



Submission to the Inspector of Custodial Services on the Banksia Hill Riot

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SCALES and the Murdoch Clinical Program

SCALES is a Community Legal Centre working predominately in the Rockingham Kwinana region south west of Perth. It has a strong track record in a human rights based approach to legal practice. This approach and the work that SCALES does has been recognized in a number of awards and commendations including a National Australian Human Rights Award¹.

Murdoch School of Law in collaboration with SCALES, runs a clinical legal education program in which students are able to work alongside SCALES's legal practitioners and Migration Agents to assist clients and contribute to law reform. This clinical program has also received many accolades, including a National Citation from the Australian Teaching and Learning Council.

This submission was prepared by the students, from Murdoch's clinical program and SCALES particularly Corey White.

Background to this submission

SCALES initially became aware of the difficulties being experienced by the young men currently being held in Hakea through their families. We have spoken to more than a dozen family members of detainees. We have also been able to speak to a number of detainees and former detainees. This submission is based on what we have been told. We have not provided identifying material due to the high levels of anxiety that the young people and their families expressed about further difficulties with correctional services officers if they spoke out. The material in italics is directly quoted from detainees or their families.

The main focus of this submission are the conditions of the detention at Hakea, however we have also been told that there were a number of problems at Banksia Hill which contributed to the incident in January. We will briefly outline these also.

¹ SCALES won the law category of the Australian Human Rights Commission's awards in 2002.

Aim of Juvenile Justice

SCALES believes that an effective juvenile justice system should balance principles of accountability and proportionality, minimize formal intervention and seek opportunities for restorative justice and reintegration into the community. What is fundamental to the effective operation of juvenile justice system is recognition that children and young people are different to adults, they vary in maturation levels and predominately depend on adults for care, supervision and guidance. The aim 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 in custody and upon their return to the community. The system should emphasise the well-being of the juvenile and ensure that any reaction to juvenile offending shall always be in proportion to both the circumstances of the offender and the offence.

National Standards

In 2009, a set of national standards were developed by the Australian Juvenile Justice Administrators² (AJJA), which describe the standards to be employed by juvenile justice administrators across the country. They are the agreed set of standards that juvenile justice services aspire to meet and have been compiled in accordance with the law in all jurisdictions and takes into account the *United Nations Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules), *United Nations Rules for Protection of Juveniles Deprived of Their Liberty* and *United Nations Standard Minimum Rules for the Administration of Non-Custodial Measures*.

The stated purpose of these national standards includes supporting jurisdictions to provide services that:

- ensure that environments in which children and young people are lawfully detained are safe, secure and *developmentally appropriate*; and
- provide juvenile justice services in ways that *optimise the health and wellbeing* of children and young people. (*emphasis added*)

² The Australasian Juvenile Justice Administrators (AJJA) is a Standing Committee of the Community and Disability Services Minister's Advisory Council (CDSMAC) which provides support to the Community and Disability Services Minister's Conference.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice “Beijing Rules”

The Beijing Rules were adopted by the United Nations in 1985 to provide member States with guidance on how to protect the rights of children in juvenile justice and to develop separate and specialized systems of justice administration.

The rules have a number of fundamental principles, many of which are mirrored by the language in sections 6 and 7 of the *Young Offenders Act 1994 (WA)*. The rules operate within a framework of two other international legal instruments relating to juvenile justice: *United Nations Guidelines for the Prevention of Juvenile Delinquency* (The Riyadh Guidelines) and the *United Nations Rules for the Protection of Juveniles Deprived of Liberty* (JDL Rules).

These three sets of rules form part of a three stage process: firstly, the development and introduction of social policies designed to protect and prevent young people from offending (Riyadh Guidelines); secondly, establishing a justice system that is progressive in the way it deals with juveniles who come into conflict with the law (Beijing Rules); and lastly, protecting the rights and developing practices to re-integrate juveniles who have been detained back into the community (JDL Rules).

Western Australian Legislation: *Young Offenders Act 1994 (WA)*

The objectives and principles of juvenile justice are set out in Part 2 ss6-7 of the *Young Offenders Act (1994)*, the language of which is similar to that of the fundamental principles of the Beijing Rules.

Section 6 of the Act outlines the objectives of juvenile justice which are:

- To set out provisions embodying the general principles of juvenile justice for dealing with young persons who have or are alleged to have committed offences;
- To ensure the legal rights of young persons in custody are observed;
- Enhance & reinforce the roles of responsible adults & families in minimizing the incidence of crime;
- Rehabilitate young offenders towards becoming responsible citizens & integrate them back into the community; and
- To ensure young persons are dealt with in a way that is culturally appropriate.

In addition to Section 6, Section 7 of the Act lists the principles of juvenile justice administration that are to be observed under the Act. They include:

- (a) Special provision to ensure the fair treatment of young persons, who have or are alleged to have committed offences;
- (b) Detention of a young person in custody, if required, is to be in a facility that is suitable for the young person and at which the young person is not exposed to any adult detained in the facility:

- (c) Young people who commit offences shall be dealt with in ways that strengthen the family group of the young person, recognises the right of the young person to belong to a family and fosters the role of families to be able to deal with the offending behaviour of the young person.

Transfer to Hakea

Following the riot at the Banksia Hill facility on 20th January 2013, the juvenile detainees were transferred to Hakea prison. To accommodate the juveniles, the routines of the adult prisoners have had to be changed, causing anger amongst the adult prisoners. For example, the detainees have to be driven through the adult prison for visits each day; this means the prisoners must be locked down for an hour in the middle of the day.

Some of the young offenders have spoken about the adult prisoners yelling and making threatening gestures at them, leading to a sense of fear and intimidation.

Education, Rehabilitation, Integration & Early Release

Principle 9 of the Beijing Rules stipulates that “whilst undergoing institutional treatment appropriate educational services and care should be made available to assist juveniles in their return to society.” Section 6 of the *Young Offenders Act* stipulates the objectives in the administration of juvenile justice. The objectives are:

- To protect the legal rights of young persons in the criminal justice system;
- Rehabilitate young offenders towards becoming responsible citizens;
- Integrate young offenders back into the community; and
- Ensure young persons are dealt with in a way that is culturally appropriate.

It is evident from the information we have received that there are severe limitations on the education programs at Hakea and the rehabilitation programs are not available at all. One detainee told us that: *“When we first got to Hakea there were no education programs, now we do get school- but not very often. In Banksia we would go to school every day.”* The facilities available for schooling at Hakea are two classrooms which hold about 16 students each. This means that even if two half day sessions are run there are only 64 detainees that are able to access school. We understand that this equates to just over one third of the detainees that are currently in Hakea.

The failure to provide rehabilitation programs not only means that rehabilitation and re-integration into the community is more difficult, it can also affect the possibility of early release. Young people are already worse off within the WA justice system in terms of early release, needing to serve two thirds of their sentence while adults need only serve half to be eligible for parole. If detainees cannot complete the programs which enable them to show they are ready for release, they will not be released, effectively prolonging their sentence.

Some of the detainees we have spoken to are afraid that despite their willingness to complete the prescribed programs, they will not be eligible for early release because the programs are simply not being conducted at Hakea, or are being conducted on an irregular basis. One detainee said: *“None of the programs are available. I am supposed to be doing an alcohol program but none of it is being offered here. This makes me worry because I want to do everything I can for early release. If I can’t do the program it will make it hard for me to be released. My Nana is very sick and I want to get to see her before she dies- if I can’t get out earlier I am worried I won’t get to see her.”*

One of the guiding principles of the Beijing Rules is that placing a juvenile in a detention facility should be a measure of last resort. However where this is required, it should be for a minimum period possible. The effective prolonging of the sentence of detainees is a breach of this fundamental principle, which is derived from Article 37(b) of the *Convention on the Rights of the Child*.

Visits, Lockdowns & Telephone Calls

From our discussions with those involved, it has become apparent that there have been restrictions on the visitation rights of the juvenile detainees, which directly contravene the minimum standards and the Act. This has included threats of having their visits taken away, parents being denied visits upon arrival, denying extended family such as aunts and uncles visitation and the inability of younger siblings or children of the detainees to visit because of the no children policy at Hakea.

Section 7(m) of the *Young Offenders Act* states that:

A young person who commits an offence is to be dealt with in a way that —

- (i) Strengthens the family and family group of the young person; and
- (ii) Fosters the ability of families and family groups to develop their own means of dealing with offending by their young persons; and
- (iii) Recognises the right of the young person to belong to a family.

One of the detainees we spoke to said: *“once I got to Hakea, they wouldn’t let anyone in to visit me. I had one visit in four weeks. This is not because no-one wanted to come see me- but they wouldn’t let people come.”* Another told of a similar experience: *“We were just told there were not going to be any visits at all.”*

Numerous parents have corroborated incidences of being denied visits: *“I was also denied a visit, I suggested a non-contact visit but that was also denied. Every visit is cut short to about 35-40 minutes. I time them with my watch- they are supposed to be for an hour but they are always cut short and they never give us a reason. I am not allowed to bring his younger brother for a visit because he is under 18 years old.”*

Furthermore, at Banksia Hill, detainees were able to have visits during the afternoon; however at Hakea the visitation times are restricted to 11:30-12:30. It is difficult for many parents and family members

who have to work during these hours, as one young man told us, *“If your family can’t make visit at that time- you don’t get a visit”*

Furthermore, some of the family members of the juvenile detainees reside in regional areas, making it very difficult for them to visit and depriving the juvenile detainees of the reassurance and support that they require. Clearly the visitation arrangements for the families of the juvenile offenders at Hakea are inconsistent with the requirements of the *Young Offenders Act* and our obligations under the various UN frameworks referred to above.

Many of the detainees we have spoken to have also told of limited access to phone calls and being handcuffed while doing so: *“we are only allowed one phone call a day and sometimes not even that.”* At Banksia Hill, there weren’t the restrictions on phone the detainees could make as many as they liked so long as it didn’t interfere with the routine. The restrictions at Hakea limit the ability of the detainees to connect with their family members, who provide vital support.

From our inquiries, after being transferred to Hakea, the detainees were in lockdown for 24 hours a day for about a week. One of the detainees told us:

“To start with we were locked down for the whole day. We couldn’t get out –even for an hour to start with. There was no exercise and we hardly saw any of the others. This went on for quite a few days. Then it got a little bit better and we could get out for at least a little bit each day –maybe an hour. But some days we don’t even get that. If we are allowed out then we can maybe play a little bit of basketball, but we generally go the whole day in our cell.” This was confirmed by another detainee who said: *“we are locked down in our cells for most of the day.”*

Many of the young people currently detained at Hakea have expressed a sense of injustice as they did not participate in the riot; however they were still transferred to Hakea and treated as if they had participated. *“If I had known I was going to be sent Hakea, I would have participated in the riot.”*

Many young people and their families expressed the concern that they were placed in Hakea under restrictive conditions as a means of punishment for the riot that took place at Banksia Hill, notwithstanding the fact that some of the juveniles did not participate. We submit that the mental suffering being inflicted as punishment for the riot at Banksia Hill through extended lockdowns is not only inhumane and degrading treatment under the *Convention Against Torture (CAT)* but also, adversely affecting the mental health of the prisoners, which reduces the efficacy of the rehabilitation programs when they are being conducted. Empirical research has found that imprisoned offenders experience poor mental health and juveniles are more vulnerable to this given their lack of maturity.³ This research also found that prisoners with poor mental health are less able to respond to rehabilitative programs.⁴ This makes mental health treatment important on humanitarian grounds as well as giving the

³ Lubica Forsythe, *Measuring mental Health in Criminology Research* (Australian Institute of Criminology, 2013), 67.

⁴ *ibid.*

rehabilitation programs the best chance of success. The quality with which these services are delivered to young people in custody is paramount to achieving those objectives.

Other Complaints

From our inquiries, it is clear that the prison staff have told the juvenile detainees that they are not to discuss the riot under any circumstances. In addition to the complaints of intimidation and mental abuse, there have been allegations of physical abuse and degrading treatment against the juvenile detainees by the prison staff. There have been reports from some parents that their children have injuries that they refuse to discuss, that they are fearful of prison staff, are not being adequately fed and that the food is nearly inedible. A number of the family members we have spoken to have told us that they have noticed significant weight loss and some even have visual signs of abuse, such as facial bruising. One of the young offenders has said that he had witnessed prison staff assault some of the juveniles and one incident where one of the detainees was placed in a restrictive jacket and had his head pushed down the toilet.

Given the information we have received, we would also question whether the Banksia Hill & particularly Hakea Prison staff have been adequately trained with respect to dealing with young offenders in accordance with principle 8 of the Beijing Rules and whether or not they have been informed about the prohibition of torture as required by Article 10 of the CAT.

Banksia Hill and conditions prior to the riot

The conditions at the Banksia Hill detention centre prior to the riot appear to have also been problematic and by many accounts have contributed to the riot.. Various sources say that the children had been in lockdown for extended periods of time because of a lack of staff. We understand that particularly during the Christmas period there was a shortage of staff and several lockdowns occurred. One family told us that a detainee was under lockdown for 5 weeks at Banksia Hill and the guardian of that child had not been notified.

It is our contention that riot that took place in January was not an unforeseeable event, rather a predictable outcome given the systemic issues within the Corrective Services Department and reluctance of the State government to lift the hiring freeze on public sector workers. As far back as October 2012, the Community and Public Sector Union told the ABC that: “at times almost 50% of staff are absent, affecting the education and rehabilitation of offenders.”⁵ When staff are absent due to personal leave or workers compensation, the detainees are confined to their cells and restricted from their normal routines.

⁵ Australian Broadcasting Corporation, *High Rate of Prison Absentee Prison Officers Claimed* (29 October 2012) ABC < <http://www.abc.net.au/news/2012-10-29/high-rate-of-guards-absenteeism-at-banksia-hill/4339012>>

Conclusion

This brief submission as attempted to raise issues that have been brought to our attention by the young detainees and their families. It is our firm belief that unless the structures and institutions around young people reflect fundamental concepts of justice and fair treatment, we have no hope of instilling and reinforcing these concepts. As one mother said to us as she described an incident in which a prison officer from Hakea assaulted a detainee; *“what hope do we have of teaching our young men that violence is not the answer, if that is what is used against them?”* In the same way a juvenile detention system which does not put the rights and wellbeing of the detainees at the centre of its operations sends a message that operational concerns or resource limitations are more important than the fundamental human rights of the human beings within that system.

Based on all that we have heard about the actual experience of those detained there, it is our view that Hakea is completely inappropriate as a juvenile detention facility. Its inadequacies and resulting operational issues are having a serious negative impact on the wellbeing of the young men detained there.