



Briefing Note

Children (Detention Centres) Amendment Bill 2006

The *Children (Detention Centres) Amendment Bill* was rushed through the Lower House of NSW Parliament on 25 May 2006. There was no Parliamentary debate and no time for public comment on the Bill.

Why this is bad law

The legislation allows for the direct contravention of the human rights of juvenile offenders under a number of human rights treaties to which Australia (and hence NSW) is a signatory.

These treaties include the *International Covenant on Civil and Political Rights* (ICCPR) and the *Convention of the Rights of the Child* (CROC) which require that every child deprived of liberty shall be treated in a manner which takes into account the needs of persons of his or her age.

The Bill also offends the standards contained in *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* ('The Beijing Rules') and the *Standard Guidelines for Corrections in Australia*. Both of which require that correctional services reflect specific needs of offenders that may arise from their age and cultural backgrounds.

The Bill also goes against the spirit of the *Youth Offenders Act*, which is considered to be one of the most forward thinking pieces of juvenile justice legislation in Australia.

The Bill also contravenes a number of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

The bill is contrary to the spirit of Recommendation 25 of the *Report on the Inquiry into Juvenile Offenders* undertaken by the Legislative Council Select Committee on Juvenile Offenders, namely that "the NSW Government provides a long term commitment to maintaining a *separate* Department of Juvenile Justice to administer the range of non-custodial services appropriate to the needs of young people in NSW".

It is of particular concern that the NSW Government is legislating in this manner at a time when the United Nations Human Rights Committee have recently made

a finding that the NSW government violated the human rights of a young person while in the custody of NSW Correctional Services.

The UN Committee found that the NSW Government (and Australia as a signatory) contravened the right of Mr Corey Brough to be treated with humanity and with respect for his dignity. It also found that Mr Brough, who is Indigenous and has a mild intellectual disability, had not been treated in a way that was appropriate with his age – he was only 16 when he was put in isolation at Parklea Prison.

We believe that rather than entrenching these violations into law the NSW government should take steps to ensure that similarly inhumane treatment is not inflicted on any person in our prison or juvenile detention systems.

Specific concerns:

Schedule 1[7] increases the length of time juvenile detainees can be held in segregation from 6 hours in a 24 hour period to an indefinite period of time.

Schedule 1[8] significantly increases the time juvenile detainees can be held in isolation as punishment – from 3 hours to 12 hours in a 24 hour period for under 16 year olds and from 12 hours to 24 hours for over 16 year olds.

Both of these increases have serious implications for the well being of young detainees, especially Indigenous detainees. Both directly contravene recommendations 144, 167 and 182 of the *Royal Commission into Aboriginal Deaths in Custody* which require that that in all cases, unless there are substantial grounds for believing that the well being of the detainee or other persons detained would be prejudiced, an Aboriginal detainee should not be placed alone in a cell.

We have great concerns about any increases in these types of punitive options for young people and question how this will be scrutinised in practice. Of particular concern is the legalization of indefinite segregation at the discretion of the Director General. It is difficult to imagine in what circumstances a person could humanely be held in segregation indefinitely.

The legislation entrenches practices of segregation or confinement of offenders for extended periods of time by removing existing safeguards to prevent prison officers taking the 'easy option' of shutting troublesome youths in isolation for extended periods of time.

This leaves the system open for similar abuses that were inflicted on Corey Brough. Corey was shut in isolation for 72 hours at a time (an allegation that was initially denied by the NSW Department of Corrective Services, however the Human Rights Committee found evidence proving Corey's allegations). Corey's

confinement was held to be “manifestly incompatible with his condition” by the UN Human Rights Committee.

A previous report from the NSW Ombudsman into the treatment of juvenile detainees has been particularly critical of the use of segregation and isolation in juvenile detention centres. Confining youths in holding cells for extended periods of time may clearly contribute to deterioration in any mental health condition they may have.

We consider these amendments to be a significant step backwards in the treatment of young people in detention. We see no sound policy reason for their inclusion in the Bill.

Schedule 1[10] significantly extends the circumstances under which the control of a juvenile facility may be passed to NSW Corrections. These arrangements subject children and young people to an adult corrections environment in direct contravention of Article 10 (2) *ICCPR*.

The transformation of juvenile justice into an adult style prison environment is particularly disturbing given the poor record of Corrective Services as regards rehabilitation and recidivism highlighted in the Audit Commissioner Report released this week.

It is important to remember that these amendments apply to children as young as 13 or 14 in juvenile detention centres of all levels of security. We believe that bringing more young people under the control of NSW Corrective Services will serve to further change the culture of the Juvenile Detention Centres to mirror that of adult correctional facilities. At best it is an abrogation of responsibility and at worst it amounts to a denial of children’s rights to appropriate detention in line with international human rights standards.

We acknowledge that there may be a small group of young offenders that are difficult to control – however this group should be able to be dealt with by employees of the Department of Juvenile Justice, who are trained to work with young people.

Under the legislation, once control is assumed by the Department of Corrective Services, correctional officers will have the same functions and immunities as if they were policing an adult correctional centre. This means that the correctional officers may use the same techniques as if they were policing adults prisoners, including the use of attack dogs.

Schedule 1[11] allows Justice Health to impose medical treatment on a juvenile detainee without their consent under certain circumstances. This could include prescription of sedatives, anti-psychotics and other serious medical interventions.

Whilst we welcome Justice Health providing medical services to young detainees, we can see no reason why a young person with the capacity to make decisions about their medical care cannot refuse medical treatment just because they are within the juvenile detention system.

Schedule 1 [12] to [15] makes administrative changes to send more detainees currently held in juvenile detention centres to adult jails. In particular it enables transfers of people over 18 to any NSW prison, rather than to specific units for young offenders in adult prisons. It also allows for transfers whenever the young person requests it and automatic transfer for anyone over 21.

NCOSS and the Youth Justice Coalition have made previous representations to the NSW Government in regards to the dangers of young people being seen to self select into the adult prison system.

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

We note that the Ombudsman's Discussion Paper does not go into any detail as to what is motivating young people to want to enter the adult prison system early. However we note that of the seven people transferred into adult prison early, four were found to have moderate to severe intellectual disabilities.

This phenomenon is even more disturbing when it is recognized that a third of young people in juvenile detention are Indigenous and that there is evidence that Indigenous offenders have higher prison return rates and therefore may be more likely to view going to prison as a way of life. Routinely moving young Aboriginal people into adult prisons could have the effect of cementing them into the adult prison cycle. It should also be noted that Corey Brough was one such detainee transferred to a unit in Parklea prison. His story is a stark reminder of how an adult prison environment is a very dangerous place for a young person to be held.

Schedule 16 allows for a very wide regulation making power in regards to juvenile detention matters. It includes an ability to make significant changes to detainees rights as regards visitors, privacy, complaints, religious and cultural rights, access to medical treatment and participation in education and rehabilitation. It also includes significant regulation making powers in regards to the use of restraints, use of force, body searches etc.

Whilst there is a legitimate role for regulations to cover the administration and management of detention facilities, we are concerned that changes could be made by way of regulation that downgrade fundamental rights of young people in detention without Parliament being given the opportunity to effectively scrutinize them.

In a related matter we are very concerned to note in the second reading speech that the Director General is about to enter into an agreement with the Commissioner for Children and Young People to effectively remove external scrutiny of complaints of unreasonable use of force by Juvenile Justice officer (or corrective services staff at Kariong or any other juvenile detention centre).

The agreement specifically states that legitimate use of force is not reportable conduct for the purposes of the *Commission for Children and Young People Act 1998*. The agreement also means that a complaint concerning the use of force where the outcome of an investigation is that the allegation is not sustained due to insufficient evidence and the allegation is not of a serious nature will not be reportable. Also, allegations of low-level neglect where no harm occurred to the detainee will no longer be reportable.

We understand that this agreement has arisen out of concerns that Juvenile Justice officers have had negative reports on a “working with children check” following a complaint by a juvenile justice client. We agree that unsubstantiated complaints should not be recorded on a working with children database once they have been finalized. However this does not mean that young people should also be denied the opportunity to have their complaints noted and considered by an independent person. We seek urgent clarification on this point.

We are also concerned that the concept of “low level neglect” is creeping into the culture of juvenile justice as a means of avoiding the clear and absolute duty of care owed by the state of NSW to detainees. Neglect is neglect and the cumulative effects of “low level” neglect should not be forgotten.

Conclusion

It is important to remember that development of a separate Juvenile Justice system was intended to provide a model that was more focused on rehabilitation than the adult correctional system. As with other recent reforms in the area of juvenile justice this legislation is yet another step towards creating a juvenile justice system that is harsh and dehumanizing.

Michelle Burrell
NCOSS Deputy Director Policy
May 2006