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Our Ref: RBGMM1287973

Direct Line: 9926 0200

9 January 2009

The Hon. Graham West MP
Minister for Juvenile Justice
Level 13
55 Hunter Street
SYDNEY NSW 2000

Dear Minister,

Re: Children (Detention Centres) Regulation 2005 – classification reviews

In December 2008 the Law Society's Juvenile Justice Committee (Committee) reviewed and supported proposed amendments to the *Children (Detention Centres) Regulation 2005* (the Regulation) with regard to the period of time served by detainees prior to their eligibility for day leave and overnight leave.

Further to the Committee's 10 December 2008 letter, the Committee would like to provide further comment on the need for classification reviews to occur more frequently in order for the proposed changes to work effectively.

The proposed amendments

The Committee notes that the effect of the proposed changes will be that clauses 47(b) and 48(b) of the Regulation be amended to afford children and young people held in detention more time to work towards qualifying for day and overnight leave. This, in turn, will mean that more detainees are eligible to be considered for conditional release under s 24(1)(c) of the *Children (Detention Centres) Act 2005* (the Act).

The Committee supports any legislative or policy review that reduces the amount of time children and young people spend in detention. The Committee recognizes the extensive research into the benefits for children and young people who have been detained in maintaining contact with family and community. Access to day and overnight leave is also beneficial in establishing connections to education, employment providers and support services which can, in turn, reduce future offending behaviours.

Human Rights Context

Article 37 of the United Nations Convention on the Rights of the Child, to which Australia is a signatory, specifies that detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time. Assuming that the proposed amendments are successful in reducing time spent in custody for some



detainees, this would be in line with efforts to ensure children and young people remain in detention as short a time as possible.

Classification review of detainees

The Committee understands that currently many detainees do not progress through the stages of leave during their period of detention. One of the causes of this may be that the legislative restrictions currently in place make it difficult for there to be sufficient time for detainees to pass through the three staged process required to be considered for s 24(1)(c) release.

While the amendments allow the process of moving through the stages to start at an earlier point in a detainee's sentence, the system of classification review may present a hurdle to the successful implementation of the proposed amendments.

Detainees must be classified as B2 to qualify for day leave and B3 to qualify for overnight leave. To move up the classification scale, detainees' classification is reviewed by Juvenile Justice staff at intervals of two months where detainees are sentenced to a period of less than nine months. If a detainee's sentence is longer than 9 months, classification reviews are held every three months. While there are some factors which may bring forward a review, such as incidents, critical dates or a recommendation for s 24(1)(c), the Committee submits that the period between reviews is too long, especially for detainees serving short sentences.


Long periods between opportunities for review may mean that detainees that are responding well to rehabilitation programs and who could benefit from the leave options in the Regulations are still not able to gain full benefit from the proposed amendments.

The Committee submits that the regular availability of classification reviews is vital to the proper implementation of the proposed changes.

The Committee notes that the availability of such reviews is currently affected by availability of staff, growing numbers of detainees and numbers of young people being held on remand. However, we would like to emphasise the importance of more regular classification reviews as essential to ensuring the outcomes envisaged by the proposed amendments to the Regulation.

Should you wish to discuss this matter any further please contact Ms Rachel Geare, Legal Officer, Juvenile Justice Committee, on 9926 0310.

Yours sincerely



Joe Catanzariti
President