



DEPARTMENT OF JUSTICE

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Mr Elton Humphrey
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Senate Community Affairs References Committee
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Dear Mr Humphrey

Senate Inquiry into Children in Institutional Care

With reference to the above inquiry, the Western Australia Department of Justice is pleased to make a submission regarding the provision of residential care to children who have been placed in the Department's care.

The *Acts Amendment (Ministry of Justice) Act 1993 (WA)* enabled the Ministry of Justice (now Department of Justice) to take over responsibility for the control and treatment of children who had offended against the law from the Department of Community Development. As such, the Department is responsible for juvenile detention centres, placement of juveniles in bail hostels and various station placement programmes.

I have attached an overview of the services provided by the Department to juveniles for your information (attachment 1) and the Department's response to each term of reference (attachment 2).

I trust that the information provided is of assistance to you.

Yours sincerely

Alan Piper
DIRECTOR GENERAL

21 September 2003

Attach x2

SERVICES PROVIDED BY THE DEPARTMENT OF JUSTICE TO JUVENILES

1. JUVENILE DETENTION CENTRES

Juvenile Custodial Services operates a secure remand centre for unsentenced juveniles and a secure detention centre for sentenced offenders. Both are located in the metropolitan area.

Juveniles aged between 10 and 18 years who are arrested, remanded in custody or who are unable to meet bail requirements are held at Rangeview Juvenile Remand Centre. Juveniles sentenced to a period of detention are held at Banksia Hill Detention Centre.

At the end of February 2003, the juvenile detainee population was 125, the number of male detainees was 110 (88% of the total), female detainees 15 (12% of the total). There were 85 sentenced detainees (68% of the total) and 40 unsentenced detainees. The total number of Aboriginal detainees was 93 (74.4% of the total number).

1.1 Rangeview Remand Centre

Detainees are managed in self-contained units. In late 2001, a major re-development was completed, which included a new 24-bed accommodation unit, bringing the centre's capacity to 56 with one bed per cell (or 72 with double-bunking).

The re-development separated long-term residential and transit functions, enabling the level of service to transit detainees to be maintained at the then high level, while improving the service provided to long-term residential detainees.

1.2 Banksia Hill Detention Centre

The centre accommodates all sentenced juvenile offenders from across the State. A range of programmes that address offending behaviour and substance abuse are provided at the detention centre. It is compulsory for all school age young people to attend school, and TAFE courses are provided for post-compulsory school age young people. The Young Offender Personal Development Programme that was developed at Banksia Hill in 2000 introduces juvenile offenders to ideas and skills that may help them in breaking offending cycles and coping with the challenges they face in the community. The programme addresses areas such as anger management, victim awareness, problem solving, motivation to change, refusal skills and relapse prevention.

There are also individual intensive programmes for very serious offenders provided by Clinical Psychologists who have developed an understanding of the complex challenges in dealing with this client group.

Assessment & Case Planning

There were 462 comprehensive assessment reports provided to sentencing and releasing authorities in 2000/2001. The individual assessment of juvenile offenders is designed to identify areas that may require the provision of specialist services to manage risk and address developmental and offending behaviour. In line with its business focus, Juvenile Custodial Services provides psychological, developmental, educational and health services designed to increase the capacity of young offenders to adopt law-abiding lifestyles.

Throughcare

Juvenile Justice Officers provide reports for sentence planning of young people sentenced to periods of detention. They maintain contact with families and ensure release plans are established to assist successful transition to the community.

Preparation for release of a juvenile commences on the day of their admission with the development of a comprehensive Case Management Plan, which may include family involvement. There is extensive liaison between Juvenile Custodial Services, Community Justice Services and community agencies to ensure that the young person has suitable accommodation, access to employment networks and other supports that assist in the adoption of responsible, law-abiding behaviours. Suitable young people may also participate in individual day release programmes to gradually integrate them back into the community.

Juvenile Justice Officers also provide young people with support and assistance beyond the completion dates of their orders and assist young people considered to be at risk of becoming an offender.

Juvenile Education Services

Juvenile Education Services assess the educational needs of young people in detention at Banksia Hill Juvenile Detention Centre or in long-term remand at Rangeview Juvenile Remand Centre and provide them with educational and training opportunities in custody and the community. When a juvenile is sentenced to custody or is in long-term remand, their educational needs are assessed. An individual plan is devised which takes into account the detainee's levels of literacy and numeracy, specific needs, interests and career aspirations. Individual education plans are frequently re-assessed and re-structured to meet the changing educational needs of each detainee.

The educational and vocational training centre at Banksia Hill provides programmes that allow detainees to make informed and responsible choices and equip them with education and training skills. Education and vocational courses can be accessed from national training packages, TAFE packages, training organisation modules and distance education, if part of an individual learning plan. Teachers closely monitor these courses and provide individual tutoring.

In addition, detainees are offered courses in cultural awareness, indigenous music, literacy and other short-term programmes for specific periods, taught by specialist staff.

Psychological Services

Psychological Services provide support and assistance to juveniles and their families in detention and in the community. It includes a team of specialist, masters-qualified psychologists who work with young people and their families who come into contact with the justice system. They provide confidential help in assessing, addressing and changing young people's behaviour. A Young Offender Personal Development Programme has been introduced to Banksia Hill Detention Centre, designed to give detained juveniles further opportunities to develop positive life skills and address their offending behaviour. These services are available to juveniles in detention and in the community.

1.3 Investigation of Complaints Made by Juveniles in Custody

Juvenile Custodial Rule 203 deals with requests and complaints by detainees. Pursuant to the Rule, a detainee may seek an interview directly with the designated Superintendent to discuss his/her complaint.

If the designated Superintendent is unable or unwilling to resolve the complaint the detainee must be advised of the following options:

- i. Request an interview with a detention Centre Visitor appointed under s.86 of the Young Offenders Act 1994 and in accordance with Juvenile Custodial Rule 501; or
- ii. Request that the complaint be forwarded to the Director Juvenile Custodial Services; or
- iii. Write to the Ombudsman; or
- iv. Write to the Minister responsible for Justice.

Furthermore, Juvenile Custodial Rule 204 deals with complaints of inappropriate sexual contact.

2 JUVENILE JUSTICE COMMUNITY BASED SERVICES

At the end of February 2003, there were 579 juvenile court orders for 541 distinct juveniles. Of the individuals with recorded demographic information, Aboriginal males had the highest number of orders (224, 41%), followed by Non-Aboriginal males (155, 29%), Aboriginal females (46, 9%) and Non-Aboriginal females (16, 3%).

Youth Community Based Orders comprised 48% (277) of all supervised orders, followed by Juvenile Conditional Release Orders (134, 23%), Intensive Youth Supervision Orders (95, 16%), Supervised Release Orders (57, 10%), and Community Work Orders (12, 2%).

2.1 Bail

The *Bail Act 1982* requires the supervision of juveniles while on bail. With some exceptions, there is a general requirement that juveniles will only be released on bail on the written undertaking of a responsible adult. The directorate operates a supervised bail programme, both in the metropolitan and country areas, to avoid unnecessary detention when difficulties occur in obtaining such an undertaking. Assistance is provided in seeking out a responsible adult or providing supervision.

2.2 Regional Supervised Bail Programme

Juveniles on remand, who are eligible for bail but don't have a responsible adult to sign the bail undertaking, can remain under supervision in selected regional communities to avoid unnecessary detention and separation from their families and communities. The facilities, which can cater for up to eight young people, are operated by the local Aboriginal communities as follows:

- **Banana Well, and Bell Springs**

The Bell Springs Supervised Bail Programme in the East Kimberley and the Banana Well Supervised Bail Programme in the West Kimberley are fully operational and accommodate young people on bail with supervision in their own communities. The outcomes of these programmes are:

- Bell Springs opened on 5 July 2001, and is on the traditional camping grounds of the Miriwoong people.
- The Bell Springs programme has accommodated 48 young people for an average stay of 23 days in its twenty months of operation.
- The Banana Well Supervised Bail Programme in the West Kimberley opened in December 2000 and operates in partnership with the local Burrjuk Aboriginal Corporation.
- The Banana Well Supervised Bail Programme has accommodated 38 young people for an average stay of 23 days in its 27 months of operation.

- **Yandeyarra**

The Yandeyarra Regional Supervised Bail Programme opened on 20 November 2002. Yandeyarra is located 140 kilometres south east of Port Hedland in the Pilbara Region. It is managed by the Mugarinya Community Association and is jointly monitored by the community and local Department of Justice staff. It provides accommodation for up to 8 juveniles on bail with supervision in their own community. The project aims to minimise the incidence of the removal of young people from regional areas as a consequence of their involvement with the justice system, thereby reducing cultural isolation and increasing appropriate support systems for juveniles.

A related initiative in 2002 was the establishment of a new position at Rangeview Detention Centre. The Manager, Supervised Bail and Diversion has charge of the Regional Supervised Bail Programme as well as the metropolitan Supervised Bail Programme and liaison services at Rangeview. For both metropolitan and regional programmes there has been an increase from 7.78% in 2000-2001 to 13.88% in 2002-2003 in young people, mainly Aboriginals, on supervised bail in the community (who would otherwise have been sent to Rangeview Remand Centre).

2.3 Juvenile Justice Teams

Juvenile Justice Teams were established to divert minor offenders from the formal court system and to increase the opportunity for victims and parents of offenders to be involved in determining outcomes applied to offenders. The teams ensure the consequences for minor offenders are immediate and meaningful – that they accept responsibility for their actions. Juvenile Justice Teams have been successful in reducing the number of charges dealt with by the Children's Court by up to 40% (sustained over five years).

TERMS OF REFERENCE

1(a) In relation to any government or non-government institutions, and fostering practices, established or licensed under relevant legislation to provide care and/or education for children;

- (i) Whether any unsafe, improper or unlawful care or treatment of children occurred in these institutions.**

Response

Information provided by the Internal Investigations Unit of the Department of Justice indicates:

- From 2 July 1998 to 9 January 2003 there have been seven recorded allegations of assault investigated at Banksia Hill Detention Centre. None of the complaints were substantiated.
- From 7 February 1994 to 12 March 1994 there were two recorded allegations of assault at Longmore (this detention centre is now closed). Both allegations were unsubstantiated.
- From 10 November 1995 to 24 June 2003 there have been four recorded allegations of assault, one of discrimination and one of excessive force investigated at Rangeview. None of the assault complaints were substantiated. The allegation of discrimination was investigated and not substantiated. The allegation of excessive force was completed and a recommendation made for a full investigation of the case (ongoing).
- On 28 September 1993 there was an allegation of assault made by a detainee at Riverbank (this detention centre is now closed). The outcome of that investigation resulted in the group worker concerned being counselled by the Superintendent.
- There has been only one complaint under Juvenile Custodial Rule 204. This complaint was against another detainee and was not substantiated. Juvenile Custodial Rule 203 deals only with minor issues, like day-to-day issues of comfort and does not cover complaints against unsafe, improper or unlawful care or treatment of children.

During 1992 a juvenile detained at the Longmore Remand Centre made allegations of improper conduct against one of the group workers. Following an investigation the group worker was dismissed for the inappropriate relationship. Following this incident another group worker was monitored over similar concerns with the same juvenile and was subject to a professional role definition agreement. This monitoring continued until November 1993 when the detainee was transferred to an adult prison.

- (ii) Whether any serious breach of any relevant statutory obligation occurred at any time when children were in care or under protection.**

Response

The Department has no record of any serious breach of any relevant statutory obligation in relation to juveniles under its responsibility.

- (iii) **An estimate of the scale of any unsafe, improper or unlawful care or treatment of children in such institutions or places.**

Response

Information gathered by the Department indicates there are no unsafe, improper or unlawful practises in departmental institutions.

- 1(b) The extent and impact of the long term social and economic consequences of child abuse and neglect on individuals, families and Australian society as a whole, and the adequacy of existing remedies and support mechanisms.**

Response

Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities (Gordon Inquiry).

On 15 January 2002 the Gordon Inquiry was set up by the Western Australian Government to:

- Examine the activities of State Government agencies in addressing complaints and the reporting of sexual abuse in Aboriginal Communities.
- Identify the barriers and capacity of Government agencies to address the issue of family violence and in particular child sexual abuse in Aboriginal communities.
- Comment and make recommendations on the mandatory reporting of sexually transmitted diseases occurring among children and juveniles.
- Comment on any limitations of DNA testing in the Aboriginal community; and propose support measures for children reporting abuse.

This report has revealed substantial child abuse among Aboriginal communities in Western Australia. In 2001, there were 24.6 reported incidents of domestic violence per 1000 people for the regional indigenous communities. In comparison, the reported rate of domestic violence for regional non-indigenous communities was only 0.73 per 1000¹. However, it is suspected that many cases go unreported and that the real figures are much higher. Data from the NT indicates that there are around 6000 incidents of assault on Aboriginal women in that territory per year, approximately one-third of the NT's Aboriginal female population. 25% of victims and perpetrators of domestic violence incidents in Western Australia are indigenous ('Police Decision Making and Domestic Violence: An Actuarial Model', Suzanne K. Dick) A full copy of the report can be viewed at:

http://www.premier.wa.gov.au/feature_stories/gordoninquiryreport.pdf

The Government's first progress report in relation to the inquiry can be viewed at:

<http://www.premier.wa.gov.au/gordonresponse/GordonProgress.pdf>

¹ Aboriginal Involvement in the Western Australian Criminal Justice System: A Statistical Review, 2001, Crime Research Centre, University of Western Australia.

1(c) The nature and cause of major changes to professional practices employed in the administration and delivery of care compared with past practice.

Response

Standards for Juvenile Custodial Facilities

The Australasian Juvenile Justice Administrators (AJJA) endorsed the Standards for Juvenile Custodial Facilities in March 1999. In July 2000 the Department of Justice adopted these standards.

The standards are based on the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the Convention on the Rights of the Child. The objectives of these standards is to provide detainees with a safe and secure environment, which assists them to address their offending behaviour and to make positive choices about their offending behaviour both during custody and upon their return to their community. The management of juveniles held in the care of the Department is consistent with the principles of these standards.

Following a review initiated by the Western Australian Attorney General, escorting procedures have been amended to ensure that pregnant juveniles are not subjected to the use of any form of mechanical restraint during movement out of the detention centres. Previously, detainees who were assessed at a high security classification may have been required to be mechanically restrained during transport to medical appointments.

Legislative Change

Prior to the enactment of the *Young Offenders Act 1994*, the management and administration of juvenile justice was contained with the *Child Welfare Act 1947* and the *Children's Court of Western Australia Act 1988*. Both Acts supported a welfare approach to juvenile crime. The Edwards report in 1982 criticised the use of indeterminate orders and the lack of emphasis on due process. Subsequent reports, such as the Carter report "The Wellbeing of the People" in 1984 and the internal Department for Community Services report "Review of the Juvenile Justice Systems" in 1986, further accelerated the questioning of this approach to juvenile crime.

The 1986 report set the groundwork for the development of a Children's Court Act and the concept of diverting young offenders from formal processing where possible. This process culminated in the *Children's Court Act 1988* and the amendment to the *Child Welfare Act* in 1988. This legislation introduced the position of the President of the Children's Court with equivalent status to a District Court judge, removed the "placed under control" provisions and gave the court the power to set fixed and finite sentences for young offenders.

The *Young Offenders Act* made provision for some modification to the criminal justice system to accommodate factors specific to children. These specific factors included maturity, a recognition that much juvenile offending is transitory and minor, and that young offenders should not be given a greater punishment than an adult for a similar offence.

Proposed amendments to the *Young Offenders Act 1994*

Current amendments are being proposed (yet to be endorsed by Government) to the *Young Offenders Act* seeking to expand options for young people pre-court; increase the use of juvenile justice teams; increasing options for release from detention and increased engagement of Aboriginal communities. In addition, it considers information sharing for specific purposes.

1(d) Whether there is a need for a formal acknowledgment by Australian Governments of the human anguish arising from any abuse and neglect suffered by children in care.

Response

There have been no substantiated incidents of mistreatment in Western Australian juvenile detention centres. Therefore, the Department of Justice does not consider that a formal acknowledgment is required.

1(e) In cases where unsafe, improper or unlawful care or treatment of children has occurred, what measures of reparation are required.

Response

If the Department were in a situation where it was required to admit responsibility for unsafe, improper or unlawful care or treatment, it would seek the advice of the Crown Solicitor with regard to any claim for compensation.

1(f) Whether statutory or administrative limitations or barriers adversely affect those who wish to pursue claims against perpetrators of abuse previously involved in the care of children.

Response

There are no known statutory or administrative limitations or barriers adversely affecting those who wish to pursue claims against perpetrators of abuse previously involved in the care of children. Pursuant to Juvenile Custodial Rule 204, where an ex-staff member is convicted of child sex abuse (or an allegation is substantiated) and where it is known that that person's current employment involves contact with children, then their employer would be advised of this information by the Department. Staff personal files are kept for a minimum period of seven years after an employee ceases employment with the Juvenile Custodial Services Directorate.

Furthermore, Juvenile Custodial Rule 203 states that any juvenile in the custody of the Department who wishes to make a complaint may:

- i) Seek an interview directly with the designated Superintendent to discuss his/her complaint.
- ii) If the designated Superintendent is unable or unwilling to resolve the complaint the detainee must be advised of the following options:
 - Request an interview with a detention Centre Visitor appointed under s.86 of the Young Offenders Act 1994 and in accordance with Juvenile Custodial Rule 501; or

- Request that the complaint be forwarded to the Director Juvenile Custodial Services; or
- Write to the Ombudsman; or
- Write to the Minister responsible for Justice.

Limitation Act 1935

The law of limitation of actions deals with the rules governing the period of time within which a person must commence civil proceedings. In Western Australia, these periods of time vary, depending upon the cause of action. The *Limitation Act 1935* (WA) is the major source of law on this topic.

On 9 June 2003, Cabinet approved the drafting of legislation for the reform of Western Australia's Limitations Laws.

1(g) The need for public, social and legal policy to be reviewed to ensure an effective and responsive framework to deal with child abuse matters in relation to:

(i) Any systemic factors contributing to the occurrences of abuse or neglect.

Response

The Department of Justice believes that there are systemic factors arising from the disadvantage suffered by Aboriginal people in remote aboriginal communities contributing to occurrences of abuse and neglect. This issue was raised under Term of Reference 1(b) in relation to the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities (Gordon Inquiry).

There are no known service delivery process-related systemic factors within the Department of Justice's jurisdiction contributing to the occurrences of abuse or neglect. The Department of Justice also seeks to minimise individual factors. For example, the Department of Justice screening and probity checks of staff will soon be upgraded. The move will come with the anticipated signing of a memorandum of understanding between the Department and CrimTrac to boost national criminal records screening. CrimTrac provides criminal history information to accredited Government and non-government agencies. The information is used to make informed decisions where crime prevention or community safety is of concern. The changes are part of planned improvements to the Department's criminal records screening processes.

Currently, all new permanent and some fixed-term employees who are working in areas that require substantial contact with children are screened. Under the proposed changes, all new fixed-term and new permanent employees will be required to undergo criminal records screening. Staff will be asked to provide their consent to be screened. In the future it is also intended to check for traffic convictions where a driver's licence is an essential requirement of the position.

It is anticipated that the changes will take effect within the next three months. The Government is currently preparing legislation regarding the screening of people working with children. This will increase the Department's responsibility as an

employer of people who work with children. Screening of non-DoJ employees who undertake activities on behalf of, or within, the Department will also be strengthened.

- (ii) Any failure to detect or prevent these occurrences in government and non-government institutions and fostering practices.**

Response

The Department is not aware of any failure to detect such occurrences and believes that its policies and procedures are among best practice.

- (iii) Any necessary changes required in current policies, practices and reporting mechanisms**

Response

As part of its mandate to investigate allegations of mistreatment, the Internal Investigations Unit has a responsibility to look at the wider issues regarding policies and procedures and make recommendations for change where necessary.