

**Banksia Hill Directed Review  
Albert Facey House  
Level 5  
469 Wellington Street  
PERTH WA 6000**

To Whom It May Concern

### **Submission to the Banksia Hill Inquiry**

Thank you for the opportunity to provide a submission into the Department's inquiry into the Banksia Hill Inquiry.

The Youth Affairs Council of Western Australia (YACWA) is the peak non-government youth organisation in Western Australia with a membership of over 300 youth service organisations, community organisations, academics, individuals and most importantly young people themselves. Established in 1980, YACWA has worked tirelessly for 30 years to deliver high-level representation and advocacy for the Western Australian youth sector and young people.

Our role is to:

- Act as a lobbying group for the non-government youth sector and Western Australian young people aged 12-25
- Provide information and support to the non-government youth sector
- Work to promote fair and positive outcomes for young people in our community
- Promote equity, equality, access and participation for young people in Western Australia
- Advocate to all levels of government on the best interests of Western Australia's young people
- Encourage the active participation of young people in identifying and dealing with issues that are important to them
- Improve youth services by exchanging ideas, information, skills and resources
- Provide a strong, united and informed voice capable of effectively advocating for the non-government youth sector and the young people with whom they work

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## **INTRODUCTION**

### ***Background***

On the night of 20 January 2013, over 70 juveniles held at the Banksia Hill Detention Centre rioted, causing damage to the facility that subsequently resulted all male detainees relocated to the Hakea Adult Prison whilst repairs are carried out.

YACWA has not privy to information relating to the circumstances and casual factors of the Riot. However we believe it is imperative that a number of issues that we believe could have contributed to the Riot are raised and explored.



The causes of the riot is yet to be specifically identified, however we believe severe-overcrowding of the centre,<sup>1</sup> the non-separation of genders<sup>2</sup>, structural problems and reduced access to recreational, education and training programs may have been key factors that contributed to the events on the 20<sup>th</sup> of February 2013.

Hakea Prison has recently come under intense scrutiny in its own right, pertaining to a recent inquiry that identified a rat infestation and a divided workforce within Hakea,<sup>3</sup> and that the facility should not be used to accommodate these juveniles. It has been estimated that the juveniles will spend around 6-9 months in the facility.<sup>4</sup>

Amid their placement at Hakea Prison, significant concern has been raised as to the juvenile's treatment whilst in this facility. Claims have included severe lockdowns, the use of restraints, violence and intimidation from other inmates, increased strip searches and a reduction in rehabilitative and education programs, have resulted in the Children's Court President Judge Denis Reynolds commenting that such treatment, if substantiated, would breach significant child rights and as such has asked the Children's Court to reduce their sentences in consideration of these harsher conditions.

### **Scope of Submission**

Our submission will focus primarily on assessing the temporary placement of juveniles at Hakea Prison, with regards to our State Government's international human rights law obligations as identified in the *Convention on the Rights of the Child (CRC)*. This international human rights treaty establishes the international framework for the protection of children, which extends to those deprived of their liberty.<sup>5</sup> Australia ratified the treaty in December 1990, subsequently making it binding on both our National and State Governments under international law. The treaty has not yet been incorporated into domestic law and as such is not enforceable by our domestic Courts.

In implementing the rights as outlined in the CRC, the following rules and guidelines will be referred to:

- The *United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985* (Beijing Rules)
- The *United Nations Guidelines for the Prevention of Juvenile Delinquency 1990* (Riyadh Guidelines)
- The *United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990*. (Havana Rules)

Although not binding like the CRC, these rules and guidelines provide guidance to States to ensure that the rights of children in specific circumstances are adhered to, and as such are relevant and persuasive in their own right. Recently, the Committee on the Rights of the Child established that these guidelines fill out the content of the CRC itself.<sup>6</sup>

### **Summary and Recommendations**

YACWA believes that our juvenile justice system should always place a strong emphasis on support, diversionary and rehabilitative programs, as well as providing for their health, continuing education and future employment during detention.

Several of our State Government's international human rights obligations have been brought into contention by the decision to temporarily place juveniles at Hakea Prison.

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<sup>1</sup> Paige Taylor, 'ALP: broken pledge behind kid's jail riot' *The Australian*, January 23 2013, <http://www.theaustralian.com.au/national-affairs/state-politics/alp-broken-pledge-behind-kids-jail-riot/story-e6frgczx-1226559597793> accessed 26 February 2013.

<sup>2</sup> AAP, 'Warnings sounded before Banksia Hill riot' 22 January 2013, < <http://www.abc.net.au/news/2013-01-22/commissioner-raised-concerns-over-juvenile-detention-centre/4477646>> accessed 26 February 2013.

<sup>3</sup> Government of Western Australia (WA), *Report of an Announced Inspection of Hakea Prison*, (November 2012) 81.

<sup>4</sup> AAP, 'Young offenders trash Hakea prison after transfer' 6 February 2013, <http://www.news.com.au/national-news/western-australia/young-offenders-trash-hakea-prison-after-transfer/story-ndo4e3y-1226571623033> accessed 28 February 2013.

<sup>5</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 37.

<sup>6</sup> Australian Human Rights Commission, *Human Rights Brief No. 2: Sentencing Juvenile Offenders*, (1999) [http://humanrights.gov.au/human\\_rights/briefs/brief\\_2.html](http://humanrights.gov.au/human_rights/briefs/brief_2.html) accessed 1 March 2013.



These include Articles 3, 4, 6, 16, 19, 23, 28, 31, 27 and 40. The existence of such potential breaches is of significant concern, and highlights the need for substantial reform within our juvenile justice system. Their removal of juveniles from Hakea should be our State Government's primary priority.

In light of our submission, YACWA makes the following recommendations:

1. That all juveniles placed in Hakea Prison be removed immediately.
2. That all juveniles who have been placed at Hakea on remand be immediately released into alternative care such as close community supervision, intensive care or at home or with family.
3. If these measures are not undertaken, for the Department of Custodial Services to provide comprehensive guidance as to the services available and daily routines of the juveniles so to ensure the full realisation of their basic rights as established under the Convention on the Rights of the Child whilst in Hakea.
4. For a much broader inquiry to be conducted into our juvenile justice system and its potential for reform.

### THE VULNERABILITY OF YOUNG PEOPLE IN DETENTION

Statistics indicate that around 80% of young people in detention have experienced multiple traumatic events during their lifetime, including physical assault, threats of violence and sexual assault.<sup>7</sup> Further, there is a worrying correlation between young people in detention and substance abuse in their family,<sup>8</sup> prior child abuse and neglect,<sup>9</sup> high levels of unemployment and low levels of education,<sup>10</sup> high rates of mental health symptoms and disorders,<sup>11</sup> and homelessness<sup>12</sup> amongst others.

It is clear from these statistics that the juveniles placed temporarily in Hakea Prison are a particularly vulnerable group of young people.

Given the over-representation of Aboriginal and Torres Strait Islander juveniles in detention<sup>13</sup> it is clear the needs of young Aboriginal people should be specifically addressed<sup>14</sup> The placement of juveniles at Hakea shows a disregard by administrators within our justice system to adequately address this problem, and underlines a lack of diversion and crime prevention programs, inadequately funded legal services and systemic discrimination.<sup>15</sup>

YACWA believes that our justice system is failing in its obligations to juveniles deprived of liberty- the effect of which can be detrimental to ensuring that juveniles in detention are supported and afforded every opportunity to be rehabilitated back into our communities and to forward their own young and prosperous lives.

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<sup>7</sup> Abram, K.M, Teplin, L.A., Charles, D.R., Longworth, S.L., McClelland, G.M., & Dulcan, M.K. (2004). Posttraumatic Stress Disorder and Trauma in youth juvenile detention. *Archives of General Psychiatry*, 61, 403-410.

<sup>8</sup> Bickel, R., & Campbell, A. 'Mental Health of adolescents in custody: the use of the 'Adolescent Psychopathology Scale' in a Tasmanian context.' (2002) *Australian and New Zealand Journal of Psychiatry*, 36, 603-609.

<sup>9</sup> Stewart, A., Dennison, S., & Waterson, E. *Pathways from Child Maltreatment to Juvenile Offending. Trends and Issues in Crime and Criminal Justice*, (2002) 241.

<sup>10</sup> Queensland Corrective Services (QLD), *Young Adult Offenders Strategy for the Management of 17-year-old Offenders in Corrective Services Facilities 2008 – 2011*, July 2008 (Internal Draft).

<sup>11</sup> Bickel, R., & Campbell, A. Mental Health of adolescents in custody: the use of the 'Adolescent Psychopathology Scale' in a Tasmanian context. (2002) *Australian and New Zealand Journal of Psychiatry*, 36, 603-609.

<sup>12</sup> Commission for Children and Young People and Child Guardian. *Views of Young People in Detention Centres, Queensland, 2009*. (2009) Brisbane.

<sup>13</sup> Australian Institute of Criminology, *Juvenile Detention Statistics*, at [http://www.aic.gov.au/statistics/criminaljustice/juveniles\\_detention.aspx](http://www.aic.gov.au/statistics/criminaljustice/juveniles_detention.aspx) (viewed 20 June 2011).

<sup>14</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, available at: <http://www.unhcr.org/refworld/docid/471355a82.html> [accessed 9 March 2013]

<sup>15</sup> K Richard, L Rosevear, R Gilbert, *Promising Interventions for Reducing Indigenous Juvenile Offending*, Indigenous Justice Clearinghouse, Brief 10 (2011).



## BREACHES OF INTERNATIONAL HUMAN RIGHTS LAW

### Guiding Principles

#### *The primary consideration*

YACWA believes that the best interests of children deprived of liberty has not been the primary consideration of our State Government in temporarily placing all male detainees at Hakea Prison. Under Article 3(1) of the CRC, our State Government must consider the best interests of children to be a primary consideration in all decisions that concern them.

The CRC and Beijing Rules provide that such a consideration also extends to juvenile justice.<sup>16</sup> Whilst understanding the complexity of balancing the rights of children and community safety, in that human rights law recognises the right of everyone to personal security,<sup>17</sup> it is difficult to comprehend how their placement in such a facility, for the reasons below, is 'consistent with the promotion of the child's sense of dignity and worth.'<sup>18</sup>

#### *Non-discrimination*

Article 2 of the CRC provides that Governments must ensure that policies and laws are not discriminatory as to their effect on children. Specifically in relation to the over-representation of indigenous children in detention,<sup>19</sup> Michael Dodson, the former Aboriginal and Torres Strait Islander Social Justice Commissioner, concluded that there was conclusive 'evidence of a legal system that discriminates against indigenous people at every level of the system.'<sup>20</sup> With the UN Committee on the Rights of the Child expressing concern as to the "serious and widespread discrimination" that aboriginal children face, particularly in the criminal justice system.<sup>21</sup>

Further, the failure to ensure equality within the criminal justice system, particularly amongst young people, is also in breach of the International Covenant on Civil and Political Rights, the International Convention on the Elimination of all forms of Racial Discrimination and the Racial Discrimination Act (1975). With an over-representation of juveniles from Aboriginal and Torres Strait Islander descent in our juvenile justice system, the placement of children at Hakea can be seen to be further conclusive evidence of an inherently discriminatory juvenile justice system.

#### *Ensuring the protection of rights*

Article 4 of the CRC establishes that governments must do all they can to fulfill the rights of every child. The following discussion will address the specific rights that the Government has brought into question by their placement of juveniles at Hakea Prison.

#### *A child's right to survival and development*

Article 6 of the CRC stipulates that every child has the right to life, and imposes an obligation on governments to do all that they possibly can to ensure that children survive and develop. The Committee on the Rights of the Child has interpreted the word 'development' in its broadest sense, as a holistic concept embracing the child's physical, mental, spiritual, moral, psychological and social development.<sup>22</sup> The placement of juveniles at Hakea Prison will no doubt cause significant mental stress on the young men who are accommodated there. Claims of reduced access to

<sup>16</sup> See Article 40.4 CRC and Beijing Rule 17.1 (d).

<sup>17</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html> [accessed 8 March 2013] Article 9.

<sup>18</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 40.1

<sup>19</sup> Australian Institute of Criminology, *Juvenile Detention Statistics*, at [http://www.aic.gov.au/statistics/criminaljustice/juveniles\\_detention.aspx](http://www.aic.gov.au/statistics/criminaljustice/juveniles_detention.aspx) (viewed 20 June 2011).

<sup>20</sup> Speech by Michael Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australasian Law Reform Agencies Conference, 16 September 1997.

[http://humanrights.gov.au/about/media/speeches/social\\_justice/overcoming\\_discrimination.html](http://humanrights.gov.au/about/media/speeches/social_justice/overcoming_discrimination.html) accessed 7 March 2013.

<sup>21</sup> Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention – Australia, June 2012 CRC/C/AUS/CO/4, pg 7.

<sup>22</sup> Committee on the Rights of the Child, General Comment No.10, Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para.12.



rehabilitative services such as education and vocational training, recreational time and harsh conditions, make it difficult to see how such treatment would be in line with our obligations under this Article.

## **Further principles of international human rights law**

### ***The detention of juveniles***

Article 37 of the CRC establishes the principles that States must abide by when depriving children of their liberty. The State Governments placement of juveniles at Hakea Prison occurred due to the lack of other specialist juvenile detention facilities in Western Australia. The placement of children in such a facility raises significant concerns under this Article.

First, Article 37(a) provides that 'no child should be subjected to torture or other cruel, inhuman or degrading treatment or punishment.' The Human Rights Committee commented that this Article aims 'to protect both the dignity and the physical and mental integrity of the individual.'<sup>23</sup> Further, this obligation extends 'not only to acts that cause physical pain but also to acts that cause mental suffering to the individual.'<sup>24</sup> These obligations extend to the physical facilities where children are deprived of their liberty.<sup>25</sup>

Claims of the juveniles being isolated for long periods in dark cells, reduced contact with family, minimal recreation and decreased access to services can reasonably be seen to contribute to a deterioration in both their physical and mental health. Further, the shortcomings of the Hakea Facility have been highlighted in a recent report by the Inspector of Custodial Services, with extensive pest problems and a negative workplace culture being of significant concern.<sup>26</sup>

Exposure to environments such as this have a significant impact on young people, with even limited exposure causing anxiety, paranoia, exacerbate existing mental disorders, and increase the risk of suicide in an already vulnerable group of young people.<sup>27</sup> It can clearly be seen that young people should not be detained in this environment under Article 37(a).

Second, Article 37 (c) provides that "...every child deprived of their liberty shall be separated from adults unless it is considered in the child's best interests not to do so..." This right ensures that children and young people do not embark on a career of crime and anti-social behavior and through mechanisms that consolidate delinquency.<sup>28</sup> Whilst the Australian Government has placed a reservation on Article 37 (c), our State Government must nonetheless be made aware of the significant issues that arise through their placement at this facility.

### ***Protection from violence***

YACWA is concerned that the juveniles placed at Hakea may be exposed to violence in this facility. Article 19 of the CRC stipulates that governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and mistreatment by their parents or anyone else who looks after them. A report from the Independent Expert for the UN Study on Violence against Children established that the environment in which the child is detained may be a form of structural violence, whereby a facility goes against the system's very purpose, breeds further deterioration and seriously jeopardises the child's chances of social reintegration upon release.<sup>29</sup>

They further provided that states must target the eradication of structural violence that directly involves a violation of a detained child's physical integrity.<sup>30</sup> Reports have also surfaced claiming that juveniles detained at Hakea were

<sup>23</sup> Human Rights Committee (HRC), General Comment 20, Compilation of General Comments and Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc HRI/GEN/1/Rev.1 at 30 (1994) paragraph 1.

<sup>24</sup> Ibid, paragraph 5.

<sup>25</sup> Havana Rules 12, 13 and 87(f); Beijing Rules, Rule 27.

<sup>26</sup> Elle Farcic and AAP, 'Hakea prison 'divided, vermin infested', *The West Australian*, 17 January 2013 <<http://au.news.yahoo.com/thewest/a/-/breaking/15862251/hakea-prison-divided-vermin-infested/>>

<sup>27</sup> Suicide Prevention Australia, *Position Statement: Youth Suicide Prevention*, December 2010.

<sup>28</sup> IACHR, Annual Report 1991, OEA/Ser.L/V/II.81, Doc .6, rev.1, 14 February 1992, 326.

<sup>29</sup> Report of the Independent Expert for the United Nations Study on Violence against Children, A/61/299, August 29, 2006, paras. 180 et seq.

<sup>30</sup> Report of the Independent Expert for the United Nations Study on Violence against Children, A/61/299, August 29, 2006, paras. 180 et seq.



being threatened by older inmates and that rehabilitation programs had been suspended,<sup>31</sup> which if substantiated would represent a clear breach of our governments obligation to protect children from all forms of violence.

### ***The physical and mental health of children deprived of their liberty***

YACWA is concerned that the juveniles placed at Hakea Prison will not be afforded adequate physical and mental health services. Article 24 of the CRC stipulates that every child has the right to the best possible health. This obligation extends to the provision of diet assistance,<sup>32</sup> mental health care,<sup>33</sup> physical health care and specialised rehabilitation programs.<sup>34</sup> YACWA believes that the placement of juveniles at an adult correctional facility can be reasonably seen to reduce their access to specialist physical and mental health services.

For example, young people have specific nutritional requirements because they are developing and growing, which also extends to the provision of vision and dental health.<sup>35</sup> Whilst these services were provided at Banksia Hill, there have been no assurances that such services will be adequately catered for at Hakea. These services are required to be provided with consideration to the age, sex and other requirements of the juveniles concerned, and if not provided in Hakea would represent a clear breach of this Article.

### ***The right to recreation***

YACWA is concerned that the temporary placement of juveniles at Hakea Prison has resulted in a lack of access to recreation. Juveniles placed in detention have a right to access recreation facilities; this right is established in Article 31 of the CRC. This Article provides that every child has the right to relax, play and join in a wide range of cultural and artistic activities. Specifically pertaining to the rights of juveniles in detention, the Havana Rules reinforces the aforementioned article and further provides that detention facilities should ensure that each juvenile is physically able to participate in the available programs of physical education.<sup>36</sup>

With the isolation of young people at Hakea from adults, there is evidence that the children are not given access to such facilities to enjoy their right to recreation. These young people should be able to socialise, engage in play, relax, play sports, participate in health and education programs, including those beyond the walls of the juvenile facility. The current facilities of Hakea are not adequate in this respect, and as such our Government may be in breach of its obligation to ensure children deprived of their liberty enjoy their right to leisure, play and culture.

### ***The right to education***

YACWA is concerned that the juveniles transferred from Banksia to Hakea will not be afforded adequate services and support in accessing and receiving education. Article 28 of the CRC establishes our governments obligations regarding education, with the United Nations Special Rapporteur on the Right to education specifically observing that generally juvenile justice systems 'have been unable to provide sufficient quantity and quality of training and education to the children detained... ill-suited to their needs.'<sup>37</sup> YACWA believes that when a child is incarcerated it is imperative to not limit their access to educational and vocational training opportunities, which will assist in the rehabilitative functions of our justice system.

The Committee on the Rights of the Child provides that education in detention should be suited to his/her needs and abilities, as well as providing vocational training.<sup>38</sup> However, interruptions in classes, lack of access to facilities and assurances as to what programs are in place, are all concerns that YACWA holds with regards to the placement of juveniles at Hakea. It is also reasonable to conclude that this arrangement may affect their ability to learn and develop. The Inter-American Court of Human Rights commented that failure to ensure such services can have

<sup>31</sup> <http://www.perthnow.com.au/news/western-australia/mothers-of-juvenile-detainees-protest-outside-hakea-prison/story-e6frg13u-1226578873978>

<sup>32</sup> The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, GA/45/113, 14 December 1990, Rule 37.

<sup>33</sup> Article 23 CRC, Havana Rule 49.

<sup>34</sup> The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, GA/45/113, 14 December 1990, Rule 54.

<sup>35</sup> Woolard, J.L, Odgers, C, Lanza-Kaduce, L, Daglis, H. Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations, (2005) *International Journal of Forensic Mental Health*, 4(2), 1-18.

<sup>36</sup> The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, GA/45/113, 14 December 1990, Rule 37.

<sup>37</sup> Report of the Special Rapporteur on the right to education, Vernon Munoz, The right to education of persons in detention, A/HRC/11/8, 2 April 2009, para. 42.

<sup>38</sup> Committee on the Rights of the Child, General Comment No.10, Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para.12.



significantly more consequences when children deprived of their liberty are from marginal sectors of society, and as such, limits their chances of rejoining society successfully and achieving their life plans.<sup>39</sup>

YACWA believes that young people should be ensured education whilst incarcerated at Hakea, and that any failure to provide this will significantly affect the juvenile's chances of rehabilitation and assimilation back into the community. The current situation at Hakea is thus unacceptable in this regard, as no assurances as to the providing of education programs have been published and we subsequently believe that any disruption to access will be significant.

### ***Proportionality of sentence***

YACWA is concerned that the harsher conditions experienced by juveniles placed at Hakea Prison has not been reflected in the length of their sentences. Article 40.4 of the CRC sets out one of the most fundamental principles of depriving juveniles of their liberty – the principle of proportionality. It seeks to ensure that 'children are dealt with in a manner appropriate to their well-being and appropriate both to their circumstances and the offence.' It is clear that the placement of juveniles in this facility, which is against the principles of juvenile justice, does not reflect the proportionality principle considered in their original sentencing, due to the harsh physical nature of Hakea. As such, the Government is in breach of their obligation to ensure proportionality in sentencing, and should remove the juveniles from Hakea immediately, or at a minimum, take these conditions into consideration in the sentences of the juveniles in detention.

### ***The rehabilitative function of juvenile justice***

YACWA believes that Hakea Prison is an inadequate facility to ensure that the rehabilitative function of juvenile criminal justice is realised to its full extent. The CRC stipulates that the objective of sentencing a juvenile must be his or her 'reintegration' into society or 'rehabilitation'.<sup>40</sup> The Beijing Rule 17 further provides that 'just desert and retributive sanctions... should always be outweighed by the interest of safeguarding the well-being and the future of the young person'. The Committee on the Rights of the Child commented that children should be provided with a physical environment and accommodation which are in keeping with the rehabilitative aims of residential placement, and due regard must be given to their needs for privacy, sensory stimuli, opportunities to associate with their peers, and to participate in sports, physical exercise, in arts, and leisure time activities.<sup>41</sup>

The issues concerning Hakea have been documented throughout this submission, such as rights to education, health, security and ill treatment. Further, with no clear directive provided by the Department of Custodial Services as to the enjoyment of the above rights by juveniles detained at Hakea, it is reasonable to conclude that their placement at Hakea is contrary to the rehabilitative functions of juvenile justice.

## **ADDITIONAL CONCERNS**

### ***The over-emphasised physical security of Hakea prison***

YACWA believes that adult correctional facilities do not fulfill the rehabilitative aim of juvenile justice system and the rights of the juveniles deprived of their liberty. Article 3 whilst not explicitly referring to circumstances regarding detention, provides that young people have the right to feel safe, which an adult facility can reasonably be seen to impact upon. The Forde Inquiry Report into the Abuse of Children in Queensland Institutions noted that 'open detention facilities for juveniles should be established with no or minimal security measures.'<sup>42</sup> Hakea Prison is not facilitative in this regard, with a greater emphasis on security and behavioural adjustment.

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<sup>39</sup> I/A Court H.R. Case of the Juvenile Re-education Institute v Paraguay, Preliminary Objections, Merits, Reparations, Costs. Judgment of September 2, 2004, Series C No. 112, para. 174.

<sup>40</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 40.1

<sup>41</sup> Committee on the Rights of the Child, General Comment No.10, Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 89.

<sup>42</sup> Commission of Children and Young People and Child Guardian (QLD), *Views of Young People in Detention Centres, Queensland*, (2009) Brisbane.



Further, the visiting times have been substantially reduced for juveniles in Hakea. The Committee on the Rights of the Child provides that facilities should facilitate frequent contacts of the child with the wider community, including communications with his/her family and other relevant people.<sup>43</sup> The Queensland Commissioner for Children and Young People commented that having regular and positive interaction with family and friends is an important determinant of a young persons sense of safety in detention.<sup>44</sup> YACWA concludes that the placement of juveniles within the confines of an adult facility is an unnecessary, and ultimately, counter-productive solution to the rehabilitation of young people.

### ***The adequacy of staff at Hakea Prison***

YACWA is concerned that the Hakea facility is ill equipped to cater for young people, which affects a multitude of rights identified in this submission. Differing from adults, it is recognised that juveniles require more intensive and more costly interventions than adult offenders. They have complex needs, require a higher duty of care and are more likely to grow out of crime.<sup>45</sup> As such, essential staff at a juvenile facility will have a differing emphasis and level of training regarding the treatment of people within their care, characterised by alternating between welfare and justice models.

This level of service is unlikely to be administered by Hakea prison officers, which will affect the various rights of the juveniles in detention.

### **CONCLUSION**

Whilst YACWA understands that the events of the 20<sup>th</sup> of February presented an immediate challenge for our justice system, we do not accept that placement of Juveniles at Hakea for a significant period is an acceptable response to the challenges presented by the riot.

YACWA believes that it must prioritise the health and wellbeing of young people first and foremost, due to its duty of care to all people in detention. As such, it is clearly not in the best interests of young people to be placed at Hakea, a facility that lacks the services and staff to adequately meet the needs of young people.

YACWA urges our State Government to respect our international human rights law obligations when placing young people in detention. The treatment of children in this environment must be comprehensive, restorative and centred on the rehabilitation of the juvenile and ensure their smooth reintegration into our community.

Our submission calls for the full realisation of the rights of juveniles, which is not possible within the confines of Hakea Prison, and as such recommend their immediate removal – to a more suitable environment based on varied needs.

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If you would like to discuss any aspect of this submission with me please do not hesitate to contact me on (08) 9227 5440 or via email [ceo@yacwa.org.au](mailto:ceo@yacwa.org.au)

Kind regards,



**Craig Comrie**  
CEO

11 MARCH 2013

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<sup>43</sup> Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 89.

<sup>44</sup> Commission of Children and Young People and Child Guardian (QLD), Views of Young People in Detention Centres, Queensland, (2009) Brisbane.

<sup>45</sup> Kelly Richards, What makes juvenile offenders different from adult offenders? Trends & Issues in Crime and Criminal Justice no. 409, (February 2011) Australian Institute of Criminology. <<http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi409.html>>