental health units within juvenile justice centres or a purpose-built facility. We encourage the DJJ and Justice Health to consider this in their ongoing examination of appropriate strategies and services for young offenders with mental illness. The Committee recognises that the relatively small number of juveniles in custody may mean that these options are not practical.
- 9.29** On the proposal for a facility for juvenile offenders at Long Bay, the Committee concurs with the PSA that there are many issues that must be addressed, particularly in relation to the management of juvenile offenders in a facility currently operated and staffed by Corrective Services. As the Committee did not receive any further information on this proposal, we are unable to comment further on its potential efficacy. However, due to the potential risks for vulnerable young people with mental illness we believe it is highly desirable to provide a system that does not co-locate young people and adults with mental illness.
- 9.30** The Committee is concerned with the claims that access to mental health professionals and counsellors at Kariong has been 'significantly limited' since the transfer of management responsibility to DCS. While the Committee acknowledges that an appropriate process of assessment covering mental health and other risk factors is occurring at the Centre, we are not convinced that adequate access to mental health professionals and programs is being provided. Given that mental health problems often emerge in the mid to late teens and early twenties, the Committee believes it is critically important that young offenders suffering mental illness are given the appropriate treatment and care. On this basis, we urge the Department of Corrective

³⁷⁹ Mr Andrew Wilson, Public Service Association of NSW, Evidence, 17 May 2005, p33

³⁸⁰ Mr Howard Brown, Representative, VOCAL, Evidence, 14 March 2005, p40

Services, in its management of Kariong, to ensure that the necessary mental health services are provided at Kariong.

Recommendation 7

That the NSW Government, in its ongoing examination of appropriate strategies and services for young offenders with mental illness, consider the practicality and appropriateness of establishing specialist mental health units within juvenile justice centres or a purpose-built facility for young people with mental illness. In addition, the Department should seek to ensure that young offenders with mental illness and adults with mental illness are not co-located.

Recommendation 8

That, in recognition that mental health problems frequently occur in teenage years, the NSW Government ensure that young people at Kariong with mental illness, or at risk of mental illness, have access to mental health professionals, and the necessary programs and services.

State wards in the juvenile justice system

9.31 The Committee understands that despite making up only 0.135 per cent of the population, approximately 30 per cent of juvenile offenders have been or are presently in the care of the Minister for Community Services.³⁸¹ State wards who have had difficult, troubled childhoods often fall into the juvenile justice system and often have considerable behaviour problems. The 1996 Ombudsman's Report highlighted particular challenges facing State wards in custody, including that some of these offenders have very limited or no visits from individuals outside the centre.³⁸²

9.32 In relation to the disproportionate number of State wards in the juvenile justice system, Professor Rob White, from the University of Tasmania, said in evidence:

...that it is probably one of the most tragic things in our society, that we have people who have been put into the care of the State as children and a huge proportion of those young people just flip over into the juvenile justice system at disproportionate rates. It really tells us several things about the appropriateness of that care that we, as a society through the State, are providing for those children whom we used to call State wards, and whether we are providing them with a family and adequate upbringing.³⁸³

9.33 Professor Rob White also commented on the 'institutional silos' that operate within the NSW system:

³⁸¹ NSW Department of Juvenile Justice, *2003 NSW Young People in Custody Health Survey, Key Findings Report*, 2003, p13

³⁸² NSW Ombudsman, *Inquiry into Juvenile Detention Centres*, Volume 1, December 1996, p133

³⁸³ Professor Rob White, Head of School of Sociology, Social Work and Tourism, University of Tasmania, Evidence, 12 April 2005, p10

The second thing is that we have institutional silos that operate that actually place at risk many of the young people that we are talking about. You can have somebody in the welfare system or as a ward of the State. Once they go into the justice system, they work with a different worker and they will be case managed by different people within the justice system but then they come out of the justice system into here, if they are under 18, and they will be working with different sets of people and being case managed in a different way. The integrations between different departments and systems are perennially an issue as well. But all I can do is comment that child welfare is an area that we need always to do more work in.³⁸⁴

9.34 According to the JJAC's Professor Cunneen, while the DJJ is aware of the issues that need to be addressed in relation to State wards, the current management at Kariong are not:

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.³⁸⁵

9.35 Most witnesses who commented on issues facing State wards felt that the Department of Juvenile Justice was in a better position to support the needs of these offenders than the DCS. However, the Committee notes that improvements are needed, particularly in relation to the institutional silos that currently exist. The Committee urges the Department of Juvenile Justice to work together with other government departments, particularly the Department of Community Services, with which they have a Memorandum of Understanding, to ensure that there is continuity of care and support of former State wards whilst they are in custody. As with other matters raised in this chapter, the evidence indicates that more needs to be done by the current management of Kariong to ensure that the needs of former State wards are addressed. Once again, the Committee calls on the Department of Corrective Services to ensure that these young people are supported in line with DJJ principles during their incarceration and upon release.

Recommendation 9

That the Departments of Juvenile Justice and Corrective Services work together with other government departments, particularly the Department of Community Services, to ensure there is continuity of care and support of former State wards whilst they are in custody.

³⁸⁴ Professor Rob White, Evidence, 12 April 2005, pp10-11

³⁸⁵ Professor Chris Cunneen, Evidence, 9 March 2005, p35

Young offenders with intellectual disabilities

9.36 According to the NSW Council for Intellectual Disability, since the 1980s, young offenders with an intellectual disability have been over-represented in the justice system.³⁸⁶ As noted above, in January and February 2003, the DJJ in conjunction with Justice Health conducted a comprehensive survey of young people in custody. The *Young People in Custody Health Survey* found that:

- 17% had cognitive functioning scores consistent with a possible intellectual disability
- at least 10% had clear cut intellectual disabilities.³⁸⁷

9.37 The NSW Ombudsman Report (1996) found that detainees with an intellectual disability are particularly vulnerable within a detention centre environment. They are ‘easily swayed’ by peer pressure and their sometimes-limited social skills make them a target for harassment. In addition, these offenders often misunderstand centre rules and routines, which can result in punishment.³⁸⁸

9.38 The NSW Council for Intellectual Disability told the inquiry there has been, and continues to be, a lack of appropriate human services aimed at offenders with an intellectual disability. However, as the Council acknowledged, some recent initiatives by the NSW Government have addressed the problem, including the Department of Ageing, Disability and Home Care now accepting responsibility for offenders with an intellectual disability.

9.39 Some concerns were raised about the impact of the transfer of Kariong to DCS, and in particular the impact of a more controlled and discipline-based approach on young offenders with intellectual disabilities. Other concerns were raised about whether DCS had the necessary resources to deal with offenders with complex needs:

...Corrective Services are, we presently believe, desperately under resourced to manage problem inmates. To digress briefly, Corrective Services are having problems with people with intellectual disability, they are having problems with people with mental illness, they are having problems with difficult-to-manage clients or inmates.³⁸⁹

9.40 In more general terms, many people are of the view that detention is counterproductive for young offenders with an intellectual disability. The NSW Sentencing Council accepted that the consequences for people with intellectual disability include:

- increasingly entrenched culture of criminality, with behaviour influenced by predominantly negative role models in prison system
- finding it hard to readjust following release from prison, and therefore likely to re-offend. This is especially acute for those people with intellectual disabilities who inherently have ‘impaired adaptive skills’

³⁸⁶ Submission 11, NSW Council for Intellectual Disability, p1

³⁸⁷ NSW Department of Juvenile Justice, *2003 Young People in Custody Health Survey*, p9

³⁸⁸ NSW Ombudsman Report, December 1996, p135

³⁸⁹ Mr Andrew Haesler SC, Evidence, 17 May 2005, p38

- more likely to be assaulted or otherwise mistreated as they are vulnerable.³⁹⁰

- 9.41** As discussed in Chapter 7 very real concern was expressed by a number of participants about the increased risk of assault and sexual assault in adult prisons for vulnerable young adults.³⁹¹ The Youth Justice Coalition argued there are many risks associated with mixing children and adults including high rates of assault and sexual assault in adult facilities and younger detainees, people with intellectual disability, and mental illness are especially vulnerable to these risks.³⁹²
- 9.42** The Committee believes that the juvenile justice system, and in particular its detention centres, need to focus on meeting the disability-related support and therapeutic needs of young offenders. We accept the concerns of some witnesses that a ‘control and discipline based approach’ in centres such as Kariiong may run counter to the effective treatment of these detainees. While particular incidents may be controlled, underlying causes of behaviour, and therefore the likelihood of repetition of the behaviour, may not be being addressed. The Committee believes that in Kariiong, as in all detention centres, professional expertise in intellectual disability is required.

Recommendation 10

That the NSW Departments of Juvenile Justice and Corrective Services continue to ensure there is adequate access to professional expertise in intellectual disability so that the disability related support and therapeutic needs of young offenders are addressed.

Dispersal versus centralised detainment for serious young offenders

- 9.43** In Chapter 1 the Committee noted that detention centres are spread out across the Sydney metropolitan area and in rural and regional NSW.³⁹³ As explained in the DJJ submission, the decision was taken in the 1990s to establish centres across the State based on the notion that the reintegration of young people back into their communities was made easier if they were detained closer to their family homes.³⁹⁴ As explained earlier in this chapter, this is especially important for Indigenous young people.
- 9.44** The Committee has heard from a number of witnesses advocating a juvenile justice system that adequately provides for community-based alternatives to custody. As a corollary to that, however, they have also provided evidence to support the need for community involvement even when custodial sentences are handed down to juvenile offenders.

³⁹⁰ Sentencing Council Abolishing Prison Sentences of Six Months or Less, Final Report, 2004, pp17, 55-56, quoted in Submission 11, NSW Council for Intellectual Disability, p2

³⁹¹ Submission 13, NCOSS, p7; Submission 10, The Youth Justice Coalition, p8

³⁹² Submission 10, The Youth Justice Coalition, p8

³⁹³ For more detailed information on these centres, see Submission 3, NSW Department of Juvenile Justice, pp56-58

³⁹⁴ Submission 3, NSW Department of Juvenile Justice, p58

- 9.45** Some witnesses commented on the complexity of the issue, suggesting that on one hand, the move to regionalisation is important as it keeps young people close to their families, relatives and peer groups. On the other hand:

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.³⁹⁵

- 9.46** As Mr Garner Clancey, Lecturer at the University of Western Sydney, points out:

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.³⁹⁶

- 9.47** In relation to the existence of a ‘super-max’ or maximum-security centre within juvenile justice, such as Kariong, some witnesses suggested that this may be counterproductive in that it creates an avenue for other centres to abrogate their responsibility for young offenders who present management challenges. Professor Cunneen presented this view:

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 [Juvenile Justice Advisory] 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.³⁹⁷

- 9.48** Professor White also suggested that if you put the ‘toughest, naughtiest and most intransigent’ people together in the one institution, it is not surprising that behavioural problems arise.³⁹⁸

- 9.49** The Committee received very little evidence in support of the idea of maintaining a maximum-security detention centre for serious offenders. However, Mr Gary Moore, Director of NCOSS, told the Committee:

As I said before, we believe that there has to be an institutional facility of the scale and capacity of Kariong. We think that is a reality in our current society. We do not subscribe to spreading young offenders at Kariong across the system because of the

³⁹⁵ Mr Garner Clancey, Evidence, 9 March 2005, p31

³⁹⁶ Mr Garner Clancey, Evidence, 9 March 2005, p31

³⁹⁷ Professor Chris Cunneen, Evidence, 9 March 2005, p37

³⁹⁸ Professor Rob White, Evidence, 9 March 2005, p3

impact that that would have on other facilities. However, we think there is a case for improving detention centres, particularly for the linkage with what I just mentioned to you—the out-of-home care facilities in New South Wales. We would then have much closer liaison with and a more integrated approach, in case management terms, when working with kids at risk of becoming incredibly serious offenders. So it is not just the responsibility of juvenile justice; it is also the responsibility of the Department of Community Services and our sector as substitute care providers.³⁹⁹

9.50 Mr Bill Grant from the Legal Aid Commission of NSW also suggested that:

There is always going to be a need for high-security facilities because unfortunately we have some children who have pretty serious criminal matters either on remand or particularly after conviction. There will always be a need for that and we probably accept you cannot have those facilities everywhere where you have juvenile detention centres, but as to the actual mix and match, that is not something I am qualified to comment on.⁴⁰⁰

9.51 The Committee acknowledges that the issue of whether to detainee serious young offenders in regional centres close to their family and community or in a maximum security centre such as Kariiong is an extremely complex issue and one that the Department of Juvenile Justice has had to grapple with for some time. There are clearly advantages and problems associated with the existence of a centralised, maximum-security centre for serious young offenders such as Kariiong. We note too, the difficulty for DJJ given the relatively small number of juvenile detainees in custody.

9.52 In general terms, the move towards regionalisation over the past decade has been a very healthy and welcome one and we join with Mr Clancey and others in applauding the DJJ and the NSW Government for supporting this initiative. We note this approach is especially important for Indigenous young offenders, and believe that every effort should be made to ensure that ATSI offenders who are given a custodial sentence are placed in centres close to their families and community.

Staff assaults

9.53 Term of reference (g) invites the Committee to consider the management of staff assaults in the juvenile justice system. The NSW Ombudsman, and others, investigated specific incidents of assaults on staff and this Committee does not have a role in assessing previous incidents or inquiries. However, this term of reference invited the Committee to look more strategically at the management of staff assaults in the juvenile justice system.

9.54 Staff assaults have long been a problem in the detention centre system as a whole. As Mark Fitzpatrick acknowledged:

...you will never stop staff assaults in certain situations—three seconds of madness, or however you want to put it—at any centre. They will always occur.⁴⁰¹

³⁹⁹ Mr Gary Moore, Director, NCOSS, Evidence, 12 April 2005, p17

⁴⁰⁰ Mr Bill Grant, Chief Executive Officer, Legal Aid Commission of NSW, Evidence, 12 April 2005, p36

⁴⁰¹ Mr Mark Fitzpatrick, former Kariiong Staff, Evidence, 17 May 2005, p5

Departmental changes to the prevention of staff assaults

- 9.55** The Department of Juvenile Justice, as are all government agencies, is bound by occupational health and safety legislation, which places obligations on the employer to prevent and manage risks and react appropriately and quickly to staff assaults when they occur. These responsibilities take on special significance in detention centres, and even more so at Kariong where the detainee population is characterised by a propensity for disruptive and violent behaviour. The move towards ensuring the safety and security of staff is considered to be a departmental priority.⁴⁰² To give effect to this in practice the Department has developed procedures with the Department of Education and Training, a hazard reduction model (HAZPACK), and assembled a Client Violence Working Group to examine the prevention of violence in detention centres.⁴⁰³
- 9.56** The Committee is disappointed to note that the Violence Prevention Strategy drafted as a result of these negotiations in 2002-2003 is still yet to be agreed between the Department and the PSA.⁴⁰⁴
- 9.57** In view of the work undertaken by the Department of Juvenile Justice in this area, the Committee has sought to examine what mechanisms the Department actually employs to prevent assaults occurring within the juvenile justice system and to address the risks inherent in the detention centre environment. Among the primary considerations here, were:
- Occupational Health and Safety
 - reporting and investigating incidents
 - punishment and incentives
 - risk assessment and programming.

Occupational Health and Safety (OH&S)

- 9.58** Each Juvenile Justice Centre in NSW has a staff OH&S Committee to review and address local issues relating to health and safety. Primarily, safety and security have been categorised in two ways; physical and dynamic security. Physical security principally refers to equipment used to control and monitor the movement of detainees within the centre. It is a centre's 'dynamic security', however that has been seen by the NSW Ombudsman to be the most important aspect of detainee management.

The mainstay of security in any custodial facility however is its dynamic security, i.e. the interaction of staff with detainees, the involvement of detainees in activities and programs and the maintenance of appropriate and safe work practices. These aspects of Kariong's security were seriously deficient.⁴⁰⁵

- 9.59** Others have indicated, however, that this kind of security is maintained by strict rules, order and routines. There is sense in finding a balance between the two, and it is important not to lose

⁴⁰² Submission 3, NSW Department of Juvenile Justice, p74

⁴⁰³ Submission 3, NSW Department of Juvenile Justice, pp76-77

⁴⁰⁴ Submission 3, NSW Department of Juvenile Justice, p77

⁴⁰⁵ NSW Ombudsman, *Investigation into Kariong Juvenile Justice Centre*, March 2000, p11

sight of the importance of discipline in the custodial environment. Without effective custodial objectives – routines, rules and structures – it is clear that safety could be compromised. The Committee understands there is an inevitable tension that exists between the need to maintain order and discipline, while allowing detainees the freedom to take responsibility for their actions and to address their underlying offending behaviour.

- 9.60** The Committee is firmly of the view that safety and security should be of paramount importance in the management of detainees in custody. Juvenile Justice Centres should provide protection for the community, but should also provide safe and secure environments for staff who are at the front line of detainee management. In addition, detainees require an environment to be created that is conducive to positive pro-social interaction and effective participation in rehabilitation programs.
- 9.61** One of the major successes of the Department of Corrective Services is its emphasis on clear and simple obligations and expectations that apply to both members of staff and detainees. There is equity in expecting all those in the Centre to follow the same rules and procedures and for clear lines to be drawn about what will and will not be tolerated. These guidelines also include elements of recourse for inappropriate behaviour or actions by staff or detainees.
- 9.62** As the Johnston and Dalton Report of November 2002 commented:

If staff cannot take responsibility for their own actions, or lack of action, in this workplace, how can they expect detainees with less life experience and skills to do the same? It would appear that staff quite readily expect disciplinary consequences for detainees who behave disrespectfully, abusively, and dangerously, yet denounce the suggestion they should be treated the same for their own breaches of rules and expectations!⁴⁰⁶

- 9.63** While the rhetoric from the Department of Juvenile Justice maintains that the ‘safety of staff was to take priority over that of detainees’,⁴⁰⁷ former staff have complained that management at Kariong continued to put the rights of detainees ahead of the safety and well-being of staff. Specifically, they objected to management overruling decisions taken by front-line staff immediately following incidents in the units. Brian Fitzpatrick suggested that this was having a detrimental effect on security at the centre:

We got a lot of boys who come down and said, ‘We are finally here’. They had been trying for months to get to our centre because it was just so easy. They could assault staff and nothing would happen to them. We would lock them up and our manager will ring his cluster director and be told to let them out of confinement.

And if they had done that at other centres, they would get locked up for 12 hours and then they would do something else to get sent. And that happened.⁴⁰⁸

- 9.64** The Department has refuted the view expressed by staff that no actions were taken to punish detainees who were guilty of assaulting staff.⁴⁰⁹ However, the issue of management reversing

⁴⁰⁶ Johnston L and Dalton V., *Review of Kariong Juvenile Justice Centre*, November 2002, p2-3

⁴⁰⁷ Submission 3, NSW Department of Juvenile Justice, p74

⁴⁰⁸ Mr Brian Fitzpatrick, former Kariong Staff, Evidence, 17 May 2005, p3

decisions made by youth officers is significant, especially where it was conducted in front of detainees for whom they were responsible in day-to-day management. This was rightly seen by staff as empowering the detainee and sending:

a message to other detainees that they are more important than staff.⁴¹⁰

- 9.65** The divisions between staff and management at Kariong have been well documented but it should be evident to the Department when staff are not complying with departmental procedures. If senior managers at Kariong felt that youth officers were conducting themselves inappropriately, or that they were acting beyond the limits of their powers under legislation, then it should have been responsible for ensuring staff understood that they were operating beyond their legal capacity and to ensure that future actions were compliant. It is critically important for all staff to understand the legislation that governs juvenile justice policies and that they implement procedures consistently and without prejudice.
- 9.66** To overrule decisions of youth officers, however, can create an illusion of wrongdoing and proved to undermine the authority of key staff. Evidence suggests that this was handled consistently poorly at Kariong over a period of time, serving to further entrench divisions between staff and management.
- 9.67** In her submission to the Committee, Sally Peyou, member of the Juvenile Justice Advisory Council, suggested there are lessons to be learnt from the way in which the Department of Corrective Services manage the custodial aspect of detention centre operations:

If the Department of Juvenile Justice had adopted some management practices similar to those reported to be in place at the Department of Corrective Services such as consistent programming and a consistent incentive scheme, while maintaining a juvenile specific environment focusing on rehabilitation and reintegration into the community, as well as improving the qualifications and training of youth work staff, many of the issues at Kariong could have been resolved.⁴¹¹

Reporting and investigating incidents

- 9.68** The Department of Juvenile Justice defines assault in detention centres broadly, to include verbal abuse and threats as well as actual physical assault. Spitting and throwing objects are also included in its definition. The Committee notes that the Department of Corrective Services in NSW as well as other jurisdictions employ a narrower interpretation of assault.⁴¹²
- 9.69** Where incidents involve physical assault within a detention centre, department policy is to refer the matter to the NSW police. In 2004, of 16 alleged assaults on staff at Kariong, the Department referred 14 to the police.⁴¹³ For less serious incidents, centre managers are

⁴⁰⁹ Correspondence from Mr David Sherlock, Director General, Department of Juvenile Justice, 20 June 2005, p3

⁴¹⁰ Submission 26, Mr Edward Ball, p4

⁴¹¹ Submission 21, Sally Peyou, p4

⁴¹² Submission 3, NSW Department of Juvenile Justice, p75

⁴¹³ Correspondence from Mr David Sherlock, Director General, Department of Juvenile Justice, 20 June 2005, p3

empowered to investigate matters and act on their findings. The Committee agrees that this general approach is a sensible and appropriate response to such matters.

- 9.70** The Department provided information to the Committee regarding its mechanisms for recording and monitoring all incidents within detention centres. Specifically, the Department captures information in two databases. The first records and tracks staff injuries in the workplace, regardless of whether they relate to incidents of assault or through other duties in each centre. The second records all centre-based incidents, but mostly this relates to assaults in three categories: detainee on detainee, detainee on staff and staff on detainee.⁴¹⁴
- 9.71** In terms of the investigation of these matters, the Committee notes that following the Dalton Report in October 2004, the Minister for Juvenile Justice commissioned a review of a number of human resource management and industrial relations issues within the department. Among the terms of reference for this review (the Newbery Review) was an investigation into disciplinary processes in the Department.⁴¹⁵
- 9.72** In his findings, the author considered that the Professional Conduct Unit (PCU), the body to which most matters are referred, is excessively burdened by alleged incidents and has taken too long to conclude its investigations.⁴¹⁶ The inefficiency of this process is cause for concern as the timeliness of reporting on serious issues – from staff misconduct to allegations of assault – is important for all stakeholders. The Committee believes that the important issues raised in the Newbery Review in regard to the investigations process should be immediately implemented.

Recommendation 11

That the Department of Juvenile Justice implement the recommendations in the *Review of Department of Juvenile Justice Industrial Relations and Human Resources Practices* by John Newbery, which call for a thorough re-assessment of the role and effectiveness of the investigations process. In addition, the Department of Juvenile Justice should work together with the NSW Ombudsman to design a more integrated misconduct process for the juvenile justice.

Punishment and incentives

- 9.73** By virtue of its high-risk clientele and the chronic mismanagement of security and behaviour-management procedures, Kariong appears to have endured an amplification of the problems of staff assault. In evidence to the Committee, Howard Brown from the Victims of Crime Assistance League (VOCAL) provided alarming statistics to illustrate the extent of the distress caused by the difficulties associated with the supervision of detainees in Juvenile Justice Centres.⁴¹⁷ In so doing, Mr Brown said:

⁴¹⁴ Submission 3, NSW Department of Juvenile Justice, p76

⁴¹⁵ Newbery, J., *Review of Department of Juvenile Justice Industrial Relations and Human Resources Practices*, December 2004

⁴¹⁶ Newbery, J., *Review of Department of Juvenile Justice Industrial Relations and Human Resources Practices*, December 2004, pp7-8

⁴¹⁷ Mr Howard Brown, Evidence, 14 March 2005, p34. Mr Brown said there were 282 claims for workers compensation by Department of Juvenile Justice employees – which is more than the total number of male detainees within Juvenile Justice Centres in 2004.

My implication is that there is a great deal of angst and anger within the detention centres being taken out against workers employed by the Department of Juvenile Justice. I believe that one of the reasons for the increase in the number of claims has something to do with the fact that officers of Juvenile Justice have little redress in relation to disciplinary matters by inmates against them.⁴¹⁸

- 9.74** Similarly, ex-Kariong staff also felt that they were ill-equipped to defend themselves from assault because the legislation prohibits the use of restraint equipment and also limits the penalties that can be given to detainees who transgress.⁴¹⁹ Mr Stan Parkes, a former youth officer at Kariong, expressed frustration that front-line staff at Kariong did not enjoy extended powers at the Centre to assist detainee management:

Just going on from what Mark has said, just to put everyone in the picture, Kariong was under the same legislation, policies and procedures as any other juvenile justice centre in New South Wales. The only difference between Kariong and any other centre was that Kariong had two fences. We had the same procedures, same punishment that we could push out or whatever.

When we had 36 residents at Kariong, they were supposedly the worst juvenile offenders for violence and behaviour in New South Wales. We had no other tools to deal with them.⁴²⁰

- 9.75** The PSA commented that lack of staff training in the management of incidents may have increased the likelihood of staff assault:

The PSA's view is that current training in the area of the use of force and restraint methods, specific restraint methods, is inadequate to deal with the type of violence that staff are being subjected to in juvenile justice centres. I think that was borne out in the many incidents at Cobham and the many incidents at Kariong last year and in other detention centres. I am referring to the assault rate on staff. We do not believe that those restraint methods, or the training in the use of force is realistic and practical, given the environment in which staff work on a day-to-day basis. So we would hope that the department changes and that it takes a more practical and realistic viewpoint and view about any changes to the use of force and restraint methods.⁴²¹

- 9.76** The Committee understands that critical incident training is about to be provided for all detention centre staff and we consider this to be an important step. Staff training in general is considered later in this chapter.⁴²²

- 9.77** In terms of the options available to detention-centre staff, the Committee notes that immediate recourse is available for centre managers to segregate detainees for specified periods in the event that the safety of others is threatened. Additionally, a range of disciplinary sanctions are also available, particularly in relation to less serious incidents – outcomes here can include

⁴¹⁸ Mr Howard Brown, Evidence, 14 March 2005, p34

⁴¹⁹ see Appendix 5 for a comparison of powers between the DJJ and DCS

⁴²⁰ Mr Stan Parkes, former Kariong Staff, Evidence, 17 May 2005, p4

⁴²¹ Mr Glenn Elliott-Rudder, Secretary – Departmental Committee on Juvenile Justice, Public service Association of NSW, 17 May 2005, p37

⁴²² Mr Andrew Wilson, Evidence, 17 May 2005, p37

confinement, loss of privileges and additional duties.⁴²³ The PSA have suggested that these do not go far enough and that:

The punishments which they receive as a result of such behaviour should act as a real deterrent from violence.⁴²⁴

9.78 However, the success of these disciplinary measures depends largely on the effectiveness of other departmental policies. A number of participants have been highly critical of the incentive scheme, for example, which was manifestly ineffective as a means of encouraging positive behaviour in detainees at Kariong. Primarily, it was considered to be failing because of the chronic misapplication of department policy, but also because it provided inappropriate rewards for detainees who are accommodated up to the age of 21 and unlikely to respond positively to incentives they view as meaningless.⁴²⁵ The Committee considers that without a coherent and well-managed scheme with meaningful rewards and sanctions, the options available to centre managers described above carry little or no weight and will be of no consequence to detainees who may feel they have nothing to lose.

Recommendation 12

That the Department of Juvenile Justice revise and formalise clear penalties for detainees who breach centre policies, including assaults on staff, and ensure that all staff and detainees have access to and understand these sanctions.

Recommendation 13

That following the development of the Department of Juvenile Justice's incentive schemes in response to the NSW Ombudsman reports in July 2002, the Department review the effectiveness of this scheme, including an investigation into whether training for all staff in the application of the scheme is enforced. The review should also assess the suitability of rewards available to detainees to ensure that they are appropriate and meaningful.

Risk assessment and programming

9.79 Among the options for detention-centre managers is for detainees to be punished for their involvement in incidents of assault by removal from programs. Primarily this is to reflect the increased level of risk posed by any detainee that displays violently disruptive behaviour. The placement of detainees in appropriate programs is critical to facilitating the aims of the Department, namely that the detainee is assisted to address their antisocial behaviour through relevant programs. For this sanction to affect the desired outcomes, programs must not be curtailed completely. As the Department of Juvenile Justice Chaplains have suggested,

⁴²³ Submission 3, NSW Department of Juvenile Justice, p76

⁴²⁴ Submission 19, Public Service Association of NSW (PSA), p16

⁴²⁵ Mr Mark Fitzpatrick, Evidence, 17 May 2005, p8

Possibly the people who are most difficult to manage are the people who need the most intensive interactive experiences of one sort or another.⁴²⁶

9.80 In addition, the PSA have stated that:

...programs, education, employment and case management need to be in place in order to facilitate positive behavioural change amongst detainees.⁴²⁷

9.81 The Department has detailed its efforts to ensure that detainees continue to access rehabilitation programs. In particular it has taken steps to develop a risk assessment program with the Department of Education and Training to identify risks associated with each centre's programs – taking into account factors such as the use of equipment and materials for example. Before participation is approved, the Objective Classification System will also evaluate the risks posed by each detainee to ensure that programs and detainees can be matched dependent on the level of risk posed by doing so. Each program is assessed from low to high risk. High-risk detainees will be permitted to participate in low-risk programs and vice versa.⁴²⁸

9.82 In terms of case management, the Committee notes that moves have also been made to increase staffing ratios in relation to detainees. This reflects the view that development of positive relationships between staff and detainees through individualised case management can be effective in reducing the likelihood of violence.⁴²⁹ The increased provision of staff to direct more personal attention to be given to juvenile offenders is clearly a positive step and is possible in the Department of Juvenile Justice because of the relatively small number of detainees in the system. The Committee acknowledges the benefits of the Department's approach to individual offender case-management and we are encouraged by the developments in relation to both risk assessment and programming.

Casualisation of the workforce

9.83 The Department of Juvenile Justice has traditionally employed 'casual' staff as youth officers at detention centres to cover planned and unplanned absences of permanent staff. In January 2004, the Department began a 12-month trial using a relief pool of 80 casual staff.⁴³⁰ However, the over-reliance on these casual staff at Kariong has been criticised as having had a deleterious effect on the management of the centre. As Mr Clancey observed during evidence to the Committee:

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

⁴²⁶ Father Ramsay Nuthall, Juvenile Sub-Committee of the Civil chaplaincies Advisory Committee, Evidence, 14 March 2005, p52

⁴²⁷ Submission 19, PSA, p16

⁴²⁸ Submission 3, NSW Department of Juvenile Justice, p78

⁴²⁹ Submission 3, NSW Department of Juvenile Justice, p66

⁴³⁰ Newbery, J., *Review of Department of Juvenile Justice Industrial Relations and Human Resources Practices*, December 2004, p8

massive levels of casualisation within either the senior youth worker ranks or now the youth officer ranks.⁴³¹

- 9.84** Casual staff currently undertake the same 27-day induction program as permanent staff, but are not entitled to be paid for attending ongoing training. Given the high number of casual staff employed by the Department, this appears to the Committee to be an oversight that should immediately be addressed. The implications of not doing so were highlighted by the PSA:

If the Department brings in new policies or new ways of doing procedures, then those casual officers may not receive enough skilling in those areas. It is a difficulty for the Department, given its limited budget in training and things like that, how they prioritise who gets training.⁴³²

- 9.85** At the heart of this issue is the extent to which casual staff will be able to contribute effectively when they are not permitted to attend on-going training and development, and might be working intermittently within the system. This is especially important when the Department is seeking to implement so many procedural and operational changes to the management of detention centres.

- 9.86** The NSW Ombudsman Report (2000) pointed to the need for Kariiong to be given adequate resources and suitably skilled and trained staff. Mr Moore from NCOSS suggested that 'it is difficult to imagine how this could have been achieved when large numbers of Kariiong staff were casuals'.⁴³³

- 9.87** There is a suggestion that a transitory workforce can lack cohesion, especially when casual staff are unable to participate on an equal footing with their permanent full-time colleagues. The proliferation of casual staff within the juvenile justice system presents a range of problems for the Department, not least the effect on stability, continuity and consistency in the operations of a detention centre. Mr Clancey aptly summarised the impact of some of these problems when he said:

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 [as a problem] that has been identified elsewhere.⁴³⁴

- 9.88** Contributions from the Department of Juvenile Justice chaplains suggested that for evidence of the benefits of a fully trained and permanent workforce, the Committee should look to the Department of Corrective Services:

Many of the problems at Kariiong can be traced to people who could have performed better had they had the security of job tenure and perhaps more formalised and strict

⁴³¹ Mr Garner Clancey, Evidence, 9 March 2005, p25

⁴³² Mr Glenn Elliott-Rudder, Evidence, 17 May 2005, p34

⁴³³ Submission 13, NCOSS, p7

⁴³⁴ Mr Garner Clancey, Evidence, 9 March 2005, p25

training and discipline that can be effected in the Department of Corrective Services. That is one thing that is to be admired in the department; it does have a good method of training its staff and disciplining the staff. That is the backbone of any school or agency that deals with people.⁴³⁵

- 9.89** Previously, the NSW Ombudsman himself noted the admiration of Kariong staff towards the uniformity of corrective officers imbued with sense of united purpose, training and discipline.⁴³⁶
- 9.90** The Committee would like to reiterate that this critique of the use of casual staff should not be misinterpreted, and we commend the professionalism of casual staff on the whole. Instead, the Committee seeks to restate the concerns expressed about the need to provide adequate training and support to casual staff to maximise the efficiency and effectiveness of detention centre service delivery.
- 9.91** The Committee accepts that the Department of Juvenile Justice will continue to need casual staff on occasion. We therefore recommend that **all** staff, including casual staff should be entitled to receive on-going training, support and regular performance reviews. While there will be budgetary implications for this, we consider this to be an essential component of a consistent and stable pool of qualified casual staff. However, it is our belief that efforts should be made to establish a permanent workforce that minimises the requirement for casual employees. The Committee believes that only through recruitment and retention of highly committed, highly qualified and highly trained staff can the objectives of the DJJ be realised.

Recommendation 14

That the Department of Juvenile Justice review management practices to ensure that all staff, including casual staff, receive on-going training and support in recognition of their value to achieving successful outcomes for the Department and detainees. This training and support should be linked to regular performance reviews to ensure consistency and establish best practice.

Recommendation 15

While recognising there may continue to be a need for casual staff on occasion, the Department of Juvenile Justice should strive to establish and retain a committed permanent workforce that minimises the requirement for casual employees.

Recruitment and training

- 9.92** Before considering some of the issues related to recruitment and training, the Committee notes the report by John Newbery following his review of the Department of Juvenile Justice industrial relations and human resources practices. The Committee defers to its findings and recommendations, but provides discussion of some of the main staff recruitment and training issues below.

⁴³⁵ Father Ramsay Nuthall, Evidence, 14 March 2005, p49

⁴³⁶ NSW Ombudsman Report, March 2000, p110

- 9.93** Participants in this inquiry have consistently commented on the immediate need for improved training for all staff working in the detention-centre environment. The Committee has received overwhelming evidence that isolates training as a major factor in achieving sound management and consistent application of policy and it has been cited as one of the many reasons for the dysfunctional operation of Kariiong.
- 9.94** In relation to Kariiong in particular, Sally Peyou, member of the Juvenile Justice Advisory Council, said that additional training provisions should have been provided for all staff involved in managing high-risk offenders:
- Perhaps Kariiong staff should have been provided with intensive specialist training in dealing with the needs and behaviour of NSW's most difficult to manage young offenders. This type of training could include both traditional corrections style techniques such as riot control and containment as well as training in mental health issues, stress and burnout management, and conflict resolution and negotiation.⁴³⁷
- 9.95** The Committee recognises that Kariiong, in particular, has been described as an 'extreme environment' to work in.⁴³⁸ The Committee has heard considerable evidence to affirm the nature of these highly pressurised surroundings. The Department of Juvenile Justice chaplains acknowledged that:
- Youth officers work in what is often an extremely stressful and demanding environment that offers little in the way of personal affirmation.⁴³⁹
- 9.96** To alleviate some of these pressures, the Newbery Review has repeated a suggestion made by the NSW Ombudsman in 2000, namely that the Department of Juvenile Justice should adopt a model of staff rotation currently used by the Department of Corrective Services, which routinely rotates staff in and out of maximum-security units to provide development opportunities and prevent 'burn-out'.⁴⁴⁰
- 9.97** Other witnesses have suggested that some of the Department of Corrective Services training should be incorporated into the induction program for youth officers.⁴⁴¹ The Committee notes, for example, that the Department of Corrective Services induction training currently extends to 10 weeks, including considerable practical sessions as well as weapons training and officer survival skills.⁴⁴² In particular, this suggestion shows that at Kariiong there was a need to reflect the offending profile of its detainees and the attendant risks involved in managing those clients.
- 9.98** In terms of recruitment practices, there appears to have been some resentment expressed about recent changes to department policy regarding the requirement for youth officers to achieve professional accreditation. Mr Hawthorne said:

⁴³⁷ Submission 21, Sally Peyou, p4

⁴³⁸ NSW Ombudsman Report, March 2000, p3.93

⁴³⁹ Submission 7, Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee, p3

⁴⁴⁰ This was reflected by Don Rogers in his assessment of Kariiong following his management of the centre, and repeated in the NSW Ombudsman Report, March 2000, p3.81

⁴⁴¹ Mr Rod Blackmore, former Chief Magistrate, Children's Court, Evidence, 8 April 2005, p2

⁴⁴² Newbery, J., *Review of Department of Juvenile Justice Industrial Relations and Human Resources Practices*, December 2004, p11

The biggest problem we have in the department, as with a lot of departments, is that the promotion comes through a certificate. We get people who are highly qualified, but they do not really know the culture; they do not really know the detainees. Therefore, the promotion will come for some other reason, and then the people throughout the department have all these certificates. It is akin to the Fire Brigade having all these people, but they cannot put out fires. You have to be able to be a hands-on person; you have to be able to nurture people, such as all the good staff we have, and bring them through, rather than picking somebody from outside who has a university degree.⁴⁴³

9.99 Some existing staff appear resistant to what they see as increasing intellectualism or bias towards theoretical notions of rehabilitation and the Committee notes that these staff have been particularly resistant to change. However, we do recognise the considerable experience these youth officers have gained in the Department and that many have received commendations for their role in managing disturbances at Kariong. We do not wish to ignore the importance of practical experience in fulfilling this difficult job.

9.100 Evidence also suggests that improvements in management training for junior and middle management may be necessary. Ms Delaney commented that following the implementation of the Behaviour Management Unit Program, a number of unit managers lacked experience in managing teams:

I did not see anybody display any real management skills on those bottom levels. I did not see the unit co-ordinators really rise up to their role as a supervisor; they were one of the staff. They did not hold their staff accountable or get them to do things right. I never saw any of them do that—as good-hearted as they might have been. They were trying to do their casework but they were not supervisors. Then you have got your unit managers, who absolutely did not rise to their role of a supervisor or manager either. So those levels just were not happening.⁴⁴⁴

9.101 Again, the Committee believes that, in relation to recruitment and training, the DJJ should look to the recommendations made in the Newbery Review. In addition, the Committee believes there is a need to develop management training for new unit coordinators and other middle management. The Department of Juvenile Justice will not be able to undertake the necessary steps to improve training and recruitment without an increased programs and training budget. The NSW Government must ensure that the Department is provided with adequate resources so it may address this important issue.

9.102 The Committee also notes that the remainder of former Kariong staff who have continued employment within the Department of Juvenile Justice appear to have had little re-training or re-orientation following their redeployment. The Committee urges the DJJ to address this and ensure that former Kariong staff are given full access to the necessary performance evaluation and re-training. The Committee believes that access to training, support and performance review will to ensure that the problems that occurred at Kariong do not occur elsewhere in the juvenile justice system.

⁴⁴³ Mr Peter Hawthorne, former Kariong Staff, Evidence, 17 May 2005, p18

⁴⁴⁴ Ms Carolyn Delaney, Evidence, 17 May 2005, p6

Recommendation 16

That the Department of Juvenile Justice considers and implements the recommendations of the *Review of Department of Juvenile Justice Industrial Relations and Human Resources Practices* by John Newbery, in particular in relation to recruitment and training.

Recommendation 17

That the Department of Juvenile Justice provide former Kariong staff who have continued employment with the Department with appropriate training and support.

Recommendation 18

That the Department of Juvenile Justice develop appropriate management training and support for new unit coordinators and all levels of management. This training should be undertaken by all internally promoted staff.

Recommendation 19

That the NSW Government ensure that an increased programs and training budget is provided for the Department of Juvenile Justice to develop and increase training provisions for all staff.

Training (DCS)

- 9.103** Participants have also called for immediate training for Department of Corrective Services officers who are now working at Kariong. The NSW Commissioner for Children and Young People has submitted that:

Training offered to Corrective Services staff at Kariong is a priority. It is most important that the training covers youth issues, age-appropriate services and the differing needs of young people as different stages of their development.⁴⁴⁵

- 9.104** Answering questions from the Committee, the Minister for Justice reassured the Committee that:

The Department of Corrective Services has prioritised training for all Kariong Juvenile Correctional Centre staff in the following areas:

Intensive case management

Managing Young Offenders

Working with Children

Tactical/effective communications

⁴⁴⁵ Submission 15, NSW Commissioner for Children and Young People, p2

With the exception of six custodial staff, all staff at the Kariong Juvenile Correctional Centre completed the Department of Juvenile Justice training program on 8 and 9 November 2004 when the Kariong Juvenile Correctional Centre was first commissioned.⁴⁴⁶

- 9.105** The Committee is pleased to note that the Department of Corrective Services officers now working at Kariong are receiving the necessary training in relation to the management of young people. The Committee encourages the DCS to ensure that all current staff, and any new staff, continue to receive the necessary training, support and performance review.

Recommendation 20

That the Department of Corrective Services ensure that all staff working at Kariong receive on-going training and support, particularly in relation to the management of young offenders. This training and support should be linked to regular performance reviews.

Performance review

- 9.106** The Department of Juvenile Justice has long recognised the importance of developing a staff appraisal scheme that is linked to competency standards, and outcome and output measures. In the NSW Ombudsman Report (2000), the lack of a professional supervision scheme was recognised as one of the major reasons for the management problems repeatedly identified by reviews of Kariong.⁴⁴⁷ This is a problem that can be extrapolated to apply across the department as a whole.
- 9.107** The Committee believes that monitoring of staff development and performance is essential to ensure that all staff receive support in attending to their training needs and in developing skills and understanding to ensure that there is a consistent application of procedures in all detention centres. Appraisals should be completed and recorded regularly, comparing performance against clear and measurable objectives and should be mandatory for every staff member. The need for performance review is addressed in recommendations above.

Policy implementation and consultation

- 9.108** Perhaps one of the problems at Kariong, and one that may betray a more widespread issue for the Department of Juvenile Justice to address, is the proliferation of new policies and guidelines that have been introduced over recent years. This has been the direct result of the numerous reviews of the Kariong and the Department's subsequent evaluation of its policies. The Department of Juvenile Justice has acknowledged that one of the most dramatic changes has been for youth officers taking on responsibility for casework with detainees. The Department notes:

⁴⁴⁶ Department of Corrective Services, answers to Committee questions, 14 June 2005, p4

⁴⁴⁷ NSW Ombudsman Report, March 2000, p99

This marked a huge shift in the conceptualisation of the role of frontline detention centre staff from one of containment and security only to personal involvement in the lives of young people in detention.⁴⁴⁸

9.109 However, in this process of policy change, evidence from one participant appears to illustrate the frustration felt by staff who feel there has been little attempt to harness their knowledge and expertise, and a failure to recognise their critical role in the success of new schemes. Edward Ball, a youth officer at Baxter, observed that:

Prior to the handover [the department] instigated quality reviews at Kariiong as with all centres and this became regular practice. As to the findings of those reviews by the department, we never learned if any problematic issues were discovered and if there were, what action was taken to fix them.⁴⁴⁹

9.110 The Committee believes that efforts to harness staff experience first in consultation about what improvements are desirable and workable, and secondly in explaining the purpose and intended benefits of any resultant policies may have achieved better results. Evidence from former staff at Kariiong in relation to the implementation of the Unit Management System, for example, is revelatory.

9.111 This system was developed by the DJJ following the Johnston and Dalton Report (2002), in conjunction with Lou Johnston, one of its authors, and was implemented across the entire Department. It replaced an existing arrangement where staff were able to move detainees between residential units to separate groups of detainees considered to present management problems. This new system removed what Mr Parkes considered to be 'a very good management tool'.⁴⁵⁰

9.112 The new policy also relied upon a system of 'positive and negative notes', which were part of the Department's casework policy and intended for use by youth officers to observe and document detainee behaviour and participation with a view to towards achieving rewards and extra privileges. Ms Carolyn Delaney reported to the Committee on the new system's intended outcomes and the response from detainees:

It is a form that is done each day on a young person where on a particular shift you observe and assess. You identify the things that they have done well and that is according to their target behaviours, whatever their problems are, and particularly are they obeying staff instructions, are they keeping their room clean and tidy, are they not damaging property, are they being polite, are they asking for things assertively? It is all those things that we are teaching them and we have just seen that they are actually doing them, and giving them praise when they actually do them. That is what it is all about.

It is about getting them ready to accept the areas that they do need to improve in. They do that if there are good things. The feedback from the boys was just amazing. They actually said, 'Isn't it good to hear good things about yourself? We do not often

⁴⁴⁸ Submission 3, NSW Department of Juvenile Justice, p68

⁴⁴⁹ Submission 26, Mr Edward Ball, p2

⁴⁵⁰ Mr Stan Parkes, Evidence, 17 May 2005, p11

hear good things. Isn't it good that we know what we are supposed to do and how to do it?' I did not see that happening at Kariong with the staff.⁴⁵¹

- 9.113** The reaction to the implementation of this policy, in particular, reflects a level of misunderstanding that could only have been remedied through training to educate all stakeholders in the purpose and intentions of new procedures. These former staff appeared reluctant to put into practice 'the stupid routines we had to do and the new structure'.⁴⁵² This displays a lack of understanding of the basis for changes in management practices and they seem unclear why certain procedures were abandoned and how new approaches were intended to bring about improvements. Similarly, it appears that clear instructions about how the system worked and what was expected of them was not given. These factors are fundamental. However unwilling some staff may have been in applying new procedures, the Department has a responsibility to resolve these issues effectively through training and performance review.
- 9.114** Department of Juvenile Justice oversight and communication throughout the DJJ in general has been criticised heavily. In particular, the NSW Ombudsman Report (2000) noted examples of the lack of regular team meetings, a lack of team spirit, disharmony between staff and between staff and management, poor communication between incoming and outgoing shifts and between youth officers and specialist staff to name but a few examples.
- 9.115** This clearly had a deleterious effect on the management of Kariong and has demonstrably affected the implementation of policies and procedures throughout the Centre. There has been a well-documented reluctance on the part of some staff to take on new responsibilities and adopt new working practices and the intransigence of some staff has been prominent in criticisms of the Centre. However, the Committee believes that staff understanding in directions and guidance and securing buy-in from all staff is essential in order to ensure that all policies and procedures are followed consistently and appropriately. We believe the Department's failure to encourage effective communication with its staff has contributed significantly to the widespread misunderstanding of its policies.

⁴⁵¹ Ms Carolyn Delaney, Evidence, 17 May 2005, p9

⁴⁵² Mr Mark Fitzpatrick, Evidence, 17 May 2005, p6

Chapter 10 Wider consequences of the transfer

I am unable to say that the transition is the most effective method of addressing management problems. I can however state that it appears to have been an effective method of doing so.⁴⁵³

In Chapter 3, the Committee considered the immediate consequences of the transfer of management responsibility for Kariiong to the Department of Corrective Services in terms of the impact on staff and the effectiveness in addressing the management problems. In this chapter, the Committee considers whether the decision was the most effective solution to those management problems. In particular, this chapter provides an overview of the legislative and cultural aspects of transfer.

Is this the *most* effective solution?

10.1 The *Juvenile Offenders Legislation Amendment Act 2004* has the potential to incorporate any young offender of or over 16 into the adult correctional system. The Committee believes that under this management arrangement Kariiong detainees should no less be 'entitled to expect education, motivation, incentive, rehabilitation and the chance to start again'⁴⁵⁴ than other juvenile offenders in the juvenile justice system. However, evidence to the Committee has repeatedly suggested that this management solution appears to restrict that entitlement.

10.2 NCOSS go further, suggesting that adult management standards will undermine the philosophy of the juvenile justice system.⁴⁵⁵ Likewise, the Youth Justice Coalition has stated:

The transposition of an adult managerial framework upon juveniles is a quick-fix response. The change may indeed bring about increased security, however it will do so in a totally inappropriate way. The punishment and security regimes in adult facilities are inappropriate for juveniles and are likely to inflict long-term psychological harm.⁴⁵⁶

10.3 While the Committee commends the success of the Department of Corrective Services in establishing and maintaining order at Kariiong, there is clearly a broader concern about the impact of the transfer on those incarcerated in the centre. While the transfer may have instituted a new regime with some success, the Committee felt it necessary to examine whether the adult correctives regime is necessary or appropriate for juvenile offenders and what the long-term effects might be.

10.4 In general terms, the problems that have been identified with the DCS managing the Centre are in two categories, legislative and cultural.

⁴⁵³ Submission 6, NSW Ombudsman, p3

⁴⁵⁴ Submission 13, NSW Council of Social Services (NCOSS), p7

⁴⁵⁵ Submission 13, NCOSS, p3

⁴⁵⁶ Submission 10, The Youth Justice Coalition, p8

Legislative

- The DCS has no statutory obligation, or departmental commitment, to providing meaningful rehabilitative intervention or support, or to the rights of juveniles.

The *Crimes (Administration of Sentences) Act 1999*, for example, does not attend to international obligations to children, allowing as it does the punishment of inmates by extended periods in confinement and the use of dogs and other methods of restraint.⁴⁵⁷

- Potential for use of weapons for restraint

While there have been reassurances from the Minister for Justice that firearms will not be used in the management of Kariong, a range of other implements and weapons may be used. The extent of the powers under the *Crimes (Administration of Sentences) Act 1999* appear to go against Human Rights obligations and provide little protection for juvenile offenders incarcerated at Kariong under the corrective services regime.⁴⁵⁸

- Provision for extended periods of isolation/segregation.

Cultural

- Bringing DCS management into the centre sets a precedent and may send a message to other centres to encourage tighter control.⁴⁵⁹
- Early lockdowns. Detainees' daily out-of-cell routine begins at 8am and ends at 4pm.⁴⁶⁰
- Departmental focus on containment – DCS has fewer staff managing more detainees.
- DCS lacks expertise in managing juveniles and in particular, expertise in programming.

‘The Department of Corrective Services lacks both the experience in, and resources required for, successful implementation and administration of the rehabilitative framework that juvenile offender management requires.’⁴⁶¹

‘[There is] a central problem of locating the incarceration of young offenders within a large organisation whose core business does not related to the supervision, rehabilitation or reintegration of young offenders.’⁴⁶²

⁴⁵⁷ s53(1)(c) and s78.

⁴⁵⁸ Submission 15, NSW Commissioner for Children and Young People, p1

⁴⁵⁹ Submission 29, Mr Garner Clancey, p12

⁴⁶⁰ In evidence to the Committee, the Minister for Justice announced a trial period for extension to 7.30pm for those on Stage 3 of the Hierarchy of Privileges, p7. This trial is ongoing – Additional Questions on Notice, p3

⁴⁶¹ Submission 8, Shopfront Youth Legal Centre, p3

⁴⁶² Submission 9, Juvenile Justice Advisory Council, p3

- 10.5** Overall, the decision has been criticised because the DCS does not, either through the legislation that underpins its operation, or the Departments' own corporate aims and objectives, differentiate the needs of juvenile and adult offenders.

The Department of Juvenile Justice has a specific mission statement that they have publicised and is well known. And they are directed at dealing with young people who come in contact with the Department and the safety of the community, and dealing with young people as individuals. Corrective Services, as far as I know, have none.⁴⁶³

- 10.6** There appears little evidence to suggest that efforts are being made by the Department to alter its procedures or protocols to make them more suitable for juveniles (particularly those under 18) at Kariong.

- 10.7** In evidence to the Committee, the Minister for Justice, the Hon John Hatzistergos, MLC made it clear that Kariong would be run as a corrective services facility, the same as all adult prisons in the correctives system:

There are no differences now. We now have a centre that is part of the Department of Corrective Services. We do not have some little sanctuary that is stuck on the Central Coast and operating in a vacuum. It is part of the Department of Corrective Services. That means that we have a discipline system that applies to them in the same way that it applies to anyone else in the correctional system.⁴⁶⁴

- 10.8** Furthermore, the Minister for Justice's view on the need to contain, rather than attend to the rehabilitative needs of juvenile offenders, can perhaps be found in evidence to the Committee:

We are running a correctional facility here; it is not a convent. Quite frankly, if people want to have a swim in swimming pools, they ought to think about their crimes before they commit them.⁴⁶⁵

- 10.9** Additionally, the Department's record in achieving positive outcomes through its management of offenders has been criticised.

I suppose the evidence for that comment comes from looking more broadly at the adult prison system, at the appalling rate of recidivism, the appalling expenditure within prisons, rehabilitation programs, the appalling expenditure on post release services out of the adult prison system...

If you want to look more broadly at the New South Wales corrective services system and the adult prison system, you only have to quote the Productivity Commission report on government service provision, the number of people in our prisons and what happens to them, you would find it very difficult to suggest that the adult prison system as such was delivering very much on rehabilitation, diversion and reducing recidivism.⁴⁶⁶

⁴⁶³ Mr Andrew Haesler SC, Barrister, NSW Public Defender's Office, Evidence, 17 May 2005, p38

⁴⁶⁴ Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, p3

⁴⁶⁵ Hon John Hatzistergos, MLC, Minister for Justice, Evidence, 14 March 2005, p16

⁴⁶⁶ Mr Gary Moore, Director, NCOSS, Evidence, 12 April 2005, p15. The National Children's and Youth Law Centre also provide statistics relating to the Department of Corrective Services, which put New South Wales behind the national average on a number of significant counts – including

10.10 The Memorandum of Understanding between the two Departments has also been condemned for failing to adequately reflect the primary objectives of the Department of Juvenile Justice, and in some cases giving the appearance of working against them. The Juvenile Justice Advisory Council, for example, were concerned that the MOU departed from the *Australasian Standards for Juvenile Custodial Facilities* in key areas, such as Standard 2.5, where the Department of Corrective Services:

will not necessarily allow a detainee/inmate to make or maintain confidential contact with advocates for young people within the justice system.⁴⁶⁷

10.11 The Juvenile Justice Advisory Council considered this to contravene an important principle established by the Department of Juvenile Justice of providing access to community based services such as the post-release support program. Following evidence to the Council that some community-funded agencies have experienced difficulties accessing young people in Kariiong since the transfer, the submission goes on to conclude that:

It also reflects a view of imprisonment inconsistent with the need to develop reintegration strategies for young people who are returning to the community.⁴⁶⁸

10.12 NCOSS is similarly sceptical about the arrangements for engaging with organisations and agencies that have responsibilities in supporting and addressing the needs of families, children and young people, which is considered to affect the effectiveness of interventions with juvenile offenders:

It is hard to reconcile how this engagement with external agencies and a focus on rehabilitation will be achieved under the adult prisons management.⁴⁶⁹

Impact on other Centres

10.13 One of the wider consequences of the transfer has been the proliferation of rumour and conjecture among Department employees, which may prove to have a profound effect on the administration of juvenile justice centres. Magistrate Crawford, a Children's Court Magistrate, speculated as to the possible impact on stability at Kariiong because of the change.⁴⁷⁰

10.14 While it appears that the management of Kariiong by the DCS has not been detrimentally affected by the speed of the transfer, there is anecdotal evidence to suggest that stability in the rest of the juvenile justice system may be interrupted because of speculation as to the ramifications of the changes for other centres.

recidivism (22 per cent above the national average (n.a.)), overcrowding (7.7 per cent above n.a.), per day out-of-cell hours and assault rates (59 per cent above n.a.), p4-5

⁴⁶⁷ Memorandum of Understanding (appendix 4), p6. Standard 2.5 reads: The centre advises and enables each young person to make or maintain confidential contact with a legal adviser, and advocates for young people within the justice system.

⁴⁶⁸ Submission 9, Juvenile Justice Advisory Council, p3

⁴⁶⁹ Submission 13, NCOSS, p8

⁴⁷⁰ Magistrate John Crawford, Children's Magistrate, Children's Court, Evidence, p31

[It] has given rise to a belief amongst operational staff within juvenile justice that further centres might be moved to Corrective Services resulting in further job losses in juvenile justice. Staff are demoralised and feel vulnerable.⁴⁷¹

- 10.15** With staff seemingly wary about proclamations of other detention centres as Juvenile Correctional Centres there is concern that this may impact on the style and approach of youth officers, fostering a more disciplinary approach to maintain effective 'control' of detainees. This could in turn cause staff to lose sight of the rehabilitative goal of the Department of Juvenile Justice. Mr Garner Clancey, Lecturer at the University of Western Sydney, relayed his interpretation of concerns expressed to him:

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 detention rather than rehabilitation in view of warding off any speculation about DCS taking over the juvenile justice system in total.⁴⁷²

- 10.16** In the light of these concerns, the Committee considers it important that the DJJ and relevant oversight agencies keep a watching brief over the management of all centres under the DJJ. The oversight of management and operations at these other centres must not be permitted to withdraw from the established principles of the Department, which the Committee supports.

Conclusions

- 10.17** Punitive measures and stronger powers to restrain and segregate detainees, while clearly desirable in responding to critical incidents, are not the only answer to the security issues at the centre. While the Committee accepts that security of the centre is no longer threatened by detainee behaviour, elements of the Corrective Services approach threatens to undermine the principles and philosophies of the DJJ. The Committee is concerned about cultural and operational changes that inhibit the opportunities for juvenile offenders to engage in pro-social activities that foster rehabilitation. The DCS routine of locking down detainees at 4pm does little to facilitate the kind of behavioural or rehabilitative change and appears unlikely to provoke beneficial change in detainees' underlying risk factors. Rather it may push them aside in favour of discipline and obedience.

⁴⁷¹ Submission 19, Public Service Association of NSW (PSA), p4

⁴⁷² Mr Garner Clancey, Evidence, 9 March 2005, p30

10.18 The NSW Ombudsman, in his submission to the inquiry, stated:

My office has closely monitored arrangements surrounding the transfer of Kariong from DJJ to DCS. Juvenile inmates who spoke with my staff during inspections of the centre in November 2004 and February 2005 generally commented favourably upon the transfer, stating DCS officers are consistent and fair in their treatment. Although DCS is operating the centre with almost half the number of previously employed by DJJ at the centre, it appears to be functioning well. The number of incidents within the centre has also reduced.⁴⁷³

10.19 Criticism of the decision should not be taken to imply any question mark over the efficiency or effectiveness of Corrective Services staff in their control over detainees in custody, but rather it questions the commitment of the Department towards achieving the goals of rehabilitation and reintegration that are paramount in the objectives of juvenile justice. While largely this can be attributed to a philosophical objection to the incarceration of juveniles under the same regime as that which operates within adult prisons, it has been reinforced by practical, operational differences that the Committee agree may undermine important rehabilitative goals for young offenders.

10.20 As the Youth Justice Coalition have pointed out, a primary finding of reports into the operation of Kariong Juvenile Justice Centre by the NSW Ombudsman in 1996 and 2000 was that problems at the centre were not, as suggested by the Minister for Juvenile Justice, caused by more experienced, hardened and criminalised juveniles. Rather, the cause was ‘the management and long-term vision of government in the operation of juvenile detention centres’.⁴⁷⁴

10.21 This finding in particular has lead the Juvenile Justice Advisory Council to pose the question:

Why, if the staff were the greatest problem was a model adopted which directly affected young offenders in Kariong and had ramifications for all young people in detention?

[Furthermore] why was the staff/management issue not resolved in a way which would continue to allow for the Department of Juvenile Justice to administer Juvenile Justice Centres in their totality?⁴⁷⁵

10.22 The Juvenile Justice Advisory Council, supported by evidence from the NSW Commissioner for Children and Young People, agree that the transfer has not only affected the management of the Centre, but also materially and adversely impacted on the daily lives of those young people being detained in the centre.⁴⁷⁶

10.23 Upon this evidence hangs the important question of whether the changes that have been made at Kariong Juvenile Correctional Centre since the transfer could have been successfully implemented by the Department of Juvenile Justice? Concurrent to that, what other alternatives

⁴⁷³ Submission 6, NSW Ombudsman, p2

⁴⁷⁴ NSW Ombudsman, *Inquiry into Juvenile Detention Centres*, December 1996, p (xvii)

⁴⁷⁵ Submission 9, Juvenile Justice Advisory Council, p4

⁴⁷⁶ Submission 15, NSW Commissioner for Children and Young People, p1 – the evidence considers the importance of putting the rights of the child to the fore in decision-making that affect their lives while in detention.

were available to the Government that may have facilitated this outcome to safeguard the objectives of the Department to foster rehabilitation of detainees and facilitate re-integration into the community to 'break the cycle of crime'? Ms Jane Sanders from the Shopfront Youth Legal Centre said:

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.⁴⁷⁷

10.24 Alternatives to the transfer are therefore discussed in the following chapter.

⁴⁷⁷ Ms Jane Sanders, The Shopfront Youth Legal Centre, Evidence, 9 March 2005, pp49-50

Chapter 11 Alternatives to establishing a juvenile correctional centre

The Committee, having considered the reasons for and consequences of the rapid decision-making and transfer of Kariong to Department of Corrective Services, was keen to investigate the alternatives open to the Government in more detail. In this chapter the Committee provides an overview of previous reports with recommendations on alternatives to this transfer. The chapter consider in some detail the recommendations made in the Dalton Report, which advanced the recommendation to transfer Kariong. The chapter also looks at a number of other alternatives to the establishment of a juvenile correctional centre, including the dispersal model, establishing an interim facility, diversion from custody and a range of custodial interventions. The chapter concludes with a discussion on the importance of consultation with relevant advisory bodies and stakeholders on any future Government decisions about the management of juvenile offenders.

Previous report and recommendations

- 11.1** Before looking at the specific recommendations of the Dalton Report, from which the decision to transfer operational management of Kariong to the Department of Corrective Services was made, the Committee considered it worthwhile returning to previous reviews of the Centre. From these reports the recommendations range from the complete decommissioning and closure of Kariong to short periods of closure to attend to the various management and training issues identified at the Centre. Noteworthy recommendations include:

NSW Ombudsman Report (2000)

- 11.2** The interim report from the NSW Ombudsman in 2000 recommended closure of the Centre for a number of months. During this time, the Department of Juvenile Justice (DJJ) would have been required to undertake systematic reviews of various aspects of the Centre and its operation, including a re-evaluation of the Centre's role in the juvenile justice system, staffing job descriptions, development of new training programs, selecting staff for the Centre and review of security and other maintenance works.⁴⁷⁸
- 11.3** This recommendation was rejected at the time because of restraints identified by the Director General of the Department, including the fact that the Frank Baxter Juvenile Justice Centre was not yet operational.

Johnston and Dalton Report

- 11.4** Recommendation Eleven of this report proposed that the Centre consider 'locking-down' detainees for one half day a week for a period of six months.⁴⁷⁹ This approach was designed to encourage the Department to address underlying problems at the Centre through mandatory

⁴⁷⁸ NSW Ombudsman, *Investigation into Kariong Juvenile Justice Centre*, March 2000, p300

⁴⁷⁹ Johnston L and Dalton V., *Review of Kariong Juvenile Justice Centre*, November 2004, Recommendation Eleven, p12

staff training and the implementation of new management practices. While this recommendation was not considered to be appropriate at that time, it would arguably have imposed a far less restrictive regime on detainees than under the current operation of the Department of Corrective Services, where lock-downs have been brought forward to 4pm each day (notwithstanding the ongoing trial period of later times for stage 3 detainees).

- 11.5 Neither of the above options was presented again in the Dalton Report in 2004, but in the Committee's view could have been considered.

Dalton Report

- 11.6 This section first considers the immediate alternative presented in the recommendations to the Minister for Juvenile Justice by the Dalton Report. It later examines other options open to the Government at the time of the transfer before concluding with the Committee's recommendations.
- 11.7 The Dalton Report was the second review of Kariong Juvenile Justice Centre by Mr Vernon Dalton in three years.⁴⁸⁰ Conducted on behalf of the Minister for Juvenile Justice, this report has been targeted for criticism by some participants in this inquiry for its central role in precipitating the decision to transfer responsibility for Kariong to the Department of Corrective Services.
- 11.8 The Dalton Report concluded that 'urgent and significant changes are required' at the Centre, and that notwithstanding any longer-term objectives of the Department, two options for interim arrangements were to be considered:

Recommendation One:

Prior to the decommissioning of Kariong JJC it is recommended that either:

- a) The Department of Corrective Services assume the management and control of Kariong Juvenile Justice Centre, making strategic changes to improve the management and security of the Centre, or
- b) Kariong Juvenile Justice Centre
 - a. Become a satellite centre under the direction of the Manager of the Frank Baxter Juvenile Justice Centre who will have the authority to implement changes that are immediately necessary.
 - b. Recommendations arising from this review be considered for implementation
 - c. The programs unit at Kariong be re-opened as an annex to the Director General of the Department of Juvenile Justice for the time being and
 - d. The Regional Director have no further involvement in Frank Baxter or Kariong Juvenile Justice Centres until otherwise determined

⁴⁸⁰ The first was the Johnston and Dalton Report

- e. A contingency emergency response strategy be prepared in consultation with other government agencies.

Both of the above options will be accompanied by legislative changes recommended below, that will enable the bulk of offenders usually housed at Kariong to be transferred to Correctional Centres.⁴⁸¹

- 11.9** It has been noted that the recommendations of this report articulate *for the first time* a suggestion of transferring operational management of juvenile offenders at Kariong to another government department.
- 11.10** Logically, the Committee's investigation of alternatives to the transfer to the Department of Corrective Services begins with the second of Mr Dalton's recommendations for interim arrangements at Kariong. This option has received little attention and the Committee believes it warranted further consideration.

The 'Frank Baxter Option'

- 11.11** Following the receipt of the Dalton Report, but prior to the announcement of the Government's intentions for the Centre, the Department of Juvenile Justice made small but significant changes to the management arrangements at Kariong: with the appointment of experienced managers from the Frank Baxter Juvenile Justice Centre to assume temporary management responsibility for the Centre; and the creation of a temporary position – Director Custodial Services Central Coast – to oversee both Kariong and Baxter Centres.⁴⁸²
- 11.12** The NSW Ombudsman Report (2000) had recommended that a 'competent and professional management team' was needed in Kariong to promote a sense of common purpose and professionalism in staff.⁴⁸³ The immediate success of this interim appointment in instituting just this kind of common purpose has been repeatedly emphasised by participants to the inquiry.
- 11.13** Management of the Centre under Mr Steve Wilson and Mr Peter Reeberger at this time has elicited strong praise. Given the events that immediately preceded his appointment, Mr Wilson appeared to be successful in negotiating the many pitfalls of managing the Centre; staff were able to regain control of the Centre and to operate fully, albeit in strained circumstances.
- 11.14** Testimony to the effectiveness of the Frank Baxter management team has come from former staff at Kariong. Mr Hawthorne and Mr Mark Fitzpatrick were fulsome in praise of their approach:

Mr Hawthorne: As soon as we had access to the Baxter Managers everything fell into place. The minute they walked through the door the ball game had to change...[It proved] given the right tools and given the people we have in the department, we can do the job.⁴⁸⁴

⁴⁸¹ Dalton V, *Report on Kariong Juvenile Justice Centre*, October 2004

⁴⁸² Submission 3, NSW Department of Juvenile Justice, p93

⁴⁸³ NSW Ombudsman Report, March 2000, p11

⁴⁸⁴ Mr Peter Hawthorne, former Kariong Staff, Evidence, 17 May 2005, p8

Mr M Fitzpatrick: I reiterate that as soon as Kariong was taken over by the right management it ran perfectly, just as it is now under the Corrective Services guys. Whether it is Corrective Services, whether it is Juvenile Justice, it is the management of the way it is run. There is nothing wrong with Baxter. That is run beautifully. When those managers came down to Kariong to take over when Kariong was on its knees, they brought it back up to its feet and it was running with a disciplined mentality. As soon as the management goes and you have someone up there not steering the ship, that is when things fall apart.⁴⁸⁵

- 11.15** Mr Wilson, Industrial Officer at the PSA was equally supportive of the impact made by Baxter management:

In particular, in relation to the Kariong situation, when the management team at Kariong was replaced by a management team from the Frank Baxter Juvenile Justice Centre, the situation within Kariong dramatically improved, and it dramatically improved because the managers from the Frank Baxter centre are excellent managers. They introduced a very, very tight regime at Kariong. They got on the floor. They supported their staff. They did not expect their staff to do anything that they were not prepared to do themselves.

The results that they got within a very short period were nothing short of excellent. Kariong went from a situation where staff in which being assaulted on a regular basis to a situation in which, in the brief period that the Frank Baxter management team had carriage of Kariong, there were no assaults on staff. So there was a dramatic improvement.⁴⁸⁶

- 11.16** Inquiry participants noted that the capacity did exist within the Department of Juvenile Justice to successfully manage all juvenile justice centres, including Kariong, within the parameters of the legislation and within DJJ policy guidelines.

Other Alternatives

The 'Dispersal Model'

- 11.17** By including, in his recommendations to the Minister, that options for Kariong were to be considered 'prior to the decommissioning' of Kariong altogether, the Dalton Report provided a clear insight into the Department's long-term plans for the Centre. In the light of this, the Committee was compelled to consider in more detail the long-term options under consideration by the Department.
- 11.18** At an early stage in the inquiry, the Committee therefore invited the then Director General of the Department of Juvenile Justice, Mr David Sherlock, to comment on whether any other options were available to the Government prior to making the decision to transfer responsibility to the Department of Corrective Services. Mr Sherlock said:

Our submission outlines one alternative that we were considering, prior to the transfer of Kariong, that was to work towards the closure of Kariong in its current form for all

⁴⁸⁵ Mr Mark Fitzpatrick, former Kariong Staff, Evidence, 17 May 2005, p16

⁴⁸⁶ Mr Andrew Wilson, PSA, Evidence, 17 May 2005, p35

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.⁴⁸⁷

11.19 In this answer, the former Director General was alluding to a report prepared by Fish Payne Pattenden Viney Pty Ltd and commissioned by the Department of Juvenile Justice. This report (hereafter the FPPV Report), submitted for consideration by the Department in August 2004 examined the suitability of Kariong Juvenile Justice Centre against the *Australasian Juvenile Justice Administrators (AJJA) Standards for Juvenile Custodial Facilities* and the *AJJA National Design Guidelines*. It evaluated the relative merits of firstly, reconfiguring the centre on the current site; secondly, rebuilding a new centre on the Kariong site and thirdly establishing smaller maximum-security units at other centres.⁴⁸⁸

11.20 The Department outlined for the Committee the number of ‘functional deficiencies’ described by the consultants as a result of their review.⁴⁸⁹ The consultants’ view was that the cost of bringing up to the standards expected for a maximum-security juvenile detention centre would have been expensive, exceeding even the cost of a completely new purpose-built centre on a ‘greenfields’ site. Furthermore, they considered that the redesign of juvenile justice facilities was critical in:

Providing an infrastructure which facilitates, enable and supports the achievement of the department’s corporate objectives, and objectives for detention.⁴⁹⁰

11.21 Having concluded that the Centre was not fit for purpose, the consultants prepared a business case and strategic plan for the implementation of a *‘Strategic Asset Improvement Program and Service Delivery Efficiency Model’*, including the decommissioning of Kariong to which Mr Dalton alluded

⁴⁸⁷ Mr David Sherlock, former Director General, NSW Department of Juvenile Justice, Evidence, 9 March 2005, p10

⁴⁸⁸ Mr David Sherlock, Evidence, 9 March 2005, p13

⁴⁸⁹ Submission 3, NSW Department of Juvenile Justice, p90. It should be noted that a number of the issues raised in the FPPV Report relating to security and architectural unsuitability of Kariong were previously highlighted in Don Rogers’ 1999 security and safety review of the centre.

⁴⁹⁰ Fish Payne Pattenden Viney Pty Ltd, *Service Delivery Plan: Secure Unit Development and Detainee Placement*, August 2004, pii

in his report. Mr Sherlock confirmed that the Department of Juvenile Justice had agreed in principle to this course of action.⁴⁹¹

11.22 This plan as proposed by the consultants and known colloquially as the ‘dispersal model’, proposed to move all A1 classified detainees from Kariong and re-house them in small, high-security units attached to three existing detention centres – Cobham, Reiby and Orana Juvenile Justice Centres.⁴⁹² The plan has not been implemented.

11.23 The ‘dispersal’ option presented in the FPPV Report puts at its centre a policy identified by the department in the planning of future infrastructure that advocates the placement of detainees as close to their home locations as practical. The consultants considered that housing all A1 classified offenders at Kariong ran counter to that philosophy. The general debate surrounding this policy, weighed against the need for a single maximum-security facility, is discussed in an earlier chapter.

11.24 The ‘dispersal’ model recommended in the FPPV Report involves locating residential units for A Class over 16 year olds in a number of established centres throughout NSW, utilising existing service infrastructures and enhancing staff levels where necessary. Principally, it proposes that creating separate, smaller maximum-security units alongside existing centres would better facilitate the achievement of this objective. The proposal consisted of the redevelopment of five sites in total:

Two permanent units in Metropolitan areas, one unit at Cobham for A1 (o) classified offenders and one unit at Reiby for A1(b).

One unit in a rural area to ‘maximise the placement of A1 detainees as close as possible to their home locations’ at Orana Juvenile Justice Centre.

Two further ‘on-demand’ units at other rural locations at Acmena and Riverina Juvenile Justice Centres.⁴⁹³

11.25 Moreover, a number of operational and organisational benefits were considered to derive from such a development:

- facilitates detainees being located closer to their home location, which in turn, increases contact with family, local communities, and support agencies/workers
- enhances continuum of care and linkages with community resources that will be integral to community life post release
- increases opportunity for stronger linkages between the department and the community
- improves linkages between Departmental custodial and community services with greater accessibility to and for Juvenile Justice Officer through more detainees from their area being located closer

⁴⁹¹ Submission 3, NSW Department of Juvenile Justice, p90

⁴⁹² For an overview of Classification, see Chapter 5

⁴⁹³ Fish Payne Pattenden Viney Pty Ltd, August 2004, p ix

- enables use of established building, management, staffing, and support infrastructure across the state, which significantly reduces costs associated with the establishment of an entirely new centre
- facilitates more successful transition of detainees from A Class units to lower class units (i.e. may move from one unit to another in the same centre when reclassified)
- limits the potential of a negative ‘A-Class’ culture that is a feature of designated/sole purpose facilities – e.g. serious juvenile offenders in custody are the same as adult prisoners; detainees with serious offences and behaviourally challenging detainees should receive less care, development and intervention than other detainees
- provides opportunity to select appropriate staff for an intensive A-class program from the broader employee group
- allows staff to be rotated in and out of A-class units, to limit burn out, contain negative cultures, and increase job satisfaction and skill development
- harness the existing expertise of staff at Reiby, who have experience of running dedicated programs for under 16 A1(b) class detainees. Further provides opportunity to revise provision of services to Under 16 detainees at Reiby, who are similarly placed at the centre away from local communities
- likewise, harness the existing expertise staff at Cobham, who have experience working with detainees on remand for serious offences (A1(o)).⁴⁹⁴

11.26 In evidence to the Committee, Mr Garner Clancey, a lecturer at the University of Western Sydney, expressed his view that responsibility for Kariong ought to have been retained by the Department of Juvenile Justice. In doing so, however, he remarked:

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.⁴⁹⁵

11.27 The FPPV Report assumed this same rationale in recommending the utilisation of Reiby and Cobham Juvenile Justice Centres, concluding that the expertise of staff at these other centres should be utilised to facilitate the effective management of all classes of juvenile offenders under a reconfigured juvenile justice system.

11.28 The reconfiguration of Juvenile Justice Centres in the FPPV Report’s plan also proposed the separation of the two classes of A1 classified detainees – A1(o) offence related detainees and A1 (b) behaviour related detainees – to ensure the integrity of unit programs designed for these specific client groups. Similarly, detainees on remand were to be accommodated in centres away from those convicted of Serious Children’s Indictable Offences.

11.29 Having maximum-security units attached to existing facilities was also thought to be beneficial because it provided a tangible and clear incentive for those detained in that unit to progress to a lower classification. Likewise, it might serve as an effective reminder to those in the main

⁴⁹⁴ Fish Payne Pattenden Viney Pty Ltd, pp30-31

⁴⁹⁵ Mr Garner Clancey, Evidence, 9 March 2005, p 29

detainee population of the consequences of failing to behave positively and constructively in the centre.

Establish an interim facility

- 11.30** A number of participants have reflected on the possibility of borrowing from experience in other States and jurisdictions. Victoria, for example, has instituted a ‘dual-track’ system with custodial facilities for young offenders considered too old or too difficult to manage for juvenile justice centres but who are not suited for adult facilities. This kind of interim facility may provide another alternative to the transfer. Ms Elizabeth Moore, Lecturer at Charles Sturt University, tentatively suggested that:

Perhaps a way forward is consultative law reform that includes the option of establishing juvenile correction centres for 17-20 year old youth, with legislation that incorporates the UN Standards.⁴⁹⁶

- 11.31** Mr Rod Blackmore, former Chief Magistrate of the Children’s Courts, has raised several concerns about the problems associated with young adults in the juvenile justice system. He has also suggested that:

A solution is for there to be purposely created a separate goal for young adults (18-24 years of age).⁴⁹⁷

- 11.32** In recommending this alternative course of action, Mr Clancey went so far as to direct the Committee towards a specific facility; the Malmsbury Juvenile Justice Centre in Victoria, which is an open prison specifically for 17-24 year olds. The Committee has not been able to undertake comparative analysis of this or any other centre in this regard, but notes these alternative facilities and encourages the Department to assess the merits of this approach in the future.

Diversion from custody

- 11.33** As noted earlier in the report, the *Young Offenders Act 1997* and the diversions system has been extremely successful in keeping young people out of the court process and in reducing re-offending. A statutory evaluation of the *Young Offenders Act 1997* found that options provided for under that Act, such as warnings, cautions and youth justice conferencing, have a better success rate in not re-offending than going through a court process for similar offences.⁴⁹⁸ Many witnesses told the Committee of the importance of maintaining a juvenile justice system that has provision for these options:

I think one of the highlights of the New South Wales juvenile justice system is that we do assume that a young person’s needs and developmental processes are very different from adults, even if they are walking down the criminal path, and the fact that we have separate juvenile detention centres and they are not part of the adult prisons, and the

⁴⁹⁶ Ms Elizabeth Moore, Evidence, 14 March 2005, p28

⁴⁹⁷ Submission 1, Mr Rod Blackmore, p9

⁴⁹⁸ Mr David Sherlock, Evidence, 9 March 2005, p1

fact that we have a very successful *Young Offenders Act* and diversions systems are critical to what we are doing for young people in this State. I think any future legislation that minimises the importance of those diversions or minimises the importance of keeping juveniles and adults who are criminals separate within our system would be a shame.

The majority of young people who come to the notice of police are diverted and never end up in the court system, never end up in the juvenile justice system.⁴⁹⁹

- 11.34** The Committee believes that custodial sentences are a necessary component of the juvenile justice system. However, we wish to put on record our commendation of the considerable success in recent years in putting resources into early intervention for young people. By focusing on the prevention of crime by diverting young people away from court proceedings into community-based alternatives, particularly for those who have committed less serious offences, this approach has enjoyed widespread support from the community, victims groups and other stakeholders.
- 11.35** The *Young Offenders Act 1997* responded to a number of issues identified through consultation, which included the need to make young offenders responsible for their actions and to encourage the involvement of communities, families and victims in decision-making. The Act, therefore, instituted a hierarchical system of options for the police in dealing with juvenile offenders, diverting them away from court to other less restrictive interventions such as warnings, cautions and youth justice conferences.⁵⁰⁰ These options reflect the need for flexibility and responsiveness to factors such as the seriousness of the offence, the level of violence involved, the harm caused to the victim and importantly the attitude of the young person and whether they admit to the offence.
- 11.36** The NSW Attorney General's Department's 2002 comprehensive review of the *Young Offenders Act 1997* identified a number of areas where these alternatives to court proceedings might be improved, including amendments to the Act. The overall tone of the report, however, was positive and the Committee would like to endorse the recommendations of that report, which includes among its number a recommendation for increased resources to facilitate the implementation of the Act and to address some of the associated problems of training, funding for Youth Liaison Officers, conference administrators and conference convenors, and support services for young offenders, particularly in regional areas and with Aboriginal groups.⁵⁰¹
- 11.37** The former Director General of the Department of Juvenile Justice reaffirmed its commitment to the policy of diversion in evidence to the Committee. Mr Sherlock said:

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

⁴⁹⁹ Ms Catherine Mackson, Senior Programs Officer – Youth, NSW Police, Evidence, 8 April 2005, p7

⁵⁰⁰ For definitions of these options, see <http://www.policensw.com/info/gen/y1.html>

⁵⁰¹ *Report on the review of the Young Offenders Act 1997*, NSW Attorney General's Department, October 2002, pp1-8

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.⁵⁰²

Custodial interventions

Pre- and post-release programs

- 11.38** The Committee has received representations that more strident efforts ought to be made to facilitate successful reintegration for young offenders into the community. The impact of experiences within the juvenile justice system are thought to have consequences beyond the rehabilitation and reintegration of juvenile offenders. Father Nuthall, Department of Juvenile Justice Chaplain, considers that the consequences of contact with the system will likely be generational:

I often think of the work that Juvenile Justice is doing and think of it in generational terms. If we can make even a small advance in one person's life, that person can in some way improve the quality of their children's life in turn. That is a very significant investment for the community, not only for the present but for the future, and is something we must never lose sight of.⁵⁰³

- 11.39** Professor Rob White, from the University of Tasmania, expounded on this when he articulated his view that Juvenile Justice should consider the 'past, present and the future' in developing strategic plans for the treatment of juvenile offenders. In this respect, Professor White continued:

Post-release transition is a huge issue for adult offenders as well as for juvenile offenders. The simple first point that I want to make—I have three quick points—is that we have to live with those we punish. At some stage these young people will come back into our communities. So what we do now has to reflect issues of their past, issues of the present, and we have to project into the future.⁵⁰⁴

- 11.40** The Committee would like to put on record its support for the use of programs that support detainees through the important transition from custody to the community. In this regard, the Committee is pleased to note the written response from the Minister for Justice on 14 June 2005, which refers to its Young Offenders Satellite Program:

The Young Offender Satellite Program is a program for inmates due for release. This program is specifically focussed towards inmates who are nearing the end of their sentences. In the time leading up to a juvenile inmate's release, case conferences are

⁵⁰² Mr David Sherlock, Evidence, 9 March 2005, p11

⁵⁰³ Father Ramsay Nuthall, Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Council, 14 March 2005, p52

⁵⁰⁴ Professor Rob White, Head of School of Sociology, Social Work and Tourism, University of Tasmania, Evidence, 12 April 2005, p1

conducted with Juvenile Justice Officers, Probation and Parole, family members and the centre's welfare officer...[who] can assist with a juvenile inmate's need pre- and post-release.⁵⁰⁵

Mentoring

- 11.41** Related to the issue of successful reintegration, the Committee has also heard from a number of witnesses who have suggested that mentoring programs might be an important means of managing juvenile offenders both inside and outside the custodial environment. The significance of peer influence has been raised previously in relation to young adults in detention, and the evidence clearly points to the value of stable, positive role models. Evidence from Acting Sergeant Andrew James, a Youth Liaison Officer with the NSW Police, testified to the contribution of responsible mentors in the community:

If you have someone at home who [young offenders] have some respect for, it makes the process of trying to restore them with their community a whole lot easier than if they live in a fractured home where mum and dad might not care. It is invaluable. If you do not have that, you lose the kid and you have no-one to assist when you are not able to assist.⁵⁰⁶

- 11.42** Similarly, Professor White considered the involvement of mentors to be crucial:

In fact, in one word, you have probably said one of the most important things about getting young people to be contributing and productive members of society. Often, a mentor of some kind is the most important thing. This is somebody they can speak with, somebody they can learn from, and somebody they can respect. I am very much in favour of various types of mentoring programs. If we are talking about incentives, one of the ways to build that into the system is to have a process whereby people can go into the prison and mentor and guide young people whilst they are incarcerated. The young people will know that person is going to be outside waiting for them, as well as coming into the institution to be with them. That is big.⁵⁰⁷

Consultation

- 11.43** In the light of the various options presented in evidence, the Committee is concerned that a complete assessment was not made of all these alternatives prior to the decision being made. The Department of Juvenile Justice has a long history of developing policy through consultation with a range of stakeholders. The Department of Juvenile Justice is the only government department of its kind in Australia, most others being incorporated into broader justice or community services portfolios. It was as a result of consultation on juvenile justice issues in New South Wales that the Department was created and it has been an innovative and progressive move towards differentiating the needs of juvenile offenders from those of their adult counterparts.

⁵⁰⁵ Hon John Hatzistergos, MLC, Minister for Justice, response to questions from the Committee, 14 June 2004, p4

⁵⁰⁶ Acting Sergeant Andrew James, Youth Liaison Officer, NSW Police, Evidence, 8 April 2005, p8

⁵⁰⁷ Professor Rob White, Evidence, 12 April 2005, p7

- 11.44** It is with great disappointment then, that a great many participants in this inquiry have remarked on the haste of the decision-making process which precipitated the transfer of responsibility for Kariong Juvenile Justice Centre to the Department of Corrective Services. Key stakeholders have consistently raised concerns about how such a significant change in government policy could have been made on evidence from the Dalton Report and with so little consultation with those who have most experience and expertise in the area of juvenile justice.
- 11.45** The Dalton Report itself has been heavily criticised for its brevity, relying heavily on the conclusions of Mr Dalton's earlier report in 2002.⁵⁰⁸ Additionally, criticism of the report has centred on two other major issues. Firstly, that it lacks proper in-depth investigation and that there is a lack of evidence to support the conclusions of the report, and secondly for its emphasis on detainee responsibility for incidents at the Centre. As a result, witnesses have concluded that decision-making on this issue was ill-considered and hasty.
- 11.46** In evidence to the Committee, Professor Chris Cunneen and Ms Moore, both members of the Juvenile Justice Advisory Committee, were unequivocal in their criticism of the report:
- Mr Cunneen: 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.⁵⁰⁹
- Ms Moore: Unlike the Dalton Report, the Ombudsman's report's recommendations were evidence based...so we have a feel for exactly what the scope of the problem was. The Dalton Report has not done that. The statements in the Dalton Report are unsubstantiated, from what I have seen, unless there are some appendices that I did not receive.⁵¹⁰
- 11.47** Encouraged to elaborate on her evaluation of the decision, particularly in the light of this report, Ms Moore continued:
- I saw it as a hasty decision made with a lot of public attention on it. It was a disappointing decision given that the evidence has been there for some years that these other problems and these other things need addressing. The Dalton Report really does not provide the same evidence base that is in previous reports. So, I did see it as a hasty political decision.⁵¹¹
- 11.48** Supporting evidence for this assumption can be found in the Memorandum of Understanding between the Department of Juvenile Justice and the Department of Corrective Services, which was drawn up to allow for the management of the centre prior to the enactment of the *Juvenile Offenders Legislation Amendment Act 2004*:

⁵⁰⁸ Johnston and Dalton Report

⁵⁰⁹ Professor Chris Cunneen, Chair, Juvenile Justice Advisory Committee, 9 March 2005, p37

⁵¹⁰ Ms Elizabeth Moore, Evidence, 14 March 2005, p27

⁵¹¹ Ms Elizabeth Moore, Evidence, 14 March 2005, p30

Under the Memorandum of Understanding, the DCS 'does not undertake to comply with all international principles as, at the date of signing this memorandum, Corrective Services will not have had sufficient opportunity to locate such principles and compare such principles with its own operating procedures'. The Council thought this a disturbing indication of a willingness to allow for the supervision of young people under the control of the DJJ by another organisation, which by its own admission was not cognisant of the international human rights principles applying to children and young people.⁵¹²

11.49 The Committee found this statement in the MOU alarming and agrees that it presents a profound and compelling argument that the decision may have been conducted in haste, and without sufficient time to fully assess the implications and consequences of the transfer in any meaningful sense.

11.50 The Committee also found it disquieting that the Government did not seek counsel from the Juvenile Justice Advisory Council which is mandated specifically for the purpose of providing policy advice in regard to juvenile justice issues. Professor Chris Cunneen, Chair of the Juvenile Justice Advisory Council commented:

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.

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.⁵¹³

11.51 Aside from the Juvenile Justice Advisory Council, other important legal advocacy groups as well as community organisations and consumer groups involved in the youth justice system have criticised the Government's approach to consultation in this matter.

11.52 Ms Irwin from the Shopfront Youth Legal Service stated:

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.⁵¹⁴

11.53 Mr Lenny Frail, Chairperson of the Aboriginal Justice Advisory Council stated that he was unaware of any consultation with Indigenous advocacy groups, confirming that there was a:

⁵¹² Submission 9, Juvenile Justice Advisory Committee, p3

⁵¹³ Professor Chris Cunneen, Evidence, 9 March 2005, p39

⁵¹⁴ Ms Jane Irwin, Solicitor, The Shopfront Youth Legal Service, Evidence, 9 March 2005, p46

...lack of consultation with the New South Wales Aboriginal Justice Advisory Council [or] other Aboriginal representatives in the criminal justice system in assessing the impact of legislative proposals and reform.⁵¹⁵

- 11.54** The Committee believes that the failure to consult not only with the Juvenile and Aboriginal Justice Advisory Councils but also with the wide range of other stakeholders has undermined important consultative principles. By taking decisions of this magnitude without first seeking the advice of relevant authorities reflects poorly on Government decision-making in this matter, which lacks transparency and demonstrates wilful disregard for the long-term objectives of the Department of Juvenile Justice.
- 11.55** The absence of any form of consultation lends credibility to those who have sought to argue that this move was reactionary or that it was a concession to sensationalist media attention and growing community desire for a tougher stance on 'law and order'. It is most unfortunate that the process has been undermined in this way.
- 11.56** It is evident to the Committee that the full extent of the impact of this decision in both the short and long term had not been effectively and comprehensively scrutinised in advance of the announcement. This has been reflected in documents such as the Memorandum of Understanding, which confesses to having had little enough time to access important international human rights obligations and ensure that Department of Corrective Services policies were compliant. The many criticisms of the *Juvenile Offenders Legislation Amendment Act 2004* also reflect on the potentially far-reaching consequences of broad discretionary powers, for example, which could have been avoided had a more concerted effort been made to seek guidance.
- 11.57** The Committee strongly urges the NSW Government to ensure that, in future, it consults with the relevant agencies established specifically for the purpose of providing policy advice in regard to juvenile justice issues, prior to making such significant decisions.

Recommendation 21

That the Department of Juvenile Justice ensures that the Juvenile Justice Advisory Council and the Aboriginal Justice Advisory Council are consulted on all future decisions relating to the future of the juvenile justice system, and in particular the accommodation and treatment of juveniles in detention in NSW.

⁵¹⁵ Professor Chris Cunneen, Evidence, 9 March 2005, p20

Chapter 12 Conclusions and major recommendations

In this chapter, the Committee provides its conclusions and key recommendations as well as a number of other related recommendations in which the NSW Government is called upon to make immediate commitments. These major recommendations are supported and complimented by smaller, more specific recommendations throughout the report.

Conclusions and recommendations

- 12.1 In our analysis of the great many issues covered by this inquiry's terms of reference, the Committee has attempted to balance the critically important principles and objectives surrounding the management of juvenile offenders together with the reality that considerable operational changes have already been made in relation to the management of Kariong. In this report we have had regard to the practical constraints in developing constructive and achievable outcomes.
- 12.2 The Committee has received evidence with overwhelming criticism of the decision to transfer Kariong to the Department of Corrective Services (DCS), and also on the manner in which the decision was made and the legislation progressed. Despite the considerable amount of evidence provided to this inquiry, the Committee was unable to categorically establish a reason for the transfer of the Centre at this time. As one witness suggested, numerous reports since 1996 have identified the substantial problems at Kariong with the management of detainees. The Committee joins with the many inquiry participants in questioning the reasons for this decision to transfer Kariong to the Department of Corrective Services. While the Government argued that the profile of offenders has changed to be more sophisticated, hardened and violent, and therefore better suited to the DCS environment, a number of expert witnesses to this inquiry argued that the statistics on offender profiles do not bear this out. The Committee was not satisfied by the reasons given for the transfer and on this basis it is hard not to see this decision as an exaggerated response to negative media coverage of incidents at Kariong.
- 12.3 The Committee is also extremely disappointed about the Governments' failure to consult the Juvenile Justice Advisory Council and the Aboriginal Justice Advisory Council in relation to the transfer of Kariong to DCS. These bodies are mandated specifically for the purpose of providing advice to the Government on juvenile justice matters. The failure to seek the advice of these bodies and other relevant stakeholders is unacceptable and should not be repeated.
- 12.4 The Committee also notes that the manner in which the decision was made had a negative impact on Kariong staff. The speed with which the decision was made and announced only added to the staff's frustration. The Committee believes it is entirely understandable that staff feel aggrieved at being informed of this decision through the media and not through official channels. We acknowledge that since the transfer of Kariong to DCS, the Government has made considerable efforts to ensure satisfactory outcomes for all Kariong employees. We encourage the Government to continue to assist these employees with their redeployment.
- 12.5 Aside from the manner of the decision, most witnesses who gave evidence have acknowledged that to a large extent criticism of the decision was based on supposition and philosophical objections to the aims and objectives of the Department of Corrective Services by comparison

to those of the Department of Juvenile Justice. As we acknowledge in this report, the Department of Corrective Services has addressed many of the management problems at the Centre and has been successful in restoring order and control. However, evidence is not yet available for the Committee to make categorical observations about the long-term effects of the Government's decision.

- 12.6** The *Juvenile Offenders Legislation Amendment Act 2004* was passed in December 2004 and is in operation now. Kariong Juvenile Correctional Centre, as it has been proclaimed under the Act, appears to be running effectively under the Department of Corrective Services' management and credit should be given to the professionalism of staff at the Centre for putting into effect new procedures and routines, and for making structural changes to the Centre that had been manifestly lacking prior to the transfer.
- 12.7** While several witnesses suggested the decision should be overturned, the Committee believes that it would be counterproductive in the short-term to the effective management of Kariong, and importantly, to the wellbeing of young offenders at the Centre, to immediately return its administration to the Department of Juvenile Justice. This is in recognition of three important factors as outlined below.
- 12.8** Firstly, the Department of Juvenile Justice has consistently failed to comprehensively implement the recommendations of consecutive NSW Ombudsman reports, and others. Recommendations for reform at Kariong have either not been implemented at all, or have only been partially implemented. This has been attributed to a number of factors, including the intransigence of some staff. As reported earlier, the Committee believes that responsibility for successful implementation of both operational and cultural change lay principally with the DJJ. Effective management procedures should have adequately mitigated the effect of obstructive staff through performance review and disciplinary measures. The Department remains some distance from the successful implementation of a number of the NSW Ombudsman's recommendations.
- 12.9** Secondly, evidence is yet to be revealed of any long-term negative impact on juvenile offenders at Kariong. Areas of concern such as extended lock-downs for detainees and lack of access to telephone calls for example, appear to have been successfully negotiated with the Governor of the Centre. However the Committee believes there are some legislative and cultural changes that must be made immediately to ensure that the management of juvenile offenders is age-appropriate and in keeping with juvenile justice principles. These amendments are addressed below. The broader arguments about the inappropriateness of the Department of Corrective Services management regime for juvenile offenders are compelling and may yet be proved, but at this time, the Department of Corrective Services appears to be addressing these concerns.
- 12.10** Thirdly, detainees at the Centre have already had to endure significant changes imposed upon them as a result of the transfer. The Committee believes that to make another substantial change so soon may affect the stability and security of the Centre.
- 12.11** Nevertheless, the Committee does accept a number of the general observations about the potentially inappropriate nature of the Department of Corrective Services regime for juveniles. In particular, we note the many criticisms of its record in relation to reducing recidivism and re-offending in adults and the number of assaults in adult prisons. We share the concerns of witnesses in this regard. We are clear that the record of the Department of Corrective Services' management of Kariong should be scrutinised thoroughly and the impacts of its regime

assessed in terms of its effect on juveniles, their access to services, participation in education and therapeutic programs, and their emotional, physical and psychological development.

Recommendation 22

That the NSW Government continue the current management arrangement for Kariiong while undertaking an evaluation of the operation and management of the Centre to establish the longer term impact of the decision on detainees and the juvenile justice system more broadly. This investigation should include an evaluation of:

- the case management system, including the number of rehabilitation and therapeutic programs being provided for juveniles; attendance figures for those programs and their effectiveness in achieving desirable outcomes
- transfers of detainees between Kariiong Juvenile Correctional Centre and a) juvenile justice centres and b) adult facilities
- access arrangements for juveniles, including access to legal services, advocates and family and support networks
- service reviews and Official Visitor reports
- all records of incidents at the Centre (including assaults), including an assessment of the investigation and management of those incidents in terms of use of force and use of restraint equipment, and punishments given to detainees.

12.12 While the Committee is recommending that the status quo remain in general, we believe that significant legislative and cultural change must be implemented to safeguard the rights of juveniles and to adhere to the rehabilitative principles of the Department of Juvenile Justice. The Committee is persuaded by the numerous concerns raised in evidence regarding the scope of the *Juvenile Offenders Legislation Amendment Act 2004*, and the breadth of discretion afforded to those executing its provisions. In order to address the concerns considered throughout this report the Committee recommends the following:

Recommendation 23

That the NSW Government consult the Juvenile Justice Advisory Council and Aboriginal Justice Advisory Council with a view to making immediate legislative amendments and changes to Departmental procedures to ensure the appropriate management of juveniles at Kariiong, as per the recommendations in this report.

Specifically, that the NSW Government consult upon, and amend, relevant legislation to attend to the following issues:

- to include provisions in the *Crimes (Administration of Sentences) Act 1999* to reflect Australasian Standards for Juvenile Custodial Facilities relating to the rights of juveniles in detention, similar to those contained in the *Children (Detention Centres) Act 1987*
- to specify Kariiong Juvenile Correctional Centre as the only correctional centre established by the amendments in the *Juvenile Offenders Legislation Amendment Act 2004*. This removes the possibility of additional centres being proclaimed as correctional centres
- to make the legislation gender specific, to remove the possibility of young women being subject to amendments in the *Juvenile Offenders Legislation Amendment Act 2004*
- to ensure that detainees cannot be transferred to an adult correctional centre on the basis that they 'wish to be transferred' unless provided with counselling and advice. Additionally, to provide for those detainees transferred under this provision to be allowed to transfer back should they so wish
- to ensure that the SYORP and/or SORC are involved in all decision-making pertaining to transfers of juvenile offenders between juvenile justice centres and Kariiong Juvenile Correctional Centre; and between Kariiong Juvenile Correctional Centre and the adult system
- to constitute the SYORP in legislation, setting out its functions, membership and the way it is to conduct its inquiries
- to specify what 'behaviour' in particular would justify the making of a transfer order, under section 28 of the *Children (Detention Centres) Act 1987* and 41C of the *Crimes (Administration of Sentences) Act 1999*
- to allow juvenile offenders a right of appeal to a court against a decision to transfer that detainee from Kariiong Juvenile Correctional Centre to an adult correctional centre.

Additionally, that the NSW Government:

- amend Department of Corrective Services departmental goals to include a commitment to rehabilitation for juvenile offenders specifically, as they have been determined to have different requirements to adults

- amend Department of Corrective Services procedures to: extend out-of-cell hours for all detainees to accommodate the provision of more programs; encourage the access and involvement of external agencies and advocates for young people as per the Australasian Standards for Juvenile Custodial Facilities
- set measurable targets for assessment for reintegration of offenders back into the Juvenile Justice system at the earliest possible opportunity.

12.13 The Committee considered other alternatives available to the Government at the time of the transfer in Chapter 11. Evidence to the inquiry has speculated as to the need for, and purpose of, a maximum-security facility in the juvenile justice system. The Department has addressed this issue through its review of options for Kariong in the Fish Payne Pattenden Viney Report. The Committee also considered the relative merits of centralising serious juvenile offenders at Kariong against the need to accommodate juveniles as close to their home as possible.

12.14 Strong evidence from a number of participants leads the Committee to the following recommendation.

Recommendation 24

That the NSW Government continue to develop a long-term strategy for the accommodation of serious young offenders, and in particular:

- to further consider returning the responsibility for management of all juvenile offenders to the Department of Juvenile Justice in the longer term
- to further investigate establishing an alternative facility for 18-24 year olds, including comparative analysis of such approaches in other States, Territories and other jurisdictions, to address concerns relating to adults in the juvenile justice system.

12.15 There is an established principle within the NSW Government that the needs and requirements of juveniles are distinct from those of adults, which is reflected in the structural separation of the portfolios that govern those two client groups. This is a principle to which the Committee is committed.

12.16 The decision to transfer Kariong to the Department of Corrective Services has troubled many participants to the inquiry as well as employees of the Department of Juvenile Justice working at the various juvenile justice centres across the State. They have expressed their fears about the future of the Department of Juvenile Justice and its separation from the adult corrections system. The Committee feels compelled to reiterate its support for the principles of the Department of Juvenile Justice and for the separation of responsibility for juvenile offenders. The Committee has recommended above that amendments be made to ensure that the changes implemented by the *Juvenile Offenders Legislation Amendment Act 2004* apply only to Kariong.

12.17 In addition, the Committee believes that the NSW Government should provide a long-term commitment to the aims and objectives of the Department of Juvenile Justice. This should be reinforced with a financial commitment to the development of appropriate programs, staff training and other needs identified throughout this report.

Recommendation 25

That the NSW Government provides:

- a long-term commitment to maintaining a separate Department of Juvenile Justice to administer the range of non-custodial and custodial services appropriate to the needs of young people in NSW
 - an increased allocation of funding for the provision of these services. In particular, priority should be given to provide increased budgets for program development and staff training.
-

12.18 Following on from recommendations earlier in this report, the Committee believes that establishing a solid foundation of evidence, taken from appropriate longitudinal research, is essential to the process of successful policy making. Participants to the inquiry have made strong representations to the Committee in this regard, having criticised reports to the Government for their brevity and lack of evidence-base. Evaluation of major policy in relation to rehabilitation and reintegration programs as well as to the reduction of recidivism is needed to further the aims of the Department of Juvenile Justice. The Committee would like to reiterate the following recommendations:

Recommendation 26

That the NSW Government ensures:

- that the Departments of Juvenile Justice and Corrective Services ensure research is conducted on the effectiveness of current rehabilitation programs aimed at reducing recidivism. The research should include a thorough examination of those juveniles most at risk of re-offending
 - that the Departments of Juvenile Justice and Corrective Services invest in effective and appropriate programs targeted at those offenders most at risk of re-offending. The Departments should consider programs from other jurisdictions, including other states and overseas, that have shown to be successful in addressing recidivism rates in young offenders.
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Appendix 1 Submissions

No	Author
1	Mr Rod Blackmore OAM DipLaw
2	Commissioner Ron Woodham, NSW Department of Corrective Services
3	Mr David Sherlock, NSW Department of Juvenile Justice
4	Mr Tony Westmore, Indigenous Law Centre
5	Ms Stacy Scheff, Justice Action
6	Ombudsman Bruce Barbour, NSW Ombudsman
7	Father Ramsay Nuthall, Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee, NSW Department of Juvenile Justice
8	Ms Jane Irwin and Ms Jane Sanders, Shopfront Youth Legal Centre
9	Professor Chris Cunneen, NSW Juvenile Justice Advisory Council, Partially Confidential at request of author
10	Mr Louise Sutherland and Ms Emma Keir, The Youth Justice Coalition
11	Mr Jim Simpson, The NSW Council for Intellectual Disability
12	Mr James McDougall, National Children's and Youth Law Centre
13	Mr Gary Moore, Council of Social Service of NSW (NCOSS)
14	Mr Lindsay Brooker, Legal Aid Commission of NSW
15	Commissioner Gillian Calvert, NSW Commission for Children and Young People
16	Ms Agnes Chong, Combined Community Legal Centres' Group (NSW) Inc
17	Mr Colin Coakley, Country Women's Association of NSW
18	Ms Elizabeth Moore
19	Mr John Cahill, Public Service Association of NSW
20	Mr Mark Fitzpatrick
21	Ms Sally Peyou
22	Mr Andrew Haesler SC, NSW Public Defenders
23	Mr Lennie Frail, Aboriginal Justice Advisory Council
24	Mr Jack Walker
25	Ms Sandra Soldo, Police Association of NSW
26	Mr Edward Ball
27	Name suppressed at request of author
28	Ms Carolyn Delaney
29	Mr Garner Clancey

Appendix 2 Witnesses and Site Visit

Date	Name	Position and Organisation	
25 February 2005 Kariong Juvenile Correctional Centre, Kariong (site visit only)	Mr Peter Maa	Governor – Kariong Juvenile Correctional Centre	
	Mr David Mumford	Deputy Governor – Kariong Juvenile Correctional Centre	
9 March 2005 Room 1108, Parliament House	Mr David Sherlock	Director General – NSW Department of Juvenile Justice	
	Mr Peter Muir	Assistant Director General – NSW Department of Juvenile Justice	
	Mr Garner Clancey	Lecturer, University of Western Sydney	
	Professor Chris Cunneen	Chair, NSW Juvenile Justice Advisory Council	
	Ms Jane Sanders	Principal Solicitor, Shopfront Youth Legal Centre	
	Ms Jane Irwin	Solicitor, Shopfront Youth Legal Centre	
14 March 2005 Jubilee Room, Parliament House	Hon John Hatzistergos MLC	Minister for Justice	
	Commissioner Don Rodgers	Acting Senior Assistant, NSW Department of Justice	
	Ms Elizabeth Moore	School of Humanities and Social Science – Charles Sturt University	
	Mr Howard Brown	Representative – VOCAL Inc	
	Ms Martha Jabour	Representative – Homicide Victims Support Group	
	Father Ramsay Nuthall	Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee	
	Pastor Martin Parish	Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee	
	Reverend Ian Duncan	Juvenile Justice Sub-Committee of the Civil Chaplaincies Advisory Committee	
	8 April 2005 Room 1108, Parliament House	Ms Catherine Mackson	Seniors Programs Officer (Youth) – NSW Police
		Sergeant Rachel Byrne	Youth Liaison Officer – NSW Police
Acting Sergeant Andrew James		Youth Liaison Officer – NSW Police	

Date	Name	Position and Organisation
12 April 2005 Room 1108, Parliament House	Senior Constable Suzanne Cady	Youth Liaison Officer – NSW Police
	Mr Rod Blackmore	Former Chief Magistrate – Children’s Court
	Magistrate John Crawford	Children’s Magistrate – Children’s Court
	Professor Rob White	Head of School of Sociology, Social Work and Tourism – University of Tasmania
	Mr Gary Moore	Director – Council of Social Services of NSW (NCOSS)
	Mr Lennie Frail	Chairperson – Aboriginal Justice Advisory Council
	Ms Lydia Miller	Executive Officer – Aboriginal Justice Advisory Council
	Ms Bobbi Cattermole	Chairperson – Aboriginal Youth Justice Advisory Council
	Mr Bill Grant	Chief Executive Officer – Legal Aid Commission NSW
	Ms Julie Morgan	Executive Officer – Legal Aid Commission NSW
17 May 2005 Jubilee Room, Parliament House	Ms Teresa O’Sullivan	Senior Solicitor, Children’s Legal Service – Legal Aid Commission NSW
	Mr Mark Fitzpatrick	Former staff – Kariong Juvenile Justice Centre
	Mr Brian Fitzpatrick	Former staff – Kariong Juvenile Justice Centre
	Mr Peter Hawthorne	Former staff – Kariong Juvenile Justice Centre
	Mr Glen Menser	Former staff – Kariong Juvenile Justice Centre
	Mr Stanley Parkes	Former staff – Kariong Juvenile Justice Centre
	Ms Carolyn Delaney	Drug and Alcohol Counsellor – Newcastle Juvenile Justice Centre
	Mr Andrew Wilson	Industrial Officer – Public Service Association of NSW
	Mr Glenn Elliott-Rudder	Secretary, Departmental Committee Juvenile Justice – Public Service Association of NSW
	Mr Steven Turner	Assistant General Secretary, Public Service Association of NSW (PSA)
Mr Andrew Haesler SC	Solicitor – NSW Public Defenders	

Appendix 3 SORC and SYORP

SERIOUS OFFENDERS REVIEW COUNCIL (SORC)

The Serious Offenders Review Council is constituted under Part 9 of the *Crimes (Administration of Sentences) Act 1999*.

Functions: SORC's functions, apart from its new function under section 41C, are:

- (a) to provide advice and make recommendations to the Commissioner with respect to the following:
 - (i) the security classification of serious offenders,
 - (ii) the placement of serious offenders,
 - (iii) developmental programs provided for serious offenders,
- (b) to provide reports and advice to the Parole Board concerning the release on parole of serious offenders,
- (c) to prepare and submit reports to the Supreme Court with respect to applications [for redetermination of life sentences] under Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*,
- (d) to review segregated and protective custody directions under Division 2 of Part 2,
- (e) to provide reports and advice to the Minister and to such other persons or bodies as may be prescribed by the regulations,
- (f) to perform such other functions as may be prescribed by the regulations in relation to the management of serious offenders and other offenders.⁵¹⁶

Serious Offenders: Serious offenders are offenders who are serving a sentence of imprisonment whereby the offender will spend at least 12 years in custody.

Members: SORC must consist of at least 8 but not more than 14 members. Three members must be judicially qualified persons (appointed by the Governor), two members are to be officers of the Department of Corrective Services (appointed by the Commissioner), and the remainder are to be persons who reflect the composition of the community at large (appointed by the Governor).⁵¹⁷ The quorum for a meeting of SORC is 3 members consisting of one judicial member, one official member and one community member.

Inquiries: Judicial members have the power to require persons to appear before SORC to give evidence; and the power to require persons to produce any document that is relevant to any proceeding of SORC. Judicial members may also require a person to answer a question that is reasonably related to the proceedings. At hearings before SORC, persons who are entitled to make submissions may be represented by a legal practitioner, may call and examine any witness who attends, may give evidence on oath, may produce documents, and may adduce such matters and address on such matters as are relevant to the proceedings before SORC.

Proceedings before SORC are not to be conducted in an adversarial manner and are to be conducted with as little formality and technicality, and with as much expedition, as fairness to any affected person

⁵¹⁶ *Crimes (Administration of Sentences) Act 1999* (NSW), s 197

⁵¹⁷ *Crimes (Administration of Sentences) Act 1999* (NSW), s 195(2)

and the requirements of the Act permit. SORC is not bound by the rules of evidence, but may inform itself of any matter in such manner as it thinks appropriate.

SERIOUS YOUNG OFFENDERS REVIEW PANEL (SYORP)

SYORP was established in 1998 as an independent body to advise the Director General of the Department of Juvenile Justice. The concept of having a review panel for young offenders was outlined in a recommendation of the Juvenile Justice Advisory Council of NSW in its 1993 Green Paper entitled *Future Directions for Juvenile Justice in New South Wales* (see rec.224).

It was initially a pilot project for 18 months. Following an evaluation of SYORP in 2000, the Minister extended its operation. SYORP is not constituted by, or given a specific role under, any legislation. The following information on its functions and members is taken from the Department of Juvenile Justice's 2003/04 Annual Report.⁵¹⁸

Functions:

- reviews the classification of serious children's indictable offenders;
- reviews long term A classification detainees held at Kariiong Juvenile Justice Centre and other juvenile justice centres;
- makes recommendations to the Director General regarding the granting of day and overnight leave to serious children's indictable offenders;
- reviews long-term remandees on serious children's indictable offences;
- considers other aspects of the case management of serious children's indictable offenders referred to it by the Director General, and
- provides advice on any other matters referred to it by the Director General or the Minister.

Members:

Members of SYORP are appointed by the Minister and approved by Cabinet. The approved composition of the panel in 2003/04 was:

- an acting Magistrate (Chairperson);
- an independent community person with expertise dealing with youth generally;
- a member of the Aboriginal community;
- a victim of crime; and
- a delegate for the Assistant Director General (Operations) of the Department of Juvenile Justice as ex-officio.

⁵¹⁸ NSW Department of Juvenile Justice, *Annual Report 2003/04*, p 43

Appendix 4 Memorandum of Understanding (MOU)

MEMORANDUM OF UNDERSTANDING

DATED THIS DAY OF 2004

PARTIES:

1. **THE COMMISSIONER OF CORRECTIVE SERVICES FOR AND ON BEHALF OF THE STATE OF NEW SOUTH WALES** of 24 Campbell Street, Sydney, New South Wales, 2000 (*“the Commissioner”*), and
2. **THE DIRECTOR-GENERAL OF THE DEPARTMENT OF JUVENILE JUSTICE** of 477 Pitt Street, Sydney, New South Wales, 2000 (*“the Director-General”*), and
3. **THE CHIEF EXECUTIVE OFFICER OF JUSTICE HEALTH** of Anzac Parade, Malabar, New South Wales, 2036 (*“the Chief Executive Officer”*)
4. **THE MINISTER FOR JUVENILE JUSTICE** of 1 Farrer Place, Sydney, New South Wales, 2000
5. **THE MINISTER FOR JUSTICE** of 59-61 Goulburn Street, Sydney, New South Wales, 2000

BACKGROUND:

1. The *Commissioner* is a representative of the Crown in the State of New South Wales.
2. The *Commissioner* has responsibility for the containment of adult offenders in custody and the supervision of offenders in the community.
3. The *Director-General* is a representative of the Crown in the State of New South Wales.
4. The *Director-General* has responsibility for the containment of juvenile offenders in custody and the supervision of juvenile offenders in the community.

5. The *Chief Executive Officer* is a representative of the Crown in the State of New South Wales.
6. The *Chief Executive Officer* has responsibility for the provision of health services to persons held in correctional centres, periodic detention centres, detention centres and certain police stations and court cell complexes.
7. The parties wish to establish the framework for the transfer of the operation of Kariong Juvenile Justice Centre from the *Director-General* to the *Commissioner*.
8. Kariong Juvenile Justice Centre is a detention centre declared under section 5 of the *Children (Detention Centres) Act 1987* to be a detention centre. Kariong Juvenile Justice Centre holds male detainees aged 16 years and over who are classified as either A1o or A1b.
9. Key legislation that applies to the *Commissioner* is listed in Schedule 1 (Item 1).
10. Key legislation that applies to the *Director-General* is listed in Schedule 1 (Item 2).
11. Key legislation that applies to the *Chief Executive Officer* is listed in Schedule 1 (Item 3).
12. The document *Standards for Juvenile Custodial Facilities* is contained in Schedule 2.
13. The following is a record of the matters agreed between the parties and supersedes all prior correspondence and negotiations between the parties in this matter on this issue.
14. This document, being a Memorandum of Understanding, creates no legally binding obligations.

1. DEFINITIONS

The following definitions apply in the context of this Memorandum only:

Category A1o means the category of detainee defined in the document *Objective Detainee Classification Policy (July 2004)* as a detainee charged with or convicted of a serious children's indictable offence in accordance with any of the following sections of the *Crimes Act 1900*: homicide (section 19A); manslaughter (section 24); sex offences (sections 61J, 61JA, 61P; and contamination (93IF)

Category A1b means the category of detainee defined in the document *Objective Detainee Classification Policy (July 2004)* as a detainee who presents a high level of risk in one or more of the identified risk areas and requires a very intensive level of supervision, a very high level of secure containment and must be accommodated and managed in a detention centre designated as high security

Commissioner means the Commissioner of Corrective Services as specified in section 3 of the *Crimes (Administration of Sentences) Act 1999*, whose functions are listed in section 231(1) of the Act

Commissioner for Children and Young People means the Commissioner for Children and Young People appointed in accordance with section 5 of the *Commission for Children and Young People Act 1998*

correctional centre means premises proclaimed to be a correctional centre under section 225 of the *Crimes (Administration of Sentences) Act 1999*

Corrective Services means the New South Wales Department of Corrective Services

detainee means a person convicted of an offence and held in a juvenile justice centre, or a person on remand and held in a juvenile justice centre

Director-General means the Director-General of the Department of Juvenile Justice as specified in section 3 of the *Children (Detention Centres) Act 1987*, whose functions are listed in section 14 of the Act

Executive Council means the Executive Council of New South Wales as defined in section 21 of the *Interpretation Act 1987*

inmate means a person convicted of an offence and held in a correctional centre, or a person on remand and held in a correctional centre

Juvenile Justice means the New South Wales Department of Juvenile Justice

juvenile justice centre means premises declared to be a detention centre under section 5(1) of the *Children (Detention Centres) Act 1987*

Kariong CC means Kariong JCC after it has been proclaimed to be a correctional centre

Kariong JJC means the detention centre known as Kariong Juvenile Justice Centre

Minister for Justice means the minister of the Crown appointed by the Governor of New South Wales to administer the *Crimes (Administration of Sentences) Act 1999*

Minister for Juvenile Justice means the minister of the Crown appointed by the Governor of New South Wales to administer the *Children (Detention Centres) Act 1987*

Official Visitor means an official visitor appointed in accordance with section 228 of the *Crimes (Administration of Sentences) Act 1999*

Standards for Juvenile Custodial Facilities means the document with this title published in March 1999 by the Australasian Juvenile Justice Administrators

2. COMMENCEMENT

This Memorandum commences on the date of signing by all parties.

3. TERM AND EXTENSION OF TERM

The term of this Memorandum is for a period of 3 years from the date of signing by all parties, or until such time as Kariong JJC becomes Kariong CC. If all parties agree to extend the term of 3 years then the extension must be recorded in writing and signed by all parties. Any extension of the term must be negotiated and concluded prior to the last date of the original term. If an extension of the term is not negotiated and arranged then this Memorandum will expire on the last day of the term.

4. OBJECTIVES OF THIS MEMORANDUM

The objectives of this Memorandum are as follows:

- a) to establish a framework for the transfer of Kariong JJC from Juvenile Justice to Corrective Services
- b) to ensure that, when Kariong JJC is proclaimed to be a correctional centre, existing detainees held at Kariong JJC are transferred by the Minister for Juvenile Justice and the Minister for Justice from Kariong JJC to Kariong CC
- c) to document the standards which Corrective Services will follow in operating Kariong JJC and Kariong CC, so far as those standards differ from the *Standards for Juvenile Custodial Facilities*

- d) to document detainee/inmate programs which Corrective Services will provide at Kariong JJC and at Kariong CC.

5. OBLIGATIONS OF THE MINISTER FOR JUVENILE JUSTICE

The obligations of the Minister for Juvenile Justice are:

- a) expeditiously to consider papers, when Kariong JJC is proclaimed to be a correctional centre, recommending that existing detainees held at Kariong JJC be transferred to Kariong CC

6. OBLIGATIONS OF THE MINISTER FOR JUSTICE

The obligations of the Minister for Justice are:

- a) to submit, as soon as possible after any required legislative changes have been made to enable Corrective Services to run Kariong JJC as a correctional centre, a Minute to the Executive Council recommending that Kariong JJC be proclaimed as a correctional centre
- b) expeditiously to consider papers, when Kariong JJC is proclaimed to be a correctional centre, recommending that existing detainees held at Kariong JJC be transferred to Kariong CC
- c) to appoint, in consultation with the Commissioner for Children and Young People, an Official Visitor for Kariong CC.

7. OBLIGATIONS OF THE COMMISSIONER

The obligations of the Commissioner are as follows:

- a) to ensure that Kariong JJC, and Kariong CC, is operated in accordance with relevant legislation and the *Standards for Juvenile Custodial Facilities*, subject to variations to those standards as set out in this Memorandum
- b) to arrange for capital works to be carried out at Kariong JJC to bring Kariong JJC up to the standard of a correctional centre
- c) to arrange for the provision of detainee/inmate programs as set out in this Memorandum

- d) to ensure that, in all deliberations relating to the proposed transfer of a detainee held at Kariong JJC, or an inmate held at Kariong CC, back to the juvenile detention system, Juvenile Justice has been invited to send one of its officers to attend such deliberations and to participate in decision-making.

8. OBLIGATIONS OF DIRECTOR-GENERAL

The obligations of the Director-General are as follows:

- a) to facilitate the transfer of Kariong JJC from Juvenile Justice to Corrective Services
- b) to delegate his functions, so far as Kariong JJC is concerned, to the Commissioner at the time of signing this Memorandum
- c) to ensure that all existing staff of Kariong JJC, both staff of the Department of Juvenile Justice and staff of any other government or non-government agency, leave Kariong JJC at times to be agreed between the Director-General and Commissioner
- d) to ensure that, in all deliberations relating to the classification of a male detainee aged 16 years and over as either category A1o or category A1b, Corrective Services has been invited to send one of its officers to attend such deliberations and to participate in decision-making.

9. OBLIGATIONS OF CHIEF EXECUTIVE OFFICER

The obligations of the Chief Executive Officer are as follows:

- a) to provide health services to persons held in Kariong JJC and Kariong CC.

10. VARIATIONS TO *STANDARDS FOR JUVENILE CUSTODIAL FACILITIES*

- a) Corrective Services and Justice Health will not necessarily collate all of the information relevant to all of the indicators listed under each standard.
- b) Standard 2.5: While Corrective Services will advise and enable each young person to make or maintain confidential contact with a legal adviser, for security reasons Corrective Services will not necessarily allow a detainee/inmate to make or maintain confidential contact with advocates for young people within the justice system.

- c) Standard 3.2: While Corrective Services will provide comprehensive information in accessible formats to detainees/inmates about their rights, obligations, programs and services at Kariong JJC, and at Kariong CC, as soon as possible after admission, Corrective Services will not necessarily provide such information to a detainee's/inmate's family or significant other.
- d) Standard 6.3: While Corrective Services will provide detainees/inmates with a variety of foods of satisfactory quality in sufficient quantities, and will ensure that meals are nutritious, meet dietary needs, and their choice and preparation is influenced by detainees'/inmates' preferences, Corrective Services will put proper nutrition ahead of the preferences of detainees/inmates.
- e) Standard 7.3: While Corrective Services will comply with all laws relating to the containment of detainees/inmates at Kariong JJC, and at Kariong CC, Corrective Services does not undertake to comply with all international principles as, at the date of signing this Memorandum, Corrective Services will not have had sufficient opportunity to locate such principles and compare such principles with its own operating procedures.
- f) Standard 9.1: Corrective Services assumes that, at the date of signing this Memorandum, buildings at Kariong JJC meet this standard. Corrective Services intends to make modifications and additions to the buildings at Kariong JJC. In making such modifications and additions Corrective Services will endeavour to meet any applicable recommendations of the Royal Commission into Aboriginal Deaths in Custody and any applicable standards contained in the *Design Guidelines for Juvenile Justice Facilities in Australia and New Zealand*.

11. DETAINEE/INMATE PROGRAMS

The Commissioner will arrange for detainee/inmate programs at Kariong JJC and at Kariong CC, as follows:

- a) education
- b) alcohol and other drugs counselling
- c) relapse prevention
- d) anger management
- e) personal development
- f) team-building

8

- g) other programs which Corrective Services may develop for detainees/inmates at Kariong JJC and Kariong CC.

12. VARIATIONS TO THIS MEMORANDUM

Any variations to this Memorandum must be agreed, recorded in writing and signed by all parties. Any variations that are not so documented and signed will have no effect whatsoever.

SCHEDULE 1

Key legislation:

Item 1:

(key legislation that applies to the Commissioner)

Crimes (Administration of Sentences) Act 1999

Crimes (Administration of Sentences) Regulation 2001

Item 2:

(key legislation that applies to the Director-General)

Children (Detention Centres) Act 1987

Children (Detention Centres) Regulation 2000

Item 3:

(key legislation that applies to the Chief Executive Officer)

Health Services Act 1997

Crimes (Administration of Sentences) Act 1999

Crimes (Administration of Sentences) Regulation 2001

Children (Detention Centres) Act 1987

Children (Detention Centres) Regulation 2000

SCHEDULE 2

Standards for Juvenile Custodial Facilities

Appendix 5 Comparison of powers

1. COMPARISON OF SEGREGATION POWERS

This section compares the segregation powers available in relation to detainees of a juvenile detention centre and inmates of a juvenile or adult correctional centre. The power to segregate a detainee or inmate is different to the power to discipline a detainee or inmate for misbehaviour by confining them to their cell.

Segregation powers in juvenile detention centres

Section 19 of the *Children (Detention Centres) Act 1987* provides:

- (1) If the centre manager of a detention centre believes on reasonable grounds that a detainee should be segregated in order to protect the personal safety of that or any other detainee, or of any other person, the centre manager may, whether or not with the consent of the detainee, direct the segregation of the detainee, subject to the following conditions:
 - (a) the nature and duration of the segregation shall be reasonable having regard to the age, mental condition and development of the detainee;
 - (b) the duration of the segregation shall be as short as practicable but, in any case, shall not exceed 3 hours, or, with the approval of the Director General, 6 hours, in any period of 24 hours;
 - (c) the detainee shall be provided with some means of usefully occupying himself or herself;
 - (d) the physical environment of the place where the detainee is kept segregated shall, unless otherwise appropriate, be no less favourable than the physical environment of other places occupied by detainees in the detention centre;
 - (e) the detainee shall be so segregated that at all times he or she is visible to, and can readily communicate with, an officer.
- (2) A detainee shall not be segregated under this section by way of punishment.
- (3) The centre manager shall make a record containing such particulars as may be prescribed of any segregation effected under this section and shall forward copies of the record to the detainee and to the Director General within 24 hours of the segregation.
- (4) A detainee shall not be segregated under this section unless the centre manager of the detention centre is satisfied that there is no practicable alternative means to protect the personal safety of the person or persons for whose protection the detainee is to be segregated.

Segregation powers in correctional centres

Section 10 of the *Crimes (Administration of Sentences) Act 1999* provides that the Commissioner of Corrective Services, or the governor of a correctional centre, may direct that an inmate be held in segregated custody if of the opinion that the inmate's association with other inmates constitutes or is likely to constitute a threat to: (a) the personal safety of any other person, or (b) the security of a correctional centre, or (c) good order and discipline within a correctional centre. An inmate subject to a segregated custody direction is to be detained in isolation from all other inmates or in association only with such inmates as the Commissioner or governor determine.⁵¹⁹

Diet and privileges while segregated: An inmate who is held in segregated custody is not to suffer any reduction of diet and is not to be deprived of any rights or privileges other than those determined by the Commissioner or the governor, either generally or in a particular case, and other than those the deprivation of which is necessarily incidental to the holding of the inmate in segregated custody.⁵²⁰

Time in segregated custody: A segregated custody direction remains in force until it is revoked. The Commissioner or governor may, at any time, revoke a segregated custody direction or amend its terms.⁵²¹

⁵¹⁹*Crimes (Administration of Sentences) Act 1999*, s 12(1).

⁵²⁰*Crimes (Administration of Sentences) Act 1999*, 12(2).

⁵²¹*Crimes (Administration of Sentences) Act 1999*, s 17.

Application for review by Review Council: An inmate whose total continuous period of segregated custody exceeds 14 days may apply to the Review Council for a review of the segregated custody direction.⁵²² In reviewing a segregated custody direction, the Review Council must take a number of matters into account and it may revoke, confirm or amend the segregated custody direction.⁵²³

Review of direction by Commissioner: The governor must submit a report about the segregated custody direction to the Commissioner within 14 days after the date on which the direction is given.⁵²⁴ Within 7 days after receiving the report, the Commissioner must review the segregated custody direction and must either revoke the direction, confirm the direction, or confirm the direction and amend its terms.⁵²⁵ If the direction is confirmed, the governor must submit a further report about the direction to the Commissioner within 3 months after the relevant date, and within each subsequent period of 3 months after that period.⁵²⁶ The Commissioner must review the direction within 7 days of receiving any such further report.

Report to Minister: As soon as practicable after confirming a segregated custody direction, the Commissioner must give written notice of that fact to the Minister, giving reasons for the confirmation direction, if the confirmation direction will result in the inmate being subject to a total continuous period of segregated custody exceeding 6 months, or the inmate has already been subject to a total continuous period of segregated or protective custody exceeding 6 months.⁵²⁷

2. COMPARISON OF DISCIPLINARY SANCTIONS

Disciplinary sanctions in juvenile detention centres

Misbehaviour

The *Children (Detention Centres) Regulations 2000* provide that a detainee must not breach any of the provisions of Schedule 1.⁵²⁸ Schedule 1 is divided into 'minor misbehaviour' and 'serious misbehaviour'.

Minor misbehaviour includes misconduct such as disobeying rules or instructions, lying, making unauthorised telephone calls, damaging property, using abusive language, fighting, and stealing. *Serious misbehaviour* includes assault, hiding in an attempt to escape, insubordination, inciting misbehaviour, possessing or supplying unauthorised medications or substances, and breaching leave conditions.

Hearing of allegations of misbehaviour

An allegation that a detainee is guilty of minor misbehaviour is to be heard and determined by the centre manager.⁵²⁹ An allegation that a detainee is guilty of serious misbehaviour is to be heard and determined by a Children's Magistrate.⁵³⁰

Punishments for misbehaviour

The following punishments may be imposed on a detainee found guilty of misbehaviour:

- (a) caution,
- (b) restriction from participation in sport or leisure activities for a period not exceeding 4 days,
- (c) additional duties for a period not exceeding 7 days, being duties of a constructive nature designed to promote the welfare of detainees,
- (d) exclusion from, or confinement to, a place for a period not exceeding 3 hours or, in the case of a detainee of or over the age of 16 years, not exceeding 12 hours,

⁵²² *Crimes (Administration of Sentences) Act 1999*, s 19(1).

⁵²³ *Crimes (Administration of Sentences) Act 1999*, s 22.

⁵²⁴ *Crimes (Administration of Sentences) Act 1999*, s 16(1).

⁵²⁵ *Crimes (Administration of Sentences) Act 1999*, s 16(2).

⁵²⁶ *Crimes (Administration of Sentences) Act 1999*, s 16(3).

⁵²⁷ *Crimes (Administration of Sentences) Act 1999*, s 18.

⁵²⁸ *Children (Detention Centres) Regulations 2000*, cl 53.

⁵²⁹ *Children (Detention Centres) Regulations 2000*, cl 56.

⁵³⁰ *Children (Detention Centres) Regulations 2000*, cl 65.

- (e) in the case of...serious misbehaviour—extension, by a period that does not exceed 7 days, of the non-parole period of any detention order, or the term of any detention order without a non-parole period, to which the detainee is subject....⁵³¹

Limits on confinement and exclusion

Confinement or exclusion pursuant to (d) above may only be imposed on a detainee subject to the following conditions:

- (a) the detainee shall be provided with some means of usefully occupying himself or herself,
- (b) the physical environment of the place where the detainee is confined shall, unless otherwise appropriate, be no less favourable than the physical environment of other places occupied by detainees in the detention centre,
- (c) the detainee shall at all times be visible to, and able to communicate readily with, an officer.⁵³²

Punishment must not interfere with visit to a detainee

A punishment must not be imposed on a detainee so as to interfere with a visit to the detainee by (a) a barrister or solicitor, a medical practitioner, an Official Visitor, a field officer; or (b) any other person, unless the centre manager is of the opinion that the security, safety or good order of the detention centre would be adversely affected if the visit were permitted.⁵³³

Prohibited punishments

A detainee must not be:

- (a) struck, cuffed, shaken or subjected to any other form of physical violence,
- (b) dosed with medicine or any other substance,
- (c) compelled to hold himself or herself in a constrained or fatiguing position,
- (d) deprived of food or drink,
- (e) denied the right to read or write letters or to make or receive telephone calls (except during any period of punishment by exclusion or confinement referred to in section 21 (1) (d)),
- (f) subjected to treatment of a kind that could reasonably be expected to be detrimental to his or her physical, psychological or emotional well-being,
- (g) subjected to treatment of a kind that is cruel, inhuman or degrading,
- (h) segregated in contravention of section 19, or
- (i) subjected to treatment of a kind forbidden by the regulations.⁵³⁴

Disciplinary sanctions in correctional centres

Correctional centre offences

Correctional centre offences are listed in Schedule 2 of the *Crimes (Administration of Sentences) Regulations 2001*. There are over 60 such offences including avoiding correctional centre routine, failing to maintain personal cleanliness, possessing a mobile phone, possessing a weapon, intimidation, assaults, rioting, stealing, possessing or consuming drugs or alcohol, and damaging property.

Hearing of correctional centre offences

If it is alleged that an inmate has committed a correctional centre offence, the governor of the correctional centre may charge the inmate with the offence and conduct an inquiry into the allegation.⁵³⁵ The Act also provides that the governor may refer a correctional centre offence with which an inmate is charged to a Visiting Magistrate for hearing and

⁵³¹ *Children (Detention Centres) Act 1987*, s 21(1).

⁵³² *Children (Detention Centres) Act 1987*, s 21(2).

⁵³³ *Children (Detention Centres) Act 1987*, s 21(3) and *Children (Detention Centre) Regulations 2000*, cl 55.

⁵³⁴ *Children (Detention Centres) Act 1987*, s 22.

⁵³⁵ *Crimes (Administration of Sentences) Act 1999*, s 52.

determination if the governor considers that, because of the serious nature of the offence, it should be referred to a visiting magistrate.⁵³⁶

Punishments

The governor may impose one of the following penalties:

- (a) reprimand and caution,
- (b) deprivation, for up to 56 days, of such withdrawable privileges as the governor may determine,
- (c) confinement to a cell for up to 7 days, with or without deprivation of withdrawable privileges,
- (d) cancellation of any right to receive payments under section 7 for up to 14 days, but to the extent only to which those payments are additional to the payments made at the base rate to inmates generally or to inmates of a class to which the inmate belongs.⁵³⁷

A Visiting Magistrate may impose one of the following penalties:

- (a) reprimand and caution,
- (b) deprivation, for up to 90 days, of such withdrawable privileges as the Visiting Magistrate may determine,
- (c) confinement to a cell for up to 28 days, with or without deprivation of withdrawable privileges,
- (d) cancellation of any right to receive payments under section 7 for up to 14 days, but to the extent only to which those payments are additional to the payments made at the base rate to inmates generally or to inmates of a class to which the inmate belongs,
- (e) extension, by up to 6 months at a time, of:
 - (i) the term of the inmate's sentence, and
 - (ii) in the case of an offence occurring during a non-parole period of the inmate's sentence, the non-parole period of the sentence,
- (f) imposition of a sentence of imprisonment for a period not exceeding 6 months.⁵³⁸

Withdrawable privileges include:

- (a) attendance at the showing of films or videos or at concerts or other performances,
- (b) participation in or attendance at any other organised leisure time activity,
- (c) use of, or access to, films, video tapes, records, cassettes or compact disks,
- (d) use of, or access to, television, radio or video, cassette or compact disk players, whether for personal use or for use as a member of a group,
- (e) use of, or access to, a musical instrument, whether for personal use or for use as a member of a group,
- (f) use of library facilities, except in so far as their use is necessary to enable study or research to be undertaken by an inmate in the inmate's capacity as a student who is enrolled in a course of study or training,
- (g) use of swimming pool facilities,
- (h) ability to purchase goods,
- (i) keeping of approved personal property,
- (j) pursuit of a hobby,
- (k) use of telephone, except for calls to legal practitioners,
- (l) participation in contact visits,
- (m) permission to be absent from a correctional centre under a local leave permit or interstate leave permit.⁵³⁹

⁵³⁶ *Crimes (Administration of Sentences) Act 1999*, s 54.

⁵³⁷ *Crimes (Administration of Sentences) Act 1999*, s 53(1).

⁵³⁸ *Crimes (Administration of Sentences) Act 1999*, s 56.

⁵³⁹ *Crimes (Administration of Sentences) Regulations 2001*, cl 152.

Prohibited punishments:

- (1) An inmate must not:
 - (a) be put in a dark cell, or under mechanical restraint, as a punishment, or
 - (b) be subjected to:
 - (i) solitary confinement, or
 - (ii) corporal punishment, or
 - (iii) torture, or
 - (iv) cruel, inhuman or degrading treatment, or
 - (c) be subjected to any other punishment or treatment that may reasonably be expected to adversely affect the inmate's physical or mental health.
- (2) For the purposes of subclause (1) (b) (i) [the following are not solitary confinement]:
 - (b) segregating an inmate from other inmates under section 10 of the Act, and
 - (i) confining an inmate to cell in accordance with an order under section 53 or 56 of the Act, and
 - (ii) keeping an inmate separate from other inmates under this Regulation, and
 - (iii) keeping an inmate alone in a cell, where a nursing officer considers that it is desirable in the interest of the inmate's health to do so.⁵⁴⁰

3. COMPARISON OF POWERS TO MAINTAIN ORDER AND USE FORCE

Powers to maintain order and use force in juvenile detention centres

Maintaining order: Clause 49 of the *Children (Detention Centres) Regulations 2000* states:

- (1) Officers must seek to influence detainees through example and leadership and must seek to enlist their willing co-operation.
- (2) At all times, the treatment of detainees must be such as to encourage their self-respect and sense of personal responsibility.
- (3) An officer is not to engage in behaviour toward a detainee:
 - (a) that is intimidating, humiliating, demeaning, threatening or oppressive, or
 - (b) that otherwise constitutes an abuse of the officer's authority.

Use of force: Clause 50 of the *Regulations* states that:

- (1) An officer must not use force against any person in a detention centre except for the following purposes:
 - (a) to prevent a detainee from injuring himself or herself,
 - (b) to protect the officer or other persons from attack or harm,
 - (c) to prevent a detainee from inflicting serious damage to property,
 - (d) to prevent a detainee from escaping,
 - (e) to prevent a person from entering a detention centre by force,
 - (f) to search a detainee in circumstances in which the detainee refuses to submit to being searched,
 - (g) to seize any dangerous or harmful article or substance that is in the possession of a detainee,
 - (h) to prevent or quell a riot or other disturbance.

⁵⁴⁰ *Crimes (Administration of Sentences) Regulations 2001*, cl 153.

- (2) An officer may also use force in order to move a detainee who refuses to move from one location to another in accordance with an order of that officer, but only if the officer first gives a warning to the detainee of the consequences of failing to comply with the order.
- (3) In dealing with a detainee, an officer must use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the detainee is to be avoided if at all possible.

Instruments of restraint: The use of force is defined to include the threat of the use of force and the use of instruments of restraint. They include handcuffs and riot shields and such other articles as are declared to be instruments of restraint.⁵⁴¹

Report on use of force: As soon as practicable after force is used by an officer against a person, a report must be furnished to the centre manager by each officer involved in the use of force.⁵⁴²

Use of dogs to detect drugs: At the request of the Director-General of the Department of Juvenile Justice, a *correctional officer* may use a dog to assist in the detection of drugs in a detention centre.⁵⁴³

Power to maintain order and to use force in correctional centres

Maintaining order: Clause 119 of the *Crimes (Administration of Sentences) Regulations 2001* states:

- (1) Order and discipline in a correctional centre are to be maintained with firmness, but with no more restriction or force than is required for safe custody and well-ordered community life within the centre.
- (2) A correctional officer must endeavour to control inmates by showing them example and leadership and by enlisting their willing co-operation.
- (3) At all times the treatment of inmates is to be such as to encourage self-respect and a sense of personal responsibility.

In addition, clause 120 of the *Regulations* provides:

- (1) Directions for the purpose of maintaining good order and discipline:
 - (a) may be given to inmates by the Commissioner, by the governor of a correctional centre or by a correctional officer, and
 - (b) may be given orally or in writing.
- (2) An inmate must not refuse or fail to comply with a direction under this clause [note that failure to comply with a direction is a correctional centre offence].

Use of force: Clause 121 states:

- (1) In dealing with an inmate, a correctional officer may use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the inmate is to be avoided if at all possible.
- (2) The nature and extent of the force that may be used in relation to an inmate are to be dictated by circumstances, but must not exceed such force as is necessary for control and protection, having due regard to the personal safety of correctional officers and others.
- (3) If an inmate is satisfactorily restrained, the only force that may be used against the inmate is such as is necessary to maintain that restraint.
- (4) Subject to subclauses (1), (2) and (3), a correctional officer may have recourse to force for the following purposes:
 - (a) to search, where necessary, an inmate or to seize a dangerous or harmful article,
 - (b) to prevent the escape of an inmate,
 - (c) to prevent an unlawful attempt to enter a correctional centre by force or to free an inmate,
 - (d) to defend himself or herself if attacked or threatened with attack, but only if the officer cannot otherwise protect himself or herself from harm,

⁵⁴¹ *Children (Detention Centres) Regulations 2000*, cl 3.

⁵⁴² *Children (Detention Centres) Regulations 2000*, cl 51.

⁵⁴³ *Crimes (Administration of Sentences) Act 1999*, s 78(3).

- (e) to protect other persons (including correctional officers, Departmental officers, inmates and members of the public) from attack or harm, but only if there are no other immediate or apparent means available for their protection,
- (f) to avoid an imminent attack on the correctional officer or some other person, but only if there is a reasonable apprehension of such an attack,
- (g) to prevent an inmate from injuring himself or herself,
- (h) to ensure compliance with a proper order, or maintenance of discipline, but only if an inmate is failing to co-operate with a lawful correctional centre requirement in a manner that cannot otherwise be adequately controlled,
- (i) to move inmates who decline or refuse to move from one location to another in accordance with a lawful order,
- (j) to achieve the control of inmates acting in a defiant manner,
- (k) to avoid imminent violent or destructive behaviour by inmates,
- (l) to restrain violence directed towards the correctional officer or other persons by an uncontrollable or disturbed inmate,
- (m) to prevent or quell a riot or other disturbance,
- (n) to deal with any other situation that has a degree of seriousness comparable to that of the situations referred to in paragraphs (a)–(m).

Use of restraining equipment: Clause 122 states:

- (1) With the concurrence of the governor, a correctional officer may use handcuffs, security belts, batons, chemical aids and firearms for the purpose of restraining inmates.
- (2) With the concurrence of the Commissioner, a correctional officer may also use the following equipment for the purpose of restraining inmates:
 - (a) anklecuffs,
 - (b) such other articles (other than chains or irons) as may be approved by the Commissioner for use for that purpose.

Report on the use of force: Any correctional officer who uses force on an inmate must immediately furnish a report about the use of force to the governor.⁵⁴⁴

Use of dogs in maintaining order and security: Section 78 of the Act states (in part):

- (1) With the approval of the governor of a correctional centre, a correctional officer may use a dog to assist in maintaining the good order and security of the correctional centre and any correctional complex of which the correctional centre forms part.
- (2) Without limiting subsection (1), such an approval may be given to the use of a dog for any of the following purposes:
 - (a) the carrying out of searches within a correctional centre or correctional complex for any reason,
 - (b) the tracking of an escaped inmate,
 - (c) the escorting of inmates while they are being moved from one place to another,
 - (d) the disarming of inmates,
 - (e) the patrolling of correctional centres and correctional complexes,
 - (f) the assisting of a police officer in the execution of the police officer's functions.

⁵⁴⁴ *Crimes (Administration of Sentences) Regulations 2001*, cl 123.

Appendix 6 DJJ Classification System⁵⁴⁵

Service Delivery Plan NSW Department of Juvenile Justice (2004)

Appendix C: Overview of the DJJ Classification System

Purpose of Classification

Classification within detainee justice is the process of assigning offenders to custody levels and treatment programs based on assessments of the offenders' supervision requirements and service needs. For the DJJ this involves first determining whether the detainee's initial classification are appropriate for consideration of each detainee's offence history and behaviour in prior placements. It then entails determining the type of programming that is required within a given custody level based on the detainee's educational, vocational, psychological, substance abuse and other treatment needs. By attempting to simultaneously consider prior record, outcomes of past interventions, and service needs, the DJJ is working to achieve goals of protecting public safety, ensuring offender accountability, and fostering offender rehabilitation.

Objectively Based Classification

A foundation of any successful classification system is its ability to achieve fair and consistent decisions. An objectively based classification system helps classification decision-makers to make such decisions. An objectively based system classifies detainees in a structured manner – utilizing standardised instruments that incorporate criteria deemed by detainee justice policymakers and practitioners, and supported by classification research to be acceptable components of classification decision-making. The systematic use of such instruments helps to ensure that similarly situated detainees receive similar classification decisions. In conjunction with the judgement and knowledge of experienced detainee justice professionals, such a system promotes greater confidence in the appropriateness, consistency, and equity of classification decision-making.

Roles and Responsibilities

The following position holders and units have either direct or indirect involvement with the objective classification system.

- Centre Manager
- Client Services Meeting
- Director, Transport and Drug Intelligence Branch
- Assistant Director General (Operations)
- Director General
- Serious Young Offender Review Panel (SYORP)
- Classification Officer
- Classification Manager

⁵⁴⁵ Fish Payne Pattenden Viney Pty Ltd, Appendix C, *Service Delivery Plan: Secure Unit Development and Detainee Placement*, August 2004

Service Delivery Plan NSW Department of Juvenile Justice (2004)

Security Classification Categories

A detainee will be classified as:

Unclassified:

A young person who has been admitted to the Department of Juvenile Justice custody but has not yet been through the Initial Classification process.

Management of unclassified detainees: a detainee who has not been classified will be managed as an A2 category (handcuffs, access to programs etc), subject to the classification process.

A1 (High) 'A' classification category has two subcategories A1 (o): offence and A1 (b): behaviour .

A1 (o)

Definition:

The detainee who has been charged with or convicted of a Children's Serious Indictable offence in accordance with the following sections of the Crimes Act 1900: homicide - 19A, 24, sex offences- s61J, s61JA, s61K, s61P, s66A, s66B, s66EA (1), and s80A. There is a community expectation that these detainees will be detained in a high security facility at least initially. Centres designated as high security include Kariong (over 16), Reiby (under 16) and Yasmar Detainee Justice Centre for young women.

High-risk areas:

Specifically because of the offence type, the risk areas are (where the detainee is assessed by the DJJ classification process as having):

Escape – whilst unknown at this stage of the classification process due to recency of admission the detainee is treated as high escape risk with violence

Physical harm to public – whilst unknown at this stage of the classification process due to recency of admission, the detainee is treated as potentially high risk of harming the public if able to escape. Further there is a potential risk that this offender may interfere with a witness or a potential witness.

Physical harm to staff or other detainees – whilst unknown at this stage of the classification process due to recency of admission, the detainee is treated as potentially high risk of harming staff or other detainees

Disruptive/ destructive behaviour – whilst unknown at this stage of the classification process due to recency of admission, the detainee is treated as potentially high risk of disruptive/destructive behaviour

Involvement in illegal behaviour whilst in custody – whilst unknown at this stage of the classification process due to recency of admission, the detainee is treated as potentially high risk of involvement in illegal behaviour whilst in custody.

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*Service Delivery Plan NSW Department of Juvenile Justice (2004)***Security Requirements:**

External movement:	accompanied by minimum of two officers and handcuffed at all times. Exceptions can be made in the case of young girls/women who are in labour.
Programs/case management:	Restricted to programmes classified as lowest possible risk
Escorted absences:	None, except medical appointments, visiting a sick relative, funerals and others as defined in the Operations Manual (Section 2.7, page 85) approved as per delegations.
Leave	nil

A1 (b)Definition:

The detainee has a history of institutional violence, demonstrated by serious violent incidents against other detainees/staff/property. Whilst in custody in this last classification period, the detainee has been charged with a violent offence and therefore, the detainee's violent or aggressive behaviour makes him/her a risk to staff or other detainees. Professional assessment indicates that he/she is unpredictable and likely to assault. The detainee is a serious management problem because he/she disrupts programs for other detainees, intimidates other detainees or continually violates rules and regulations. The detainee has not responded to behaviour management strategies by changing his behaviour. Since initial or last classification period, the detainee has escaped from custody (including police custody) with violence.

An A1(b) detainee is a high security detainee and presents a high level of risk in one or more of the identified risk areas and requires a very intensive level of supervision, a very high level of secure containment and must be accommodated and managed in a detention centre designated as high security. Centres designated as high security include Kariong (over 16), Reiby (under 16) and Yasmal Detainee Justice Centre for young women.

High-risk areas:

Specifically the risk areas are (where the detainee is assessed by the DJJ classification process as having):

Escape - high escape risk with violence

Physical harm to public - high risk of harming the public if able to escape

Physical harm to staff/other detainees - serious assault or serious threats of assault to staff and other detainees

Disruptive/ destructive behaviour - ongoing threat to good order, safety and security of the centre via serious non-compliant behaviour that requires a very intensive level of supervision.

Involvement in illegal behaviour whilst in custody - high risk of engaging or inciting others to become involved in illegal activities.

Service Delivery Plan NSW Department of Juvenile Justice (2004)

Security Requirements:

External movement:	accompanied by minimum of two officers and handcuffed at all times. Exceptions can be made in the case of young girls/women who are in labour.
Programmes/case management:	Restricted to programmes classified as lowest possible risk.
Escorted absences:	None, except medical appointments, visiting a sick relative, funerals and others as defined in the Operations Manual (Section 2.7, page 85) approved as per delegations.
Leave:	nil

A2 (High Medium)

Definition:

A detainee can be reclassified from A1 (o) or A1 (b) to an A2 classification.

A detainee can be classified to A2 upon admission.

A detainee may be classified as A2 if he/she has been charged with or convicted of a Serious Children's Indictable Offence, except those resulting in an automatic A1(o). At initial classification, such a detainee may have:

- Extensive history of violence in/escape from custody and extensive history of offending or both.
- An extensive court history that results in A2

A detainee may also be reclassified to A2 from A1 (o) or A1(b). Conversely, a detainee may due to an incident be reclassified from B classification to A2.

An A2 detainee is a high medium security detainee and presents a medium to high level of risk in one or more of the identified risk areas and requires a high level of supervision, a high level of secure containment and must be accommodated and managed in detention centres classified as variable. This category of detainee is perceived by the public as being of high to moderate risk if he/she escapes.

High Medium risk areas:

Specifically the risk areas are:

Escape risk: high to medium escape/attempted escape risk

Physical harm to public: high to medium risk of harming the public if able to escape

Physical harm to staff or other detainees: high to medium risk of harming staff or other detainees

Disruptive/destructive behaviour: high to medium risk of disruptive/destructive behaviour

Involvement in illegal behaviour whilst in custody - high risk of engaging or inciting others to become involved in illegal activities.

Fish Payne Pattenden Viney Pty Ltd & Subconsultants

*Service Delivery Plan NSW Department of Juvenile Justice (2004)***Requirements:**

Movement and supervision:	Accompanied by at least two officers for each detainee and handcuffed at all times
Programs:	Restricted to programmes classified as lowest possible risk if A2 on admission or on reclassification. If a detainee is classified as A2 from A1, he/she will be eligible to access medium risk programs.
Escorted absences:	None, except medical appointments, visiting a sick relative, funerals and others as defined in the Operations Manual (Section 2.7, page 85) approved as per delegations.
Leave	nil

B1 (Medium)Definition:

A B1 detainee is either newly admitted or he/she can be recently reclassified from A2, B2 or B3.

A medium security detainee presents a medium level of internal risk and a medium level risk of escape and can be managed within detention centres that are of variable security/with a moderate level of structure.

However, a medium classification detainee may present sufficient risk to good order and safety, or because they are newly admitted detainee they have not had the opportunity to demonstrate suitability for access to programmes available to low medium or minimum security detainees.

Such a detainee may also have served insufficient time on his/her sentence to justify B2 or C classification. Therefore he/she requires constant supervision, medium level of intervention and medium level of structure.

This detainee may have moderate adjustment issues and may be in the early stages of participation in his/her case plan.

Medium risk areas:

Specifically the risk areas are:

Escape risk: medium escape risk

Physical harm to public: medium risk of harming the public if able to escape

Physical harm to staff or other detainees: medium risk of harming staff or other detainees

Disruptive/destructive behaviour: medium risk of disruptive/destructive behaviour

Involvement in illegal behaviour whilst in custody - medium risk of engaging or inciting others to become involved in illegal activities.

Service Delivery Plan NSW Department of Juvenile Justice (2004)

Security Requirements:

External Movement	Accompanied by two officers and handcuffed at all times
Programmes:	Generally restricted to programmes classified as medium. On admission restricted to low if released from custody previously as A2 . If reclassified and due to their remand status retain the B1 classification, they are restricted to medium risk programs. A detainee reclassified from B2 or B3 will access medium risk programs for at least 2 reclassification periods. A detainee who is on remand and this is the sole reason for their B1 classification, may be eligible for high risk programs.
Escorted absences:	Funerals and visits, seriously ill family, for purposes of rehabilitation/reintegration; psychological/psychiatric assessment to assist meeting conditional bail
Leave	24 (i) (c),

B2 Low/ Medium

Definition:

A low medium detainee presents a low to medium level of internal risk and a low to medium level of escape risk and presents few management problems and can therefore be managed in a less structured environment. He/she has worked through institutional adjustment issues and is fully participating and motivated in his/her case plan. Such a detainee requires medium levels of structure, supervision and intervention. This detainee can be accommodated in detention centres classified as variable.

Low Medium risk areas:

Specifically the risk areas are:

Escape: low to medium risk of escape

Physical harm to public: behaviour in custody and progress in the unit indicates a detainee is unlikely to present a risk to public and would adhere to the conditions set for leave. The level and type of program participation justify giving an opportunity to the detainee to demonstrate they can behave in the same way in the community. A detainee may be accommodated in all detention centres except Kariang and Riverina

Risk areas:

Specifically the risk areas are:

Escape from custody or while engaged in activities outside the institution: minimal risk

Physical harm to public: minimal risk

Fish Payne Pattenden Viney Pty Ltd & Subconsultants

Service Delivery Plan NSW Department of Juvenile Justice (2004)

Physical harm to staff: minimal risk

Disruptive/destructive Institutional behaviour: the detainee is generally cooperative with staff, other detainees or centre rules/regulations, and usually does not present a management problem within the centre

Security Requirements:

External Movement	Planned movements can have delegated supervision
Programs:	All levels of programs
Escorted absences:	Applying for or attending external education/employment
Leave:	Day and overnight leave, 24 (i) (c) Work release/education

Physical harm to staff, other detainees: is low to moderate; based on detainees past behaviour and case plan participation.

Disruptive/destructive behaviour: is low to moderate risk; the detainee is usually cooperative with staff, and centre rules/regulations, appropriately manages peer relationships and does not present a significant management problem within the centre.

Security Requirements:

External Movement	At the discretion of the Manager, according to circumstances.
Programmes/case management:	A detainee can access all programs on site and appropriate supervised community activities consistent with the detainee's case plan..
Escorted absences:	Funerals/medical and supervised community activities, birth of their, planned appointments for reintegration/ rehabilitation purposes.
Leave:	24 (i) (c), Supervised outings and day leave (Serious Children's Indictable offenders require SYORP approval)

B3 LowDefinition:

A low security detainee presents minimal risk in all of the identified risk areas and requires a low level of supervision and detention. The detainee has served the majority of his/her sentence and has demonstrated a level of reliability and self-responsibility to comply with overnight leave or work release/education.

Appendix 7 Minutes

Minutes No 1
1 February 2005
Room 1108, Parliament House, 2.30pm

1. **Members Present**

Rev the Hon Dr Gordon Moyes MLC
Hon Catherine Cusack MLC
Hon Amanda Fazio MLC
Hon Charlie Lynn MLC
Hon Eric Roozendaal MLC
Hon Dr Peter Wong MLC

2. **Chair's Opening Statement**

The Chair made an opening statement welcoming Members and introducing the Director and Assistant Council Officer

3. **Initial Resolutions**

The committee considered the draft initial motions, previously circulated.

Resolved, on the motion of Ms Cusack, that the following initial resolutions be adopted for the life of the Committee:

1. Sound and television broadcasting

That in accordance with the resolution of the Legislative Council of 11 October 1994 the Committee authorises the sound and television broadcasting as appropriate, of its public proceedings, unless the Committee decides otherwise.

2. Arrangements for hearings and site visits

That arrangements for the calling of witnesses and for visits of inspection be left in the hands of the Chair and Director after consultation with the Committee.

3. Media statements

That media statements on behalf of the Committee be made only by the Chair, if possible after consultation with the Committee.

4. Advertising

That the Chair and Director be empowered to advertise and/or write to persons, bodies and organisations inviting written submissions relevant to the terms of reference for the Committee's inquiries.

5. Publication of transcripts

That in accordance with section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing Order 223(1), the Committee authorises the Director to publish the transcript of evidence taken at public hearings, unless the Committee decides otherwise.

6. Publication of minutes

That in accordance with section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing Order 223(1), the Committee authorises the Director to publish minutes of the Committee's proceedings after the minutes have been confirmed by the Committee, unless the Committee decides otherwise.

7. Committee correspondence

That the Director be empowered to respond to correspondence on behalf of the Committee, where the correspondence concerns routine or administrative matters. In all other cases the Chair must approve replies to correspondence.

8. Meeting during sittings

That if by leave of the House the Committee meets while the House is sitting the meeting be suspended during any division or call for quorum in the House.

9. Government response

That where a government response to a Committee report is received, the Chair or Director forward a copy of the response to all people who made a submission to the relevant inquiry, unless the Committee decides otherwise.

10. Method of distribution of meeting papers to Members

That, on non-sitting days, the secretariat will be taken to have distributed meeting papers to Members if the papers have been circulated by memorandum distributed to members' offices and by email to the Member and to a staff member nominated by the member.

That, on sitting days, it will be sufficient for the secretariat to have distributed a memorandum enclosing the papers to each Member's office.

4. Inquiry Planning

Inquiry schedule

The Committee discussed the timing of inquiry. The Secretariat undertook to circulate a calendar for Members to indicate their availability for meetings and hearings. Members noted that it may be appropriate for a Forum to be organised if there are a number of people wishing to make personal statements in a more informal context.

Site visit

Resolved, on the motion of Ms Cusack, that a site visit to Kariong Juvenile Correctional Centre be undertaken, with Members to advise on suitability of 25 February 2005.

Call for submissions

The Committee considered the draft advertisement calling for submissions, noting the closing date for submissions of 28 February 2005.

Resolved, on the motion of Ms Fazio, that the advertisement be placed in the Sydney Morning Herald, the Grafton Daily Examiner, the Wagga Daily Advertiser, the Dubbo Daily Liberal and the Broken Hill Barrier Truth, as soon as possible.

Resolved, on the motion of Dr Wong, that the Chair write to relevant organisations and individuals on the mailing list previously circulated plus those provided by Dr Wong and Ms Cusack, to invite submissions

Announcement of inquiry

The Committee considered the draft media release announcing the inquiry.

Resolved, on the motion of Mr Lynn, that the media release be distributed via the press boxes in the press gallery and to regional and rural news media outlets.

5. Inquiry Resources

The Secretariat undertook to email any useful links to Members for electronic copies of relevant resource material.

Tanya Bosch
Director

Minutes No 2
25 February 2005
Kariong Juvenile Correctional Centre, 11:00am

1. Members Present

Rev the Hon Dr Gordon Moyes MLC
Hon Catherine Cusack MLC
Hon Amanda Fazio MLC
Hon Eric Roozendaal MLC
Hon Dr Peter Wong MLC

2. Apologies

Hon Charlie Lynn MLC

3. Site Visit – Inquiry into Juvenile Offenders

The Committee met and spoke with the following people at Kariong Juvenile Correctional Centre:

- Governor Peter Maa
- Deputy Governor David Mumford
- Acting Senior Assistant Commissioner Don Rogers
- Staff and students at the School
- Correctional and other staff of the Centre
- Inmates

4. Adjournment

The meeting adjourned at 3:45pm

Tanya Bosch
Director

Minutes No 3
9 March 2005
Room 1108, Parliament House, 9:30am

1. Members Present

Rev the Hon Dr Gordon Moyes MLC (Chair)
Hon Catherine Cusack MLC
Hon Amanda Fazio MLC
Hon Charlie Lynn MLC
Hon Eric Roozendaal MLC
Hon Dr Peter Wong MLC

2. Public Hearing– Inquiry into Juvenile Offenders

The public and the media were admitted.

Mr David Sherlock, Director General, Department of Juvenile Justice and Mr Peter Muir, Assistant Director General – Operations, were sworn and examined.

The witnesses answered questions from the Committee.

Mr Muir tendered two items of correspondence:

- Letter to Mr Sherlock from the NSW Ombudsman, dated 9 October 2001, regarding implementation of the NSW Ombudsman's Report on Kariong JJC
- Letter to Mr Sherlock from the NSW Ombudsman, dated 3 August 2001, regarding implementation of the NSW Ombudsman's Report on Kariong JJC

Mr Sherlock undertook to provide the Committee with a copy of the consultants' report on options for Kariong.

Resolved on the motion of Ms Fazio that the documents tendered by Mr Muir be accepted and made public.

Questioning concluded, the witnesses withdrew.

Mr Garner Clancey, Commercial Associate, Australian Centre for Security Research, University of Western Sydney, was affirmed and examined.

The witness answered questions from the Committee.

Questioning concluded, the witness withdrew. The public and media withdrew.

3. Deliberative Meeting– Inquiry into Juvenile Offenders

Publication of submissions

Resolved, on the motion of Mr Lynn that the following submissions be accepted and made public:

- No. 1 - BLACKMORE Mr Rod
- No. 2 - WOODHAM Mr Rod (Department of Corrective Services)
- No. 3 - SHERLOCK Mr David (NSW Department of Juvenile Justice)

- No. 4 - WESTMORE Mr Tony (Indigenous Law Centre)
 No. 5 - SCHEFF Ms Stacy (Justice Action)
 No. 6 - BARBOUR Mr Bruce (NSW Ombudsman)
 No. 7 - NUTHALL Fr Ramsay (NSW Department of Juvenile Justice)
 No. 8 - SANDERS Ms Jane (Shopfront Youth Legal Centre and Youth Justice Coalition)
 No. 10 - KEIR Ms Emma (The Youth Justice Coalition)
 No. 11 - SIMPSON Mr Jim (The NSW Council for Intellectual Disability)
 No. 12 - MCDOUGALL Mr James (National Children's and Youth Law Centre)
 No. 13 - MOORE Mr Gary (NCOSS)

Resolved, on the motion of Mr Lynn, that submission No. 9 - CUNNEEN Prof Chris (New South Wales Juvenile Justice Advisory Council (JJAC)) be accepted and kept confidential.

The Committee adjourned at 12.20pm and resumed at 1.55pm.

Minutes

Resolved, on the motion of Dr Wong, that Minutes No 1 and 2 be confirmed.

Witnesses for future hearings

The Committee considered witnesses for future hearings of the Inquiry. Resolved, on the motion of Ms Fazio, that the Secretariat select witnesses from the following list, with priority given to witnesses marked with an asterix:

- Professor Don Weatherburn*
- Aboriginal Justice Advisory Council*
- Aboriginal Legal Service – regionally based
- Mr Ken Buttrum
- Mr Rod Blackmore
- Mr Scott Mitchell, Acting Snr Children's Court Magistrate
- Mr Nick Cowdery, DPP*
- Police Youth Liaison Officers*
- Police and Community Youth Clubs NSW
- Public Defenders Office
- Legal Aid Commission of NSW*
- Ted Noffs Foundation
- Professor Rob White, University of Tasmania*
- DJJ Chaplains*
- Kariong Interim Official Visitor, Jack Walker*
- Mr Gary Moore, NSW Council on Social Services
- NSW Ombudsman*
- Australian Institute of Criminology – information or witness*
- Jbaih Jbaih Bail Court
- Representatives or information from Malmsbury Correctional Centre in Victoria.

4. Resumption of Public Hearing – Inquiry into Juvenile Offenders

The public and the media were readmitted.

Professor Chris Cunneen, Chair, Juvenile Justice Advisory Council, was affirmed and examined.

The witness answered questions from the Committee.

Questioning concluded, the witness withdrew.

Ms Jane Sanders, Principal Solicitor, Shopfront Youth Legal Centre and Ms Jane Irwin, Solicitor, Shopfront Youth Legal Centre, were affirmed and examined.

The witnesses answered questions from the Committee.

Questioning concluded, the witnesses withdrew. The media and the public withdrew.

5. Adjournment

The Committee adjourned at 4.15pm to resume at 10:00am on 14 March 2005.

Tanya Bosch
Director

Minutes No 4
14 March 2005
Jubilee Room, Parliament House, 10:00am

1. Members Present

Rev the Hon Dr Gordon Moyes MLC (Chair)
Hon Catherine Cusack MLC
Hon Amanda Fazio MLC
Hon Charlie Lynn MLC
Hon Eric Roozendaal MLC
Hon Dr Peter Wong MLC

2. Public Hearing – Inquiry into Juvenile Offenders

The public and the media were admitted.

The Hon John Hatzistergos MLC, Minister for Justice, was admitted.

Mr Don Rogers, Acting Senior Assistant Commissioner, Department of Corrective Services was sworn and examined.

The witnesses answered questions from the Committee.

Questioning concluded, the witnesses withdrew.

The Committee adjourned at 11.30am and resumed at 11.45am.

Ms Elizabeth Moore, School of Humanities and Social Sciences, Charles Sturt University, was affirmed and examined.

The witness answered questions from the Committee.

Questioning concluded, the witness withdrew.

The Committee adjourned at 12.45pm and resumed at 2.05pm.

Mr Howard Brown, VOCAL Inc and Ms Martha Jabour, Homicide Victims Support Group, were sworn and examined.

The witnesses answered questions from the Committee.

Questioning concluded, the witnesses withdrew. The public and media withdrew.

3. **Deliberative Meeting – Inquiry into Juvenile Offenders**

Publication of submissions

Resolved, on the motion of Ms Cusack that the following submissions be accepted and made public:

No. 14 – BROOKER Ms Lindsay (Legal Aid Commission of New South Wales)

No. 15 - CALVERT Ms Gillian (NSW Commission for Children and Young People)

No. 16 – CHONG Ms Agnes (Combined Community Legal Centres' Group (NSW) Inc.)

No. 17 – COAKLEY Mr Colin (Country Women's Association)

No. 18 – MOORE Ms Elizabeth (Charles Sturt University)

Minutes

Resolved, on the motion of Ms Fazio, that Minutes No 3 be confirmed.

Witnesses for future hearings

The Committee considered witnesses for future hearings of the Inquiry.

Resolved, on the motion of Dr Wong, that the Secretariat invite written submissions from witnesses on the following list:

Mark Fitzpatrick
 Brian Fitzpatrick
 Peter Hawthorne
 Gary Hall
 Byron Hill
 Gary Hulbert
 Julie Adridge
 Kayleen Watson
 Jim Brown
 Andrew MacKay
 Richard Rice
 Peter Coomes
 Mark Smith
 Glen Menser
 Neville Squire
 Stan Parks
 David Maryska
 Luke Falconer

Resolved, on the motion of Ms Fazio, that the Secretariat invite a written submission from Laurie Myers, former Senior Manager with the Department for Juvenile Justice.

Resolved, on the motion of Ms Cusack, that the Secretariat invite a written submission from Mr Matthew Keely, Senior Legal Officer, People with Disabilities.

Resolved, on the motion of Dr Wong, that the Secretariat invite written submissions from the Department of Health – Justice Health and Department of Education and Training school at Kariong Juvenile Correctional Centre.

Correspondence

Correspondence received

The Chair tabled the following correspondence:

- Letter dated 7 March 2005 from Ms Lyndsay Brooker, Manager, Review and Reform, Legal Aid Commission of NSW, concerning the Legal Aid Commission's appearance before the Committee
- Undated letter from the Minister for Justice, received 1 March 2005, declining to make a submission but offering to appear at a hearing.

Correspondence to be sent

The Committee considered the draft letter to Mr David Sherlock, Director General, Department of Juvenile Justice, forwarding written questions.

Resolved, on the motion of Ms Fazio, that the letter be sent after being amended to include the following:

8. Are there further details about the employment outcomes for former employees of Kariong, including former casual staff?

Alleged unauthorised media comment

Ms Fazio alleged that Ms Cusack had made comments to the media following the Committee's visit to Kariong Juvenile Correctional Centre in breach of Standing Order 224(1), and moved that the matter be brought to the attention of the House.

Debate ensued.

Resolved, on the motion of Ms Fazio, that further consideration of her motion be deferred until the transcript of the media statements are obtained.

4. Resumption of Public Hearing – Inquiry into Juvenile Offenders

The public and the media were readmitted.

Father Ramsay Nuthall, Departmental Chaplain, Frank Baxter Juvenile Justice Centre and Secretary to Juvenile Justice sub-Committee of the Civil Chaplaincies Advisory Committee; and Martin Parish, Departmental Chaplain, Kariong Juvenile Correctional Centre; and Rev Ian Duncan, Pastoral Care Services, Baptist Community Services were sworn and examined.

The witness answered questions from the Committee.

Questioning concluded, the witnesses withdrew.

5. Adjournment

The Committee adjourned at 4.33pm to resume at 10:00am on 8 April 2005.

Tanya Bosch
Director

Minutes No 5
8 April 2005
Room 1108, Parliament House, 12:00pm

1. Members Present

Rev the Hon Dr Gordon Moyes MLC (Chair)
Hon Catherine Cusack MLC
Hon Amanda Fazio MLC
Hon Charlie Lynn MLC
Hon Eric Roozendaal MLC
Hon Dr Peter Wong MLC

2. Deliberative Meeting – Inquiry into Juvenile Offenders

Minutes

Resolved, on the motion of Mr Lynn, that Minutes No 4 be confirmed.

Correspondence

Correspondence received

The Chair tabled the following correspondence:

- Letter dated 20 March 2005 from Professor Chris Cunneen, agreeing to allow the Committee permission to quote from his written submission;
- Letter dated 18 March 2005 from Chris Wheeler, Deputy NSW Ombudsman, declining the invitation to appear before the Committee.

Outgoing correspondence

The Committee considered a draft letter to the Hon Diane Beamer MP, Minister for Juvenile Justice, requesting additional information.

Resolved, on the motion of Ms Fazio, that the letter be sent after being amended to request the removal of any details in the information that might identify detainees.

Publication of submissions

Resolved, on the motion of Mr Roozendaal that the following submissions be accepted and made public:

- No. 19 – CAHILL Mr (Public Services Association of New South Wales)
- No. 20 – FITZPATRICK Mr Mark
- No. 21 – PEYOU Ms Sally
- No. 22 – HAESLER SC Mr Andrew (New South Wales Public Defenders)

Witnesses for future hearings

The Committee received an update from the Secretariat and considered witnesses for future hearings of the Inquiry.

Resolved, on the motion of Ms Cusack, that the Secretariat invite a written submission from the Police Association.

Resolved, on a motion of Ms Cusack, that the Secretariat seek Members' availability for a further hearing, and invite the following witnesses to give evidence:

Public Service Association
Andrew Haesler SC, NSW Public Defenders
Mark Fitzpatrick
Brian Fitzpatrick
Peter Hawthorne
Gary Hall
Byron Hill
Gary Hulbert
Julie Adridge
Kayleen Watson
Jim Brown
Andrew MacKay
Richard Rice
Peter Coomes
Mark Smith
Glen Menser
Neville Squire
Stan Parks
David Maryska
Luke Falconer

Alleged unauthorised media comment

Consideration of deferred motion by Ms Fazio that Ms Cusack's breach of Standing Order 224(1) be brought to the attention of the House.

Debate ensued.

Ms Cusack tabled the following piece of correspondence:

- Letter dated 11 November 2004 from the Minister for Justice to Ms Cusack

Debate ensued

Ms Fazio withdrew her motion.

Resolved, on the motion of Mr Wong, that the Committee noted that Ms Cusack breached Standing Order 224(1) and declined to take further action on the matter; that all Members be aware of the need to maintain confidentiality of Committee proceedings under standing order 224; and that Members refrain from making comments to the media during the course of the Inquiry, except as provided for by Clause 3 of the Committee's initial resolutions.

3. Public Hearing – Inquiry into Juvenile Offenders

The public and the media were admitted.

Sergeant Andrew James, Youth Liaison Officer, NSW Police was affirmed and examined.

Sergeant Rachel Byrne, Youth Liaison Officer, NSW Police; Ms Catherine Mackson, Senior Programs Officer (Youth), NSW Police; and Senior Constable Suzanne Cady, Youth Liaison Officer, NSW Police were sworn and examined.

The witnesses answered questions from the Committee.

Questioning concluded, the witnesses withdrew.

The Committee adjourned at 1.10pm and resumed at 2.07pm.

Mr Rod Blackmore, Former Chief Magistrate of Children's Courts, was sworn and examined

The witness answered questions from the Committee.

Questioning concluded, the witness withdrew.

Magistrate John Crawford, Children's Magistrate was sworn and examined.

The witness answered questions from the Committee.

Questioning concluded, the witness withdrew.

4. **Adjournment**

The Committee adjourned at 3.48pm to resume at 10:00am on 12 April 2005.

Tanya Bosch
Director

Minutes No 6

12 April 2005

Room 1108, Parliament House, 10:00am

1. **Members Present**

Rev the Hon Dr Gordon Moyes MLC (Chair)

Hon Catherine Cusack MLC

Hon Amanda Fazio MLC

Hon Charlie Lynn MLC

Hon Eric Roozendaal MLC

Hon Dr Peter Wong MLC

2. **Public Hearing – Inquiry into Juvenile Offenders**

The public and the media were admitted.

Professor Rob White, Head of School of Sociology, Social Work and Tourism, University of Tasmania, was affirmed and examined.

The witness answered questions from the Committee.

Questioning concluded, the witness withdrew.

The Committee adjourned at 11.05am and resumed at 11.18am.

Mr Gary Moore, Director, NCOSS, was affirmed and examined.

The witness answered questions from the Committee.

Questioning concluded, the witness withdrew.

3. Deliberative Meeting – Inquiry into Juvenile Offenders

Minutes

Resolved, on the motion of Ms Fazio, that Minutes No 5 be confirmed with the following amendment:

‘Resolved, on the motion of Dr Wong, that the Committee note that Ms Cusack breached Standing Order 224(1) and declined to take further action on the matter; that all Members be aware of the need to maintain confidentiality of Committee proceedings under standing order 224; and that Members refrain from making comments to the media during the course of the Inquiry, except as provided for by Clause 3 of the Committee’s initial resolutions.’

Correspondence

Correspondence received

The Chair tabled the following correspondence:

- Letter dated 17 March 2005 from Mr David Sherlock, Department of Juvenile Justice, clarifying information given during evidence to the Committee;
- Letter dated 7 April 2005 from Mr David Sherlock, Department of Juvenile Justice, answering questions from the Committee;

The Committee adjourned at 12.03pm and resumed at 2.05pm.

4. Resumption of Public Hearing – Inquiry into Juvenile Offenders

The public and the media were admitted.

Mr Lenny Frail, Chairperson, Aboriginal Justice Advisory Council; Ms Lydia Miller, Executive Officer, Aboriginal Justice Advisory Council; and Ms Bobbi Cattermole, Chairperson, Aboriginal Youth Justice Advisory Network were sworn and examined.

The witnesses answered questions from the Committee.

Questioning concluded, the witnesses withdrew.

The Committee adjourned at 3.01pm and resumed at 3.12pm.

Mr Bill Grant, Chief Executive Officer, Legal Aid Commission NSW; Ms Julie Morgan, Executive Officer, Legal Aid Commission NSW; and Ms Teresa O’Sullivan, Senior Solicitor, Children’s Legal Service, Legal Aid Commission NSW were sworn and examined

The witnesses answered questions from the Committee.

Questioning concluded, the witnesses withdrew.

5. Deliberative Meeting – Inquiry into Juvenile Offenders

Publication of submissions

Resolved, on the motion of Ms Fazio that the following submission be accepted and made public:

No 23 – FRAIL Mr (Aboriginal Justice Advisory Council)

6. Adjournment

The Committee adjourned at 4.02pm.

Tanya Bosch
Director

Minutes No. 7
17 May 2005
Jubilee Room, Parliament House, 10:00am

1. Members Present

Rev the Hon Dr Gordon Moyes MLC (Chair)
Hon Catherine Cusack MLC
Hon Amanda Fazio MLC
Hon Charlie Lynn MLC
Hon Eric Roozendaal MLC
Hon Dr Peter Wong MLC

2. Deliberative Meeting – Inquiry into Juvenile Offenders

Confirmation of Minutes No. 6

Resolved on the motion of Ms Cusack, that Minutes No. 6 be adopted.

Publication of submissions 7A, 24, 25, 26

Resolved on the motion of Ms Fazio, that the following submissions be accepted and made public:

No 7A (supplementary submission) – NUTHALL Fr Ramsay (NSW Department of Juvenile Justice)

No 24 – WALKER Mr Jack (Kariong Juvenile Correctional Centre)

No 25 – SOLDI Ms Sandra (Police Association of NSW)

No 26 – BALL Mr Edward (Frank Baxter Juvenile Justice Centre)

Correspondence

Correspondence received

The Chair tabled the following correspondence:

- Letter from Catherine Mackson, dated 29 April 2005, responding to questions on notice from a previous hearing of the Committee
- E-mail from Garner Clancy, dated 3 May 2005, providing additional information relating to evidence given at a previous hearing of the Committee.

Resolved, on the motion of Ms Cusack, to make public the answers to questions on notice provided by Mr David Sherlock, Director General, Department of Juvenile Justice, together with copies of reports requested.

Future Committee activity

The Committee considered the need for additional witnesses.

Resolved, on the motion of Ms Cusack, that the Committee write to the Minister for Juvenile Justice and the Director General of the Department of Juvenile Justice seeking further information on matters relating to the terms of reference.

The Committee deliberated.

The Committee considered the issue of whether to seek further information in relation to an alleged incident at the Orana Juvenile Justice Centre.

Resolved, on the motion of Ms Cusack, that the Chair seek further information on the matter, and that the Secretariat check the transcript of evidence from the Department of Juvenile Justice for mention of the matter, prior to a decision being made by the Committee.

Today's hearing

The Secretariat provided a briefing on today's hearing.

Resolved, on the motion of Ms Fazio, that the Committee agree to the request of the witness due to appear between 2.15pm and 3.00pm to be heard *in camera*.

The Chair informed the Committee that he would make a brief opening statement at the commencement of the public hearing about certain procedural matters.

3. Public Hearing – Inquiry into Juvenile Offenders

The public and the media were admitted.

Mr Glen Menser, Mr Stanley Parkes, Mr Mark Fitzpatrick, Mr Peter Hawthorne and Mr Brian Fitzpatrick, were sworn and examined.

The witnesses answered questions from the Committee.

Questioning concluded, the witnesses withdrew.

The Committee adjourned at 12.30pm and resumed at 2.25pm.

4. In Camera Hearing – Inquiry into Juvenile Offenders

The public and media withdrew.

The witness was sworn and examined.

The witness answered questions from the Committee.

Resolved, on the motion of Ms Fazio, that the transcript of evidence given today by Ms Carolyn Delaney be made public.

Resolved, on the motion of Ms Fazio, that the documents tendered by Ms Delaney be accepted.

Questioning concluded, the witness withdrew.

5. Public Hearing – Inquiry into Juvenile Offenders

The public and media were admitted.

Mr Glenn Elliott-Rudder, Secretary, Departmental Committee Juvenile Justice, Mr Andrew Wilson, Industrial Officer, Mr Stephen Turner, Assistant General Secretary, Public Service Association of New South Wales, were affirmed and examined.

The witnesses answered questions from the Committee.

Questioning concluded, the witnesses withdrew.

Mr Andrew Haesler SC, Solicitor, New South Wales Public Defenders Office, was affirmed and examined.

The witness answered questions from the Committee.

Questioning concluded, the witness withdrew.

6. Adjournment

The Committee adjourned at 5.10pm

Julie Langsworth
Director

Minutes No. 8
22 June 2005
Room 1136, Parliament House, 9.40am

1. Members Present

Hon Catherine Cusack MLC (in the Chair)
Hon Amanda Fazio MLC
Hon Charlie Lynn MLC
Hon Eric Roozendaal MLC
Hon Dr Peter Wong MLC

2. Apologies

Rev the Hon Dr Gordon Moyes MLC

3. Deliberative Meeting – Inquiry into Juvenile Offenders

Resolved, on the motion of Ms Fazio, that in the absence of the Chair, Ms Cusack be appointed as Deputy Chair for the purpose of this meeting.

Confirmation of Minutes No. 7

Resolved on the motion of Ms Fazio, that Minutes No. 7 be adopted.

Correspondence

The Deputy Chair tabled the following items of correspondence:

Correspondence sent

Item 1 – Letter to Minister Beamer with additional questions, dated 25 May 2005

Item 2 – Letter to Minister Hatzistergos with additional questions, dated 25 May 2005

Item 3 – Letter to Minister Beamer re: requests for official visitors reports, dated 15 June 2005

Correspondence received

Item 4 – Letter to Chair from Minister Beamer re: request for official visitors reports, dated 29 April 2005

Item 5 – Letter to Chair from Minister Hatzistergos with additional answers, received 14 June 2005

Item 6 – Letter to Chair from Minister Beamer with additional answers, received 16 June 2005

Item 7 – Letter to Chair from David Sherlock, Director General, Department of Juvenile Justice, with additional information in relation to evidence provided to the Committee, received 20 June 2005.

Resolved, on the motion of Mr Roozendaal, to make public the letter to Chair from Minister Beamer with additional answers, received 16 June 2005 and the letter to Chair from Minister Hatzistergos with additional answers, received 14 June 2005.

The Deputy Chair tabled a document with the Committee, in relation to an investigation report on allegations of misconduct.

Future Committee activity

The Committee considered the need for additional witnesses.

Resolved, on the motion of Ms Fazio, that the Committee invite the Minister for Juvenile Justice and the Director General of the Department of Juvenile Justice to attend a hearing at a date to be determined by the Secretariat to answer questions on the terms of reference.

4. Adjournment

The Committee adjourned at 9.50am

Julie Langsworth
Director

Minutes No 9

20 July 2005

Room 1153, Parliament House, 2.40pm

1. Members Present

Revd the Hon Dr Gordon Moyes MLC (Chair)

Hon Catherine Cusack MLC

Hon Amanda Fazio MLC

Hon Charlie Lynn MLC

Hon Eric Roozendaal MLC

Hon Dr Peter Wong MLC

2. Deliberative Meeting – Inquiry into Juvenile Offenders***Confirmation of Minutes No. 8***

Resolved, on the motion of Mr Lynn: That Minutes No. 8 be adopted.

Publication of Submissions

Resolved, on the motion of Dr Wong: That the following submissions be accepted and made public:

No. 22a – HAESLER SC Mr Andrew (NSW Public Defenders)

No. 28 – DELANEY Ms Carolyn

No. 29 – CLANCEY Mr Garner

Resolved, on the motion of Ms Cusack: That the Committee agree to Mr Haesler's request to suppress the judge's name in the transcript of evidence provided by Mr Haesler on 17 May 2005.

Correspondence

The Chair tabled the following correspondence:

Correspondence sent

Letter dated 23 June 2005 from the Chair to the Hon Diane Beamer MP inviting the Minister and representatives from the Department of Juvenile Justice to appear before the Committee.

Correspondence received

Letter from Ms Megan Wilson, Director – Office of the Director General, dated 30 June 2005 clarifying information provided by the Department of Juvenile Justice

Letter from the Hon Diane Beamer MP regarding the Committee's invitation to the Minister and representatives from the Department of Juvenile Justice to appear before the Committee.

Resolved, on the motion of Dr Wong: That the correspondence from Ms Megan Wilson be made public.

Consideration of Chair's Draft Report

The Chair submitted his draft report which, having been circulated to each member of the Committee, was accepted as having been read.

Ms Cusack moved: That the Committee defer consideration of this draft report and instead report to the Parliament in the following terms:

Use the wording of Chapter 1 introduction paragraph 1; delete paragraph 2; 1.1; 1.2; 1.3; 1.4 with amendments.

Amend 1.4 by inserting after the words "position as Director General", the words "and the inability of Mr Peter Muir, Director Operations to attend until after the end of July,".

Insert a new paragraph 1.5 to read:

"The inability of the Government to answer questions or respond to evidence provided by witnesses to the Inquiry places the Committee in a position of being unable to finalise many important aspects of this report. While a detailed draft report has been prepared for consideration by the Committee, a large number of recommendations on issues such as

- access to mental health services;
- rehabilitation of indigenous young offenders;
- the operation of the complex Objective Classification System;
- the apparent overuse of casual staff;
- the 12 month backlog in staff investigations; the effectiveness and fairness of these investigations;
- management recruitment practices;
- implementation of an effective punishment and rewards system;

- the role of other agencies in breaking the crime cycle at an early stage of offending;
- the standing and future of the 'Dispersal Option' developed by the Department of Juvenile Justice;
- allegations that contraband is tolerated in detention centres;
- status and response to the findings and recommendations of the Newbury Report;
- and the Minister's response to the findings of the BOSCAR report on Juvenile recidivism rates (published May 2005).

In these circumstances the Committee reports that we have been unable to properly deliberate on the evidence due to the inability of the Minister and Department of Juvenile Justice to provide additional evidence required to complete our findings and recommendations.

The Committee recommends the Parliament permit a continuation of the inquiry until 31 October 2005 to enable this process to be properly completed."

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Lynn

Noes: Revd. Dr Moyes, Dr Wong, Ms Fazio, Mr Roozendaal

Question resolved in the negative.

Chair's Foreword read.

Resolved, on the motion of Ms Cusack: That the word 'rightly' be deleted from the third sentence of the second paragraph.

Resolved, on the motion of Mr Lynn: That the word 'philosophical' be added to the fourth sentence of the fifth paragraph.

Resolved, on the motion of Ms Fazio: That the following sentence be included after the sixth paragraph:

The Committee would also like to put on record our appreciation for the Governor of Karióng, his staff and detainees for speaking candidly with Committee Members during our site visit.

Chapter One, *Introduction*, read.

Resolved, on the motion of Ms Fazio: That paragraph 1.30 be amended to read:

The DCS oversees 30 correctional centres, 10 periodic detention centres and two transitional centres for female inmates. The DCS manages approximately 9,100 offenders in full time custody, including approximately 600 women. In addition, the DCS manages 900 offenders in periodic detention centres in week and mid-week programs and supervises over 18,000 offenders in the community on parole, probation or serving community service orders.

Resolved, on the motion of Ms Fazio: That the first sentence of paragraph 1.34 be deleted.

Resolved, on the motion of Ms Cusack: That the first and second sentences of paragraph 1.35 be deleted.

Resolved, on the motion of Ms Fazio: That final sentence of paragraph 1.35 be deleted.

Resolved, on the motion of Ms Fazio: That the following quote from The Hon John Hatzistergos in evidence to the Committee on 14 March 2004, p5 be added to the end of paragraph 1.35:

‘The detainees will either go to work or to school and in addition to that they will have to attend various programs to address their underlying offending behaviour.’

Resolved, on the motion of Ms Fazio: That the word ‘overwhelming’ be deleted from the third sentence of paragraph 1.39.

Resolved, on the motion of Ms Fazio: That the last sentence of paragraph 1.40, Recommendation 1 – Key Recommendation, and paragraph 1.41 be deleted.

Chapter One, as amended, on the motion of Ms Fazio, agreed to.

Chapter Two, *Kariong Juvenile Justice Centre and reasons for the transfer*, read.

Resolved, on the motion of Ms Cusack: That the following paragraph be added after paragraph 2.11:

Johnston Report, 2003

As one of the original reviewers in 2002, Lou Johnston was employed to assess progress made by the DJJ towards the implementation of each of the recommendations made in the 2002 Johnston and Dalton Report. Overall, this report is critical of the lack of progress made by the Department in implementing procedural or cultural change at the Centre.

Resolved, on the motion of Ms Cusack: That paragraph 2.13 be deleted and replaced with:

The Fish, Payne, Pattenden and Viney Pty. Ltd Report (2004)

In August 2004, the *State Wide Study of Juvenile Justice Centres NSW* was prepared for the DJJ. The report contains 4 volumes. The Executive Summary states that ‘a detailed planning and development appraisal of Juvenile Justice custodial facilities at Kariong was completed’ by the consultants. It further examined the suitability of Kariong Juvenile Justice Centre against Australasian standards in relation to the design and appropriate housing of juvenile offenders. The Report is dealt with in detail in Chapter 11.

Resolved, on the motion of Mr Lynn: That the following sentence be added as another dot point to the end of the section ‘Management and staffing’ at paragraph 2.17: ‘High turnover of senior managers and different management approaches.’

Resolved, on the motion of Ms Cusack: That the word ‘staff’ be deleted from the second dot point in the section ‘Security and safety’ at paragraph 2.17.

Resolved, on the motion of Ms Fazio: That the words ‘staff concern about the’ be added to the section ‘Kariong culture’ at paragraph 2.17.

Resolved, on the motion of Ms Fazio: That the third dot point of the section ‘Departmental oversight’ at paragraph 2.17 be deleted.

Resolved, on the motion of Ms Fazio: That the following quote from The Hon John Hatzistergos in evidence to the Committee on 14 March 2004, p16 be added to the end of paragraph 2.27:

‘We did not need richly paid consultants to tell us that the swimming pool was not going to work at Kariong, for what we were going to do. There was an adequate range of recreational activities to fulfil our requirements to ensure that inmates received appropriate exercise. That pool was appallingly located—I do not know why you put it there, in fact. I understand from some of the staff, the education staff in particular, that the shed, which was on a slope, was actually used as a diving platform by some of the detainees. When the detainees were misconducting themselves and staff were trying to get a hold of them, they would dive into the middle of the swimming pool and ask the staff to come in after them.’

Resolved, on the motion of Ms Cusack: That the last two sentences of paragraph 2.31 be deleted.

Resolved, on the motion of Ms Fazio: That the last sentence of paragraph 2.32 be deleted.

Resolved, on the motion of Ms Fazio: That the first three sentences of paragraph 2.37 be deleted.

Resolved, on the motion of Ms Fazio: That the statistics from Submission 2, Department of Corrective Services, be added as a footnote to paragraph 2.38.

Resolved, on the motion of Ms Fazio: That the following quote from The Hon John Hatzistergos in evidence to the Committee on 14 March 2004, pp4-5 be added after paragraph 2.39:

‘We have a lot of experience with young offenders in the corrective services system. We have more people in the age group of juvenile justice—16 to 21—than does Juvenile Justice. A lot of those are in juvenile offender programs that we operate at John Moroney, at Oberon and at Brewarrina, particularly in relation to indigenous young offenders. So, we have a lot of experience. We also have a lot of experience in dealing with serious offenders, which a lot of people who are at Kariong clearly. Indeed, we have much more experience in dealing with issues relating to serious offenders than the juvenile justice system, simply because of the large number of serious offenders in the adult system.’

Resolved, on the motion of Ms Cusack: That the first four sentences of paragraph 2.40 be deleted.

Chapter Two, as amended, on motion of Ms Fazio, agreed to.

Chapter Three, *Impact of the transfer*, read.

Resolved, on the motion of Ms Fazio: That the second sentence of the chapter introduction be deleted.

Resolved, on the motion of Ms Cusack: That the first sentence of paragraph 3.15 be amended to read: ‘Former Kariong youth officers felt that’

Ms Fazio moved: That paragraphs 3.25 and 3.26 be deleted.

Question put.

The Committee divided.

Ayes: Ms Fazio, Mr Roozendaal

Noes: Revd. Dr Moyes, Dr Wong, Ms Cusack, Mr Lynn

Question resolved in the negative.

Resolved, on the motion of Ms Fazio: That the first sentence of paragraph 3.32 be amended to read: 'Some former Kariong staff have'

Resolved, on the motion of Ms Cusack: That the second and third sentence of paragraph 3.32 be deleted.

Resolved, on the motion of Ms Fazio: That the text found at footnote 96 be put in the body of the report at paragraph 3.44.

Resolved, on the motion of Ms Cusack: That the word 'manifestly' be deleted from the first sentence of paragraph 3.53.

Chapter Three, as amended, on the motion of Mr Roozendaal, agreed to.

Chapter Four, *Consequences of the transfer – the legislation*, read.

Resolved, on the motion of Ms Fazio: That the section '*Crimes (Administration of Sentences) Act 1999*' at paragraph 4.1 be amended to read:

Regulates the administration of offenders in adult correctional, periodic and transitional centres, and in the community by the Department of Corrective Services.

The Committee noted Ms Cusack's concerns that the NSW Ombudsman *Discussion Paper, Review of the Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001* is not discussed in this chapter.

Resolved, on the motion of Ms Cusack: That a footnote be added to the first sentence at paragraph 4.28 to read:

An amendment was moved in the NSW Legislative Council during debate on the Juvenile Offenders Legislation Amendment Bill 2004 to make the legislation Kariong specific but this amendment was defeated.

Resolved, on the motion of Ms Fazio: That the following quote from the Hon John Hatzistergos in evidence to the Committee on 14 March 2004, p7 be included at paragraph 4.32:

'The regime is structured under the legislation to have a difference between those people aged 16 to 18 and those who are 18 and above. As you would be aware, 18 and above can go into the adult system anyhow: they get a choice. They get an induction program and they are advised. Aged 16 to 18 is in a different circumstance. That requires a recommendation to me by the Serious Offenders Review Council in which the offender has rights of participation in a hearing of the Serious Offenders Review Council and can be legally represented. So there is a fairly full inquiry that takes place before a person between 16-18 can actually go into the adult system, and so far we have not had to move anyone in that category, and hopefully that will continue.'

Resolved, on the motion of Mr Roozendaal: That the first two sentences of paragraph 4.33 be deleted and the third sentence be amended to read ‘Some issues raised by participants to the inquiry’

Resolved, on the motion of Ms Fazio: That the following quote from the Hon John Hatzistergos in evidence to the Committee on 14 March 2004, p7 be added to paragraph 4.43:

‘Aged 18 and above requires a recommendation to me by the Commissioner for Corrective Services. As I say, I think they are the people you are talking about in terms of informed consent. They are people who have a right to request it, as two have. In one case an individual was moved because it was a better option in terms of dealing with the issues of that individual, and also for the safety and security of other detainees.’

Resolved, on the motion of Ms Fazio: That the following quote from Ms Martha Jabour in evidence to the Committee on 14 March 2004, p37 be added after paragraph 4.49:

‘I am not aware of a serious offender actually being transferred from a juvenile detention centre into an adult gaol. This is my second appointment to the Serious Offenders Review Council [SORC]. I have been a member for three years and I have not had that experience, although I suppose one of the biggest things for a juvenile offender would be a somewhat daunting one and that would be going from a juvenile detention centre into an adult gaol. Obviously their security would be something that they would be quite frightened about. I think that for the person who is in a juvenile detention centre, the Serious Offenders Review Council should still have that same monitoring role where they still meet with the independent council at the juvenile detention centre that they are at so that when the time came that they went into an adult gaol, the transition was not going to be one where it is very alien and they do not know any of the faces. We could guide them right from the very start and that is from the day that they start their sentence. Apart from that, I really have not had any experience of what the transition would be except to say that now that we know there are possibly about six serious offenders who would fall under the guidelines of a SORC inmate, that would be the way that I would do it.’

Resolved, on the motion of Ms Fazio: That paragraph 4.56 be deleted and replaced with the following paragraphs:

However, the NSW Ombudsman recently produced a ‘Discussion Paper: Review of the *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*’, which indicates the problems associated with preventing detainees from transferring to the adult system if they wish to do so. The NSW Ombudsman notes that a number of detainees who had been transferred between 2002 and 2003 reported at interview that they had deliberately committed offences whilst in juvenile detention, including keeping staff as hostages, in order to be moved into the adult prison.

The NSW Ombudsman’s Discussion Paper usefully included testimony from nine young offenders who had been removed to the adult system by the end of September 2003. Interviews were conducted to determine how they were faring in their new environment and for evidence of their experiences since moving to corrective services. The NSW Ombudsman reports a somewhat mixed set of experiences. Of the nine, four had been held on ‘protection non-association’ orders at a remand institution for a number of months following their transfer. At the time of the initial interview, all of the detainees reported that they were ‘unsettled and bored’ and complained about being on the non-association orders which meant they were only allowed out of their cell for very limited amounts of time. According to the NSW Ombudsman, at a later

interview at a maximum-security institution, these four, plus two other young offenders, were associating together and were much more settled. The Discussion Paper also says:

Most complained about having 'nothing to do', except for the one who was working. All six reported smoking more cigarettes in prison, not using illicit drugs, and not having been assaulted. All reported that the rules were more straightforward in adult prison and that 'you know where you stand with the workers'; several said they were 'treated like a kid' in juvenile detention but that in prison you needed to 'treat the screws with respect.'

Other experiences have been less favourable. Detainees are reported to have been depressed in their new environment and having been scared, intimidated and even assaulted. Importantly, the NSW Ombudsman noted that most of these interviewees concluded that they felt it would preferable to move to corrective services only at an older age than 18 years.

Chapter Four, as amended, on the motion of Mr Roozendaal, agreed to.

Chapter Five, *Classification*, read.

Resolved, on the motion of Ms Fazio: That the word 'overwhelmingly' be deleted from paragraph 5.11.

Resolved, on the motion of Mr Roozendaal: That third sentence in paragraph 5.17 be deleted and replaced with the words 'These issues are discussed in Chapter 6.'

[Dr Wong left the meeting]

Resolved, on the motion of Ms Cusack: That Recommendation 2 be deleted.

Mr Roozendaal moved: That Recommendation 3 be amended by deleting the words 'within six months of this report'.

Question put.

The Committee divided.

Ayes: Revd. Dr Moyes, Mr Roozendaal, Ms Fazio,

Noes: Ms Cusack, Mr Lynn

The question resolved in the affirmative.

Ms Cusack moved: That Recommendation 3 be deleted.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Lynn

Noes: Revd. Dr Moyes, Ms Fazio, Mr Roozendaal

The question resolved in the negative.

Ms Fazio moved: That Chapter Five, as amended, be agreed to.

Question put.

The Committee divided.

Ayes: Revd. Dr Moyes, Ms Fazio, Mr Roozendaal

Noes: Ms Cusack, Mr Lynn.

Question resolved in the affirmative.

Chapter Six, *Rehabilitation and recidivism*, read.

Resolved, on the motion of Ms Cusack: That the following paragraph be added after paragraph 6.34 and a footnote be attached with average expenditure per day of juveniles in custody:

Prior to the transfer, the Department of Juvenile Justice had an operating budget of \$6.822m for Kariong Juvenile Justice Centre. The Department of Corrective Services currently has a full yearly operating budget of \$3.872m. It should be noted there is an additional provision of \$2.1m for capital works to be undertaken at the Centre to attend to security and other site-related improvements.

Resolved, on the motion of Ms Cusack: That Recommendation 4 be amended by including the words 'continues to'.

Resolved, on the motion of Ms Cusack: That Recommendation 5 be amended by including the words 'continues to'.

[Dr Wong returned to the meeting]

Resolved, on the motion of Dr Wong: That Recommendation 6 be amended by including the word 'further'.

Resolved, on the motion of Ms Fazio: That Recommendation 7 be deleted.

Chapter Six, as amended, on the motion of Ms Fazio, agreed to.

3. Adjournment

The Committee adjourned at 5:45pm until 21 July 2005 at 2.30pm.

Julie Langsworth
Director

Minutes No. 10
21 July 2005
Room 1153, Parliament House, 2.40pm

1. Members Present

Revd the Hon Dr Gordon Moyes MLC (Chair)
 Hon Catherine Cusack MLC
 Hon Amanda Fazio MLC
 Hon Charlie Lynn MLC
 Hon Eric Roozendaal MLC
 Hon Dr Peter Wong MLC

2. Deliberative Meeting – Inquiry into Juvenile Offenders

Consideration of Chair’s Draft Report

The Committee resumed consideration of the Chair’s draft report.

Resolved, on the motion of Ms Fazio: That the title of Chapter 7 be amended to read ‘Human rights issues for juveniles’ and that ‘Chapter 7 Human rights issues for juveniles’ become ‘Chapter 8 Human rights issues for juveniles’; ‘Chapter 8 Other systemic issues’ become ‘Chapter 9 Other systemic issues’; and ‘Chapter 9 Adults in juvenile justice’ become ‘Chapter 7 Adults in juvenile justice’.

[The Committee noted that, for the purpose of this meeting, the Committee would consider the chapters as their previous chapter numbers.]

Chapter Nine, *Adults in juvenile justice*, read.

Resolved, on the motion Ms Cusack: That the following quote from Submission 1, Rod Blackmore, p2 be included after paragraph 9.2:

‘The fact remains that it is wrong in principle for adults and juveniles to be detained in the one facility, whether it be a juvenile detention centre or an adult correctional centre.’

Ms Cusack moved: That paragraphs 9.32 to 9.38 be deleted.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Lynn

Noes: Revd. Dr Moyes, Dr Wong, Ms Fazio, Mr Roozendaal

The question resolved in the negative.

Resolved, on the motion of Dr Wong: That paragraph 9.37 be amended by deleting the word ‘many’ and replacing it with the word ‘some’.

Resolved, on the motion of Dr Wong: That Recommendation 24 be deleted.

Mr Roozendaal moved: That Chapter Nine, as amended, be agreed to.

Question put.

The Committee divided.

Ayes: Revd. Dr Moyes, Dr Wong, Ms Fazio, Mr Roozendaal

Noes: Ms Cusack, Mr Lynn

The question resolved in the affirmative.

Chapter Seven, *Human rights issues for juveniles*, read.

Resolved, on the motion of Ms Fazio that the following quote from The Hon John Hatzistergos evidence to the Committee on 14 March 2004, p4 be included at the end of the paragraph 7.21: 'The standards that Australian juvenile jurisdictions have adopted are the Australasian juvenile justice administrators standards. They are effectively guidelines for the management of offenders, and overwhelmingly we comply with those. There are some areas that we will not, I make that quite clear. One of the standards says we have to give preference to what juveniles want to eat. We will not do that. We will always put the needs of good nutrition ahead of what people demand. We do not resile from that.'

Dr Wong moved: That Chapter Eight, as amended, be agreed to.

Question put.

The Committee divided.

Ayes: Revd. Dr Moyes, Ms Fazio, Mr Roozendaal, Dr Wong

Noes: Ms Cusack, Mr Lynn

Question resolved in the affirmative.

Chapter Eight, *Other systemic issues*, read.

Resolved, on the motion of Ms Cusack: That the words 'crime prevention' be added to paragraph 8.11.

Resolved, on the motion of Ms Fazio: That the words 'many of which have not been implemented' be deleted from paragraph 8.12.

Ms Cusack moved: That Recommendation 8 be deleted and replaced with the following recommendation:

Recommendation 8

That the NSW Government commissions an independent, professional audit of rehabilitation programs directed at Indigenous young offenders; evaluate the effectiveness of those programs and develop new policies to more effectively address over-representation of Indigenous people in the juvenile justice system.'

Question put.

The Committee divided.

Ayes: Revd. Dr Moyes, Ms Cusack, Mr Lynn, Dr Wong
Noes: Ms Fazio, Mr Roozendaal

Question resolved in the affirmative.

Ms Cusack moved: That the Recommendation 9 be deleted and replaced with the following recommendation:

Recommendation 9

That the NSW Government reconvene an Implementation Committee for monitoring and annual reporting on the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Lynn
Noes: Revd. Dr Moyes, Ms Fazio, Mr Roozendaal, Dr Wong

Question resolved in the negative.

Resolved, on motion of Mr Roozendaal: That Recommendation 10 be amended by deleting the words 'the Department of Juvenile Justice' and including the words 'the NSW Government'.

Resolved, on motion of Ms Cusack: That Recommendation 11 be amended by deleting the words 'often emerge in the mid to late teens, the Department of Corrective Services' and including the words 'frequently occur in teenage years, the NSW Government'.

Resolved, on the motion of Ms Fazio: That the words 'with which they have a Memorandum of Understanding' be added to paragraph 8.35.

Resolved, on motion of Ms Fazio: That Recommendation 13 be amended by including the words 'continue to'.

Ms Cusack moved: That paragraph 8.63 be deleted.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Lynn, Dr Wong
Noes: Revd. Dr Moyes, Ms Fazio, Mr Roozendaal

There being an equality of votes, the Chair gave his casting vote with the Noes.

Question resolved in the negative.

Resolved on motion of Ms Fazio: That Recommendation 14 be amended by deleting the words 'undertake to'.

Resolved on motion of Revd. Dr Moyes: That paragraph 8.79 be deleted and replaced with the following paragraph:

However, the success of these disciplinary measures depends largely on the effectiveness of other departmental policies. A number of participants have been highly critical of the incentive scheme, for example, which was manifestly ineffective as a means of encouraging positive behaviour in detainees at Kariong. Primarily, it was considered to be failing because of the chronic misapplication of department policy, but also because it provided inappropriate rewards for detainees who are accommodated up to the age of 21 and unlikely to respond positively to incentives they view as meaningless. The Committee considers that without a coherent and well-managed scheme with meaningful rewards and sanctions, the options available to centre managers described above carry little or no weight and will be of no consequence to detainees who may feel they have nothing to lose.

Resolved on motion of Revd. Dr Moyes: That Recommendation 15 be deleted and replaced with the following recommendation:

Recommendation 15

That the Department of Juvenile Justice revise and formalise clear penalties for detainees who breach centre policies, including assaults on staff, and ensure that all staff and detainees have access to and understand these sanctions.

Ms Cusack moved: That Recommendation 16 be deleted.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Lynn

Noes: Revd. Dr Moyes, Ms Fazio, Mr Roozendaal, Dr Wong

Question resolved in the negative.

Resolved on motion of Dr Wong: That Recommendation 19 be amended by including the words 'in particular'.

Resolved on motion of Mr Roozendaal: That Recommendation 20 be deleted and replaced with the following recommendation:

Recommendation 20

That the Department of Juvenile Justice provide former Kariong Staff who have continued employment with the Department with appropriate training and support.

Ms Cusack moved: That Recommendation 21 be deleted and replaced with the following recommendation:

Recommendation 21

That the Department of Juvenile Justice review its management recruitment practices to ensure the high percentage of inexperienced managers be balanced by managers with practical experience in program delivery in a custodial setting.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Lynn

Noes: Revd. Dr Moyes, Ms Fazio, Mr Roozendaal, Dr Wong

Question resolved in the negative.

Mr Roozendaal moved: That the Recommendation 21 be amended by including the words 'appropriate' and 'support'; and deleting the words 'other middle' and replacing them with the words 'all levels of'.

Question put.

The Committee divided.

Ayes: Revd. Dr Moyes, Ms Cusack, Mr Lynn, Mr Roozendaal, Dr Wong

Noes: Ms Fazio

Question resolved in the affirmative.

[Dr Wong left the meeting]

Ms Fazio moved: That Recommendation 22 be adopted.

Question put.

The Committee divided.

Ayes: Revd. Dr Moyes, Ms Fazio, Mr Roozendaal

Noes: Ms Cusack, Mr Lynn

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio: That the words 'including casual staff' be deleted from Recommendation 23.

Ms Cusack moved: That paragraph 8.116 be deleted.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Lynn

Noes: Revd. Dr Moyes, Ms Fazio, Mr Roozendaal

Question resolved in the negative.

[Ms Cusack and Mr Lynn left the meeting]

Resolved, on the motion of Mr Roozendaal: That paragraph 8.116 be amended by including the word 'some'.

Chapter Nine, as amended, on the motion of Ms Fazio, agreed to.

Chapter Ten, *Wider consequences of the transfer*, read.

Resolved, on the motion of Ms Fazio: That the following quote from Submission 6, NSW Ombudsman, p2 be added after paragraph 10.17:

'...my office has closely monitored arrangements surrounding the transfer of Kariong from DJJ to DCS. Juvenile inmates who spoke with my staff during inspections of the centre in November 2004 and February 2005 generally commented favourably upon the transfer, stating DCS officers are consistent and fair in their treatment. Although DCS is operating the centre with almost half the number of previously employed by DJJ at the centre, it appears to be functioning well. The number of incidents within the centre has also reduced.'

Chapter 10, as amended, on the motion of Mr Roozendaal, agreed to.

Chapter 11, *Alternative to establishing a juvenile correctional centre*, read.

Resolved, on the motion of Ms Fazio: That paragraph 11.22 be amended by including the words 'as proposed by the consultants and'.

Resolved, on the motion of Ms Fazio: That the sentence 'The plan has not been implemented.' be added to the end of paragraph 11.22.

Resolved, on the motion of Ms Fazio: That Recommendation 25 be amended by replacing the words 'NSW Government' with the words 'Department of Juvenile Justice'.

Chapter Eleven, as amended, on the motion of Ms Fazio, agreed to.

[Dr Wong returned to the meeting]

Chapter Twelve, *Conclusions and Major Recommendations*, read.

Resolved, on the motion of Mr Roozendaal: That Recommendation 26 be amended by deleting the words 'for a period of 12 months' and 'independent'.

Resolved, on the motion of Dr Wong: That the second dot point in Recommendation 26 be amended by including the words 'of detainees between'.

Resolved, on the motion of Ms Fazio: That the first dot point in Recommendation 27 be amended by replacing the words 'international obligations' with the words 'Australasian Standards for Juvenile Custodial Facilities'.

Resolved, on the motion of Ms Fazio: That the fourth dot point in Recommendation 27 be deleted.

Resolved, on the motion Ms Fazio: That the twelfth dot point in Recommendation 27 be amended by including the words ‘assessment for’.

Resolved, on the motion of Mr Roozendaal: That the thirteenth dot point in Recommendation 27 be deleted.

Resolved, on the motion of Ms Fazio: That the first dot point in Recommendation 28 be deleted and replaced with the words ‘to further consider returning the responsibility for management of all juvenile offenders to the Department of Juvenile Justice in the longer term’.

Resolved, on the motion of Ms Fazio: That Recommendation 30 be amended by deleting the words ‘particularly Indigenous young people’.

Chapter 12, as amended, on the motion of Dr Wong, agreed to.

Appendices 1 – 7, on the motion of Mr Roozendaal, agreed to.

The Chair’s Foreword, as amended, on the motion of Mr Roozendaal, agreed to.

Resolved, on the motion of Dr Wong: That the report, as amended, be adopted by the Committee and signed by the Chair and presented to the House in accordance with Standing Orders 230 and 231.

Resolved, on the motion of Dr Wong: That the report, with accompanying public submissions, evidence, correspondence, answers to questions on notice, minutes and tabled documents, be tabled in the House in accordance with Standing Order 230.

Resolved, on the motion of Ms Fazio: That the Committee Secretariat be authorised to make any grammatical or typographical changes to the report prior to the tabling of the report.

The Chair indicated that the deadline for the provision of dissenting reports to the Secretariat would be 5pm on Monday 25 July 2005.

3. Adjournment

The Committee adjourned at 6.10pm

Julie Langsworth
Director

Appendix 8 Dissenting Statement: Opposition Members

The Liberal Members viewed the Inquiry as an opportunity to separate fact from fiction in Juvenile Justice, and to reach balanced findings and recommendations. In our view there is too great a gap between community expectations, commonsense and the current administration of Juvenile Justice.

The Inquiry was incomplete

At the beginning of the Committee's deliberations we argued that the Inquiry was incomplete because of the refusal of the Minister for Juvenile Justice, The Hon Diane Beamer MP to appear as a witness and respond to evidence taken by the Committee, which contradicted her public position on the issues. In addition the Department of Juvenile Justice refused to reappear. We note the Director General had resigned, and the Director, Operations was overseas.

The Liberal Members remind the Minister and senior officers of the Department that they are accountable to Parliament. We believe that the Committee should have pursued this matter more vigorously.

It is our view that the Committee should have provided a short report of our activities to the Parliament, and sought approval of the House to complete our Inquiry prior to deliberating on a final report.

Adults in juvenile detention centres:

We do not support the approach taken by the Committee in Chapter 7 dealing with Adults in Juvenile Justice. The Chapter contains a lengthy section on "Human Rights", which argues the principle of separating children from adults in the penal system.

We support this in principle and, as argued by Rod Blackmore, former Chief Children's Magistrate, we believe the large number of adults in Juvenile Detention Centres should be removed as they contaminate and compromise the rehabilitation prospects of child offenders. We believe the Committee has erred in recommendations that seek to delay and frustrate the transfer of adults from juvenile detention centres and Kariong Juvenile Correctional Centre into the prison system.

Resources available for rehabilitation at Kariong

The Liberal Members note the funding for Kariong Juvenile Correctional Centre has been almost halved since it transferred from Juvenile Justice to Corrective Services. Recommendation 3 implies that this level of funding is sufficient and should be continued. The Liberal Members believe the halving of the budget at Kariong is of concern and the Committee should have investigated this issue further through calling Government witnesses. The recommendation 3 is not based on evidence and in our view is unsafe in supporting current resource allocations for Kariong.

Royal Commission into Aboriginal Deaths in Custody

Recommendation 6 calls on the Government to “comply” with the recommendations of the RCADC. This recommendation is weak and ineffective. The Liberal Members note that in the past 10 years the proportion of Indigenous offenders in custody in juvenile detention centres has dramatically increased to 40%. We also note the findings of the Bureau of Crime Statistics that recidivism rates for juvenile Indigenous Offenders range up to 90% and believe that this reflects a total failure of the Government to effectively implement the Royal Commission findings. The Government should not have dismantled the implementation monitoring committee which objectively tracked progress on the recommendations of the Royal Commission.

The evidence and statistics viewed by the Committee show the problem of young Indigenous offenders is getting worse. We believe the Committee should have called for greater accountability by the Government. The recommendation envisaged by Liberal Members is to reconvene the RCADC monitoring committee so there could be independent scrutiny and advice on the Government’s implementation of the Royal Commission’s recommendations. To simply ask the Government to “comply” is insufficient and disregards the seriousness of the problem for both the community and the young offenders themselves.

The issue of training

A number of findings and recommendations 19 and 20 relate to increased funding and emphasis on training. The Liberal Members have noted the issue was repeatedly raised in evidence by the Department and other witnesses in a way we felt was an attempt to argue frontline-staff were in some way inadequate for the task. In relation to problems at Kariong it was a clear strategy of the Government to shift blame onto workers who were in reality the victims of the problems (and not the cause of them).

We disagreed with the recommendation to increase funding for training because we had no evidence as to what existing funding is, what training is or should be available, and, because we had no evidence of gaps or inadequacies, the Committee has no idea how much additional funding (if any) is needed, and for what. This recommendation seemed to us to have been plucked out of who knows where and undermined the credibility of the report. It also highlighted the need for further advice to be provided by the Government in order for the Committee to effectively deliberate on such an issue.

Criticisms of former Kariong staff

Chapters 3 and 9 make criticisms of former Kariong staff, which are reflective of allegations made by the Department in seeking to shift blame for problems onto staff. However these allegations were not supported by evidence received to our inquiry and indeed the reverse was proven – that staff attempted on numerous occasions to rectify problems through official channels and that these efforts were either ignored or repelled.

The Liberal Members believe such criticisms are unfair and not supported by the evidence. We strongly disagree with this aspect of the Committee’s deliberations and supported the version of staff, who feared being the victims of political pay-back by the Government.

Management of “A” classification inmates at Kariong Juvenile Correctional Centre

Liberal Members viewed issues relating to management of “A” Classification detainees as being at the heart of the legislation and the hub of the work of this Inquiry. However as Chapter 7 showed, the Committee considered detainees at Juvenile Justice Centres as a homogenous group. The section on

Human Rights failed to distinguish between adults and children in existing centres; it failed, along with other sections of the report to recognise the rehabilitation and management needs of detainees charged or convicted of very serious crimes are totally different to those serving short periods of remand or control order sentences. The section failed to distinguish the two types of “A” Classification – behaviour and offence; and failed to consider the custody management issues are very different.

This resulted in flawed findings and recommendations, including those relating to transfer to prison of adults whose crimes were committed when they were children.

Hon Catherine Cusack MLC

Hon Charlie Lynn MLC