



PARLIAMENT OF NEW SOUTH WALES

LEGISLATIVE COUNCIL

STANDING COMMITTEE  
ON  
SOCIAL ISSUES

**JUVENILE JUSTICE IN NEW SOUTH WALES**

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**Standing Committee on Social Issues Report No. 4**

**May 1992**

Reprinted October 1994

PROFIT COVER

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**ISBN 0 7305 9714 8**

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## CHAIRMAN'S FOREWORD

In the breadth of its terms of reference, this inquiry presented the Committee with a special challenge - to take a broad view of Juvenile Justice in New South Wales, while at the same time avoiding superficiality.

If we have achieved this aim, my gratitude is in no small measure owed to our staff. Committee Director Isobel Bothwell and Senior Project Officer Alexandra Shehadie both have worked extraordinary hours in order to complete this lengthy report in the shortest possible time so that needed reforms to Juvenile Justice are not delayed.

Committee Officer Heather Crichton and Assistant Committee Officer Annie Marshall have also been exemplary in their dedication to this project.

Similarly, great pressures have been placed on the Members of the Committee, all of whom are busy Parliamentarians with many other responsibilities. I thank both past and present members for their commitment, and am grateful that we have been able to achieve what must be an extraordinary level of unanimity, for the representatives of five different political parties, across such a broad and often contentious area. This unanimity is, I believe, testimony to the importance of the issues, the needs we perceived, and the commitment of us all to save as many of our children as possible.

Clearly, young offenders need to be accountable for their misdeeds. But equally clearly, our investigations have shown that many of these young people are themselves victims, of physical or sexual abuse or neglect.

As a system we have a responsibility to provide these victims with the skills and resources to cope, in a world that sadly often has no place for them. As a society, we must learn to cherish our children and nurture the family, as the institution that cares for them. Only in this way can future juvenile crime and suffering be prevented.



MARLENE GOLDSMITH  
Chairman

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## ACKNOWLEDGEMENTS

The Standing Committee on Social Issues wishes to record its appreciation for the many thoughtful written submissions and evidence received from members of the public and a wide range of organisations, upon which this Report is heavily dependent.

Our gratitude is extended to the valuable advice and assistance which the Committee received from representatives of the New South Wales Office of Juvenile Justice. In particular we wish to acknowledge the assistance of Carl Loughman and Philip Clarke.

The staff of the Parliamentary Library were helpful and resourceful to the Committee. For their assistance, the Committee extends its thanks.

The Committee would also like to extend a thank you to Simon Waterhouse of the Legislative Council staff and Jan Duncan of Media Monitoring who were particularly co-operative in the provision of resources for the Inquiry, often at very short notice.

We wish to place on record our appreciation to Tony Pooley and Christopher Chippendale for their assistance with the preparation of the Report.

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**TERMS OF REFERENCE:**

That the Standing Committee on Social Issues undertake a full Inquiry into the Juvenile Justice System in New South Wales and in particular report on:

- (a) crime prevention programs;
- (b) court diversion schemes;
- (c) sentencing and community-based options for the care and management of young offenders;
- (d) selection and training of staff in relevant youth services; and
- (e) the adequacy of services to young people in the juvenile justice system.

**MEMBERSHIP OF THE**  
**STANDING COMMITTEE ON SOCIAL ISSUES COMMITTEE:**

Hon. Dr Marlene Goldsmith, MLC (Chairman), Liberal Party

Hon. Ann Symonds, MLC, (Deputy Chairperson), Australian Labor Party

Hon. Franca Arena, MLC, Australian Labor Party

Hon. Lloyd Coleman, MLC, National Party

Hon. Keith Enderbury, MLC, Australian Labor Party

Hon. Elisabeth Kirkby, MLC, Australian Democrats

Hon. Doug Moppett, MLC, National Party

Rev. The Hon. Fred Nile, MLC, Call to Australia Group

Hon. John Ryan, MLC, Liberal Party

Hon. Helen Sham-Ho, MLC, Liberal Party

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Ms Isobel Bothwell, Committee Director

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Ms Heather Crichton, Committee Officer

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**Front:** Hon. J. Ryan MLC, Hon. A. Symonds MLC (Deputy Chairperson),  
Hon. Dr. M. Goldsmith MLC (Chairman), Hon. E. Kirkby MLC

**(from left to right)**

**MEMBERSHIP OF THE**  
**STANDING COMMITTEE ON SOCIAL ISSUES COMMITTEE**  
**AT THE COMMENCEMENT OF THE INQUIRY:**

Hon. Max Willis, MLC (Chairman), Liberal Party

Hon. Ann Symonds, MLC, (Deputy Chairperson), Australian Labor Party

Hon. Franca Arena, MLC, Australian Labor Party

Hon. Keith Enderbury, MLC, Australian Labor Party

Hon. Duncan Gay, MLC, National Party

Hon. Dr Marlene Goldsmith, MLC, Liberal Party

Hon. Judith Jakins, MLC, National Party

Rev. The Hon. Fred Nile, MLC, Call to Australia Group

Hon. Helen Sham-Ho, MLC, Liberal Party

## EXECUTIVE SUMMARY

On 14 August, 1991 the Attorney-General, the Hon. Peter Collins, M.P., and the Minister for Justice, the Hon. Terry Griffiths M.P. referred an Inquiry to the Standing Committee on Social Issues of the Legislative Council, into the Juvenile Justice System in New South Wales.

The Terms of Reference for this Inquiry are:

That the Standing Committee on Social Issues undertake a full Inquiry into the Juvenile Justice System in New South Wales and in particular report on:

- (a) crime prevention programs;
- (b) court diversion schemes;
- (c) sentencing and community-based options for the care and management of young offenders;
- (d) selection and training of staff in relevant youth services; and
- (e) the adequacy of services to young people in the juvenile justice system.

This Report is the result of that Inquiry.

The Committee heard evidence from 95 people at formal hearings. Detailed discussions and informal meetings were held with 72 people in South Australia, Queensland, Victoria, New Zealand and other countries. A genuine attempt was made to speak to young people, with the Committee meeting with 29 juveniles inside or outside Juvenile Justice Centres.

Juvenile justice has been a prominent issue in New South Wales for some time, with a number of different opinions regarding the operation of the existing system. This system is also quite complex, encompassing a wide variety of responsibilities and services provided by several different authorities and agencies. In writing this Report and in framing its recommendations, the Committee acknowledges the competing interests of those associated with the Juvenile Justice System.

The Standing Committee on Social Issues is composed of Members from diverse backgrounds. However, it was universally considered that on this issue non-partisan support is essential if meaningful change is to be achieved for the benefit of the community as a whole.

## Executive Summary

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During the course of the Inquiry, a number of important factors became apparent to Committee Members. The most relevant of these was the peculiar nature of juvenile crime, or more specifically, that the overwhelming majority of young people come in contact with the juvenile justice system only once. Consequently, the Committee is committed to strategies that will minimise the contamination of first and minor offenders by exposure to the justice system, including exposure to hardened offenders.

A number of principles were outlined by the Committee. These principles underly the recommendations made and approach within this Report, and include:

- . crime prevention must be the first response to juvenile crime;
- . every effort must be made to prevent the progression by young people from Juvenile Justice Centres to adult gaols;
- . young people detained on "care" matters must be separated from those incarcerated on criminal matters;
- . diversion, particularly Police Cautions, should be the first response to minor offences and community based orders be the most frequent sentencing options;
- . institutionalisation should always be used as a last resort;
- . selection and training of all persons involved with juveniles should be of the highest order;
- . the victim should be considered and respected;
- . a co-ordinated approach between the law enforcement, health, community service, education, housing and juvenile authorities is required; and
- . the community needs to be accurately and sensitively informed of the facts relating to juvenile justice and the rationale behind the determinations of government.

The needs of specific groups of young people involved in the Juvenile Justice System became apparent to the Committee. Among those considered by the Committee were Aborigines, girls, people from non-English speaking backgrounds, and rural young people. While the recommendations affect all groups of young people involved in the Juvenile Justice System, the special needs of these groups were highlighted and addressed.

The Committee considered that crime prevention programs are essential to addressing the problems of juvenile offending. The need for such programs can be seen from the estimated costs of juvenile crime. The Committee received evidence that the direct cost of juvenile crime, for damage and injuries, was around \$250 million per year in New South Wales. Further indirect costs, such as insurance premiums and the like, were estimated at about \$150 million per year. The costs in human suffering are immeasurable.

In order to make recommendations about crime prevention strategies, the Committee took a broad approach. This necessitated an investigation of the causes of juvenile crime. The Committee concluded that the reasons for juvenile offending could not be easily isolated and that its causes were many and complex. However, it was found that factors such as poverty, unemployment, family breakdown, school alienation, homelessness, substance abuse and low morale and self-esteem were clearly associated with juvenile offending.

The Committee heard that the formal processing of juveniles by the court has long been an area of concern, especially in jurisdictions where formal diversionary procedures are implemented. The court process may have the effect of the young person being stigmatised as a criminal, perceiving themselves as an offender and becoming unnecessarily caught up in the process. Court proceedings are often slow, with young people remanded for lengthy periods. The Committee considered that effective responses to juvenile offending should be both prompt and related to the offence so that the causal connection is clear.

It was also clear that young people often do not understand court proceedings, and therefore may not fully comprehend the implications of their offending behaviour. The Committee considers that it is in the interest of both the young person and the community that the implications of offending are fully understood by the offender, and that court diversion schemes may better facilitate this process.

The Committee determined that an effective court diversion scheme is the appropriate use of Police Cautions. The Committee made recommendations which serve to increase the use of cautioning by police through updated and streamlined cautioning procedures.

In the course of its Inquiry the Committee heard of the concept of "shaming". Described as the communication of disapproval whilst maintaining a relation of respect for an offender, "shaming" allows young offenders to accept responsibility for their actions while maintaining a sense of self-respect. It was considered by the Committee that such a process could effectively be accomplished through the involvement of the families of young offenders and representatives of the community.

A significant recommendation within this Report is the establishment of a pilot pre-court diversion panel scheme called a Children's Panel. Such Panels would include a community representative and work with the offender's family to facilitate an agreed outcome concerning reparation or amends to any victim involved.

The Committee found that in recent years there has been some reduction in the use of custody as a sentencing option for young offenders. However, the research showed that more young people can be diverted from detention. While it is acknowledged that there is a small group of serious and violent young offenders who should be detained for the protection of the community, the Committee strongly recommends that detention be used as a measure of last resort. The Committee believes that these young offenders who are detained should be provided with services and programs designed to help their re-integration into society.

Community-based sentencing options for other, particularly non-violent offenders were found to be more beneficial for many young offenders. It was found that community-based sentences may help a young offender better develop into a responsible member of their community without the dislocating and damaging effects of incarceration. The Committee strongly supported the use of community-based sentences and made a series of recommendations supporting their use.

However, the Committee considered that community based sentencing options could only work effectively if adequate resources were allocated to assist Juvenile Justice Officers.

The Committee also considered and reported on the selection and training of staff in relevant youth services. The need for a high standard of selection, training and supervision of workers from a number of different professions was recognised. In this regard, the Committee made a number recommendations in relation to youth workers employed in Juvenile Justice Centres.

The Committee also considered evidence in relation to the range of services available to young people in the juvenile justice system. Services addressed include those relating to crime prevention, drugs and alcohol, health, education and training and information and legal advice.



## RECOMMENDATIONS

### Recommendation No. 1:

That a Crime Prevention Division be established within the Attorney General's Department, a priority of which is to develop policies and strategies relevant to juvenile crime prevention. (2.3)

### Recommendation No. 2:

That a consultation and liaison process, similar to the French Bonnemaïson Scheme, be established under the co-ordination of the proposed Crime Prevention Division of the Attorney General's Department, so that State Government Departments and Offices, the Federal Government, local councils and relevant community organisations can assist in the formulation of long term policies and strategies relevant to juvenile crime prevention.

The Committee considers that relevant State Government Departments and Offices would include the Office of Juvenile Justice, the Police Service, the Department of Local Government and Planning, the Department of School Education, the Department of Community Services, the Department of Health, the Department of Housing, the Department of Industrial Relations, Further Education, Training and Employment, the Technical and Further Education Commission, the Department of Sport, Recreation and Racing and the Office of Aboriginal Affairs. (2.3)

### Recommendation No. 3:

That any initiatives and strategies designed to prevent juvenile offending should be based on an appreciation and recognition of the causes of such offending, an assessment of how the offending might affect particular communities and an understanding of the needs, including the cultural needs of particular communities. (2.3)

**Recommendation No. 4:**

That the Department of Community Services and the Department of Housing increase the provision of services that can provide safe and suitable crisis, medium-term supported and long-term accommodation for those young people who are homeless and either cannot return home or cannot remain at home.

That such services provided by the relevant Departments be suitably staffed and provide a range of relevant programs including independent living skills, and any relevant counselling.

That girls who can no longer remain at home and who may have been subject to violence and abuse should have available accommodation that caters specifically for girls, is staffed by women, and offers a range of programs suitable to the needs of girls.

That accommodation services should be responsive to the needs of specific groups, including young Aboriginal people and young people from non-English speaking backgrounds. (2.4.1)

**Recommendation No. 5:**

That resources be made available to the Department of Community Services, to ensure that there are adequate services available to assist families experiencing crisis and breakdown. The provision of such services should be delivered jointly by the Department and relevant non-Government organisations, that are properly funded and accredited. Relevant liaison with Federal Departments on this issue should also take place.

That a range of accommodation and counselling services for young people who are victims of neglect, violence and abuse be further developed under co-operative schemes with the Department of Community Services and properly funded and accredited non-government organisations. There should be specific services of this kind for girls that are staffed by women. (2.4.3)

**Recommendation No. 6:**

That relevant programs of pre-and early school intervention, such as the Parents as Teachers program, which can assist in the identification of behavioural or learning problems in a child and offer support to parents be encouraged, supported and developed by the Department of School Education, Department of Health and the Department of Community Services. (2.4.3)

**Recommendation No. 7:**

That the Department of School Education in consultation with the Department of Employment, Education and Training, examine the feasibility of establishing Homework Centres throughout New South Wales that can assist disadvantaged young people.

That the extended use of school and community premises be examined as an option for facilities from where Homework Centres may operate out of school hours and which may be staffed by those other than the particular school's teachers. (2.4.3)

**Recommendation No. 8:**

That Government initiatives in the area of youth employment and training programs be encouraged and developed. That where appropriate, a liaison process to achieve this aim, be established between the New South Wales Department of Industrial Relations, Employment, Training and Further Education and the proposed Crime Prevention Division of the Attorney General's Department and the Federal Government. (2.4.4)

**Recommendation No. 9:**

That the proposed Crime Prevention Division of the Attorney General's Department, the Department of Sport, Recreation and Racing, and local councils, in consultation with community organisations and members of local communities, collaboratively develop appropriate strategies for the implementation of constructive leisure, recreation and entertainment programs and facilities for young people throughout New South Wales, particularly in areas where there are high rates of involvement in the Juvenile Justice System. (2.4.5)

**Recommendation No. 10:**

- That Aboriginal communities and organisations relevant to Aboriginal youth be encouraged, supported and funded to develop relevant crime prevention strategies for young Aboriginal people.
- That a liaison process between such communities and the proposed Crime Prevention Division of the Attorney General's Department be developed to facilitate this process. (2.5)

**Recommendation No. 11:**

- That ethnic communities and organisations relevant to youth from non-English speaking backgrounds be encouraged, supported and funded to develop relevant crime prevention strategies for young people from non-English speaking backgrounds. That a liaison process between such communities and the proposed Crime Prevention Division be developed to facilitate this process. (2.6)

**Recommendation No. 12:**

- That due to the special needs of girls a position of Policy Officer (Girls) be created within the Office of Juvenile Justice to specifically examine issues affecting girls and develop policies on how these issues might be addressed. One of the responsibilities of that position would be to liaise with the proposed Crime Prevention Division regarding the implementation of appropriate strategies to prevent girls from entering the Juvenile Justice System. (2.7) See also Recommendation No. 79

**Recommendation No. 13:**

- That consistent with Recommendation No. 30, regarding the development of the position of Police Youth Officer, that Officer co-ordinates and develops programs of the kind undertaken by General Duties Youth Officers in relation to prevention of juvenile crime. Appropriate liaison should be established between those officers and the proposed Crime Prevention Division. (2.8)

**Recommendation No. 14:**

- . That the proposed Crime Prevention Division of the Attorney General's Department examine the feasibility of implementing a juvenile crime prevention scheme throughout New South Wales that gives greater responsibility and a greater role to local councils. In undertaking this evaluation, the Crime Prevention Division should examine systems operating in other jurisdictions, as well as local council initiatives in New South Wales. (2.9)

**Recommendation No. 15:**

- . That a Police Caution should be given in the presence of a parent, adult relative or person responsible for the care of the juvenile, where possible.
- . That in instances where a Police Caution is given other than in the presence of such a person with the care and responsibility for the juvenile, that that person be notified in writing of the fact and details of the caution administered. (3.2.2.2)

**Recommendation No. 16:**

- . That the Police administration develop a structured policy to assist more police officers to utilise more effectively the option of cautioning. (3.2.2.2)

**Recommendation No. 17:**

- . That Police be given revised and simplified procedures for cautioning in order that the process itself does not act as a deterrent to cautioning. (3.2.2.2)

**Recommendation No. 18:**

- . That Police be given instruction on the merits and effectiveness of cautioning. (3.2.2.2)

**Recommendation No. 19:**

- . That Police be given specific training in respect to the use and philosophy of cautioning. (3.2.2.2)

**Recommendation No. 20:**

- . That Police guidelines be amended to indicate that unless an alleged offence is grave or the juvenile is likely to repeat or commit other offences at that time, arrest should not be effected. (3.2.2.2)

**Recommendation No. 21:**

- . That police officers are given training in the use of Section 8 of the Children (Criminal Proceedings) Act, 1987 and that section be utilised more effectively in respect of proceedings, unless specifically exempt by the legislation. (3.3)

**Recommendation No. 22:**

- . That legislation relating to bail should specifically state that lack of accommodation is not a sufficient reason to refuse bail. (3.4)

**Recommendation No. 23:**

- . That custody alternatives such as bail hostels and non-custodial community placements be provided for juveniles. (3.4)

**Recommendation No. 24:**

- . That information on custody alternatives be readily available to police, magistrates, court officers, young people and workers with youth. (3.4)

**Recommendation No. 25:**

- . That the Office of Juvenile Justice approve families, particularly Aboriginal families, for the provision of bail accommodation. (3.4)

**Recommendation No. 26:**

- . That training be provided to magistrates and police officers in relation to the nature and type of bail conditions with which a young person could reasonably be able to comply. (3.4)

**Recommendation No. 27:**

- . That the imposition of onerous monetary bail conditions should, where possible, be discontinued. (3.4)

**Recommendation No. 28:**

- . That the New South Wales Attorney General's Department review the applicability of the Summary Offences Act to juveniles with a view to examining the penalties for offensive language by juveniles.
- . That, following the review, the New South Wales Attorney General's Department develop guidelines relating to the enforcement of the legislation.
- . That the maximum penalty for offensive language by juveniles, be a formal Police Caution. (3.5)

**Recommendation No. 29:**

- . That bail for juveniles on an offensive language charge should not be refused, during the review of the Summary Offences Act. (3.5)

**Recommendation No. 30:**

- . That the position of Police Youth Officer be developed within the New South Wales Police Service. (3.6.2)

**Recommendation No. 31:**

- . That at least one position of Police Youth Officer be a requirement for each police patrol area. The number of such officers would be related to the population, proportion of young offenders and the history of juvenile offending in a particular area. (3.6.2)

**Recommendation No. 32:**

- . That a specialist police policy unit be established within the Head Office of the New South Wales Police Service with responsibility:
  - . to oversight the work of Police Youth Officers in relation to practices and procedures for the policing of young people,
  - . for the co-ordination and development of policies and programs relating to the policing of young people,
  - . to determine the nature of training and development required for all police officers in relation to policing young people, and
  - . to monitor and evaluate procedures and practices relating to policing juveniles throughout the state. (3.6.2)

**Recommendation No. 33:**

- . That the New South Wales Police Service develop and establish a separate career structure for Police Youth Officers which:
  - . recognises the skills and abilities required,
  - . would enable officers to move between career streams,
  - . maintain the integrity of the position, and
  - . ensure the positions become an integral part of a policing career within New South Wales. (3.6.2)



**Recommendation No. 34:**

That Police Youth Officers be appointed to the rank of at least Senior Constable. (3.6.2)

**Recommendation No. 35:**

That a pre-court diversion panel scheme, a Children's Panel, be introduced within New South Wales in the form outlined in Chapter Three of this Report. (3.8)

**Recommendation No. 36:**

That the Children's Panel be implemented initially as a pilot pre-court diversion scheme in six police patrol areas throughout New South Wales. (3.8)

**Recommendation No. 37:**

That the six areas in which the Children's Panels are piloted be in both city and country areas, including areas with high populations of young people from Aboriginal backgrounds or non-English speaking backgrounds. (3.8)

**Recommendation No. 38:**

That the areas in which the pre-court scheme, Children's Panel, is piloted preferably have no Community Aid Panels in operation. (3.8)

**Recommendation No. 39:**

That the scheme of Children's Panels be evaluated after a start up period of six months, followed by an operational period of eighteen months. (3.8)

**Recommendation No. 40:**

That the evaluation of the operation of the Children's Panel scheme be undertaken by an independent body such as the Australian Institute of Criminology or a specialist contracted for that purpose. (3.8)

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**Recommendation No. 41:**

- . That following the evaluation of the operation of Children's Panels, legislation be developed and necessary adjustments made to Children's Panels prior to their adoption throughout the state. (3.8)

**Recommendation No. 42:**

- . That Police Officers be trained in the nature of Children's Panels, the options available for young people and matters relating to the plea. (3.8)

**Recommendation No. 43:**

- . That a checklist be developed for Police Officers which will ensure that the appropriate and consistent advice on the nature and operation of the Children's Panel scheme is given to young people who are apprehended. (3.8)

**Recommendation No. 44:**

- . That Children's Panels include a:
  - . Juvenile Justice Officer (co-ordinator) and
  - . member of the Police Service or a Police Community Liaison Officer and
  - . community representative. (3.8.2)

**Recommendation No. 45:**

- . That the following people must attend a Children's Panel:
  - . the offender and
  - . representatives of the offender's family, however that may be defined. (3.8.1)

**Recommendation No. 46:**

- That the victim and support persons, as requested, be encouraged to attend the relevant Children's Panel. (3.8.1)

**Recommendation No. 47:**

- That magistrates be given a discretion to refer a young offender, where appropriate, back to a Children's Panel. Such a procedure should be done in a magistrate's chambers on the submissions of the young person's legal counsel, thereby dispensing with the formalities of court. (3.8.2)

**Recommendation No. 48:**

- That at least one of the members of each Children's Panel be a woman. (3.8.3)

**Recommendation No. 49:**

- That at least one of the members of each Children's Panel be of the same cultural group as the young offender. (3.8.3)

**Recommendation No. 50:**

- That where an Aborigine appears before a Children's Panel, some panel members should be Aboriginal. (3.8.3)

**Recommendation No. 51:**

- That consistent with the provisions of the Children (Criminal Proceedings) Act, 1987, community-based sentencing options should be a first response of magistrates when sentencing a young offender and that the use of custodial sentences be used only as a last resort. (4.2)

**Recommendation No. 52:**

- That when a young person has committed a minor offence and had not been given the opportunity of a Police Caution or the option of attending a Children's Panel, magistrates be encouraged, in all appropriate cases, to use "court dismissals" and "dismissals with a caution" as appropriate measures. (4.4.1)

**Recommendation No. 53:**

- That wherever possible, magistrates utilise other community-based alternatives before imposing a fine on a young offender. Before a fine is imposed, magistrates must consider the financial circumstances of the young offender and his or her ability to pay. (4.4.3)

**Recommendation No. 54:**

- That magistrates sitting in Children's Courts utilise the option of Community Service Orders as a genuine alternative to custodial sentences, particularly in areas where incarceration rates are high. (4.4.4)

**Recommendation No. 55:**

- That resources be made available and relevant support services able to be drawn upon, to assist Juvenile Justice Officers in all regions, to adequately supervise and offer a range of community work, to those young offenders placed on Community Service Orders. (4.4.4)

**Recommendation No. 56:**

- That a pilot scheme be introduced for a period of two years whereby the maximum number of hours that a young offender can perform under a Community Service Order is 300 hours. The purpose of the pilot scheme is to assess the feasibility of increasing the number of hours of Community Service Orders as a realistic alternative to custody for serious offenders. (4.4.4)

**Recommendation No. 57:**

- That where supervision of a community-based sentencing option is ordered by a magistrate, that supervision should be consistent, and relevant to the circumstances and needs of the offender. (4.4.5)

**Recommendation No. 58:**

- That resources be available to ensure that Juvenile Justice Community Services can provide consistent and relevant supervision for all young offenders throughout New South Wales, subject to a supervised order, including a recognizance and probation order. (4.4.5)

**Recommendation No. 59:**

- That Community Youth Centres be expanded to cover further Juvenile Justice Office Regions, particularly country regions. (4.4.5)

**Recommendation No. 60:**

- That in order for Juvenile Justice Officers and Community Youth Centres to adequately supervise a young offender, a wide range of suitable programs must be available within the community from which they can draw assistance. Those community organisations offering relevant services, should be provided with adequate government funding so that co-operative service delivery between the government and the non-government sector can be fostered. (4.4.5)

**Recommendation No. 61:**

- That the Attorney General's Department examine the applicability of the Victims Compensation Act to young offenders in regard to the payment of compensation levies. As part of that examination the Attorney General's Department should assess the ability of most young offenders, convicted of an offence, to pay the levy. (4.4.6)

**Recommendation No. 62:**

That magistrates be provided with training as to appropriate conditions that they can attach to an order. When sentencing, a magistrate must demonstrate an awareness and understanding of the circumstances of the young offender, including his or her ability to comply with conditions before any conditions are applied. (4.5.1) See also Recommendation No. 73

**Recommendation No. 63:**

That all Juvenile Justice Centres, as well as providing secure care for young offenders, must be humane in their treatment of young offenders and their practices and programs must reflect a commitment to the rehabilitation of those young offenders. (4.6.1)

**Recommendation No. 64:**

That the Attorney General's Department, the Department of Courts Administration, and the Office of Juvenile Justice examine, as a matter of urgency, the operation of the Sentencing Act in relation to young offenders, particularly as that Act impacts upon post release supervision and follow-up. (4.7)

See also Dissenting Opinion.

**Recommendation No. 65:**

That as well as examining the issue of post-release supervision the relevant Departments noted in Recommendation No. 64, examine the establishment of a system that allows young offenders who are incarcerated to earn remissions for good behaviour. (4.7)

**Recommendation No. 66:**

That during the period of operation of the pilot scheme of the Children's Panel, there should be no further Community Aid Panels established. (4.8.2)

**Recommendation No. 67:**

That during the period of the operation of the pilot scheme of the Children's Panel, Community Aid Panels should be subject to guidelines to ensure accountability. Such guidelines should include:

- . That a ceiling be placed on the number of hours of community work that the young offender should perform; where a young offender wishes to continue such work or continue participation in a program, this should not effect any final sentencing outcome;
- . That any option imposed should be in proportion with the offence committed;
- . That any community organisation to which the young person is referred by the Community Aid Panel consents to that person participating in work or activities there;
- . That a monitoring scheme be established to ensure that there is a consistency among the options being issued from different Community Aid Panels;
- . That Community Aid Panels are covered by insurance in the event of a young offender being injured in the course of his or her participation in a Community Aid Panel program;
- . That Community Aid Panels must not be used as an alternative to police cautioning. (4.8.2)

See also Dissenting Opinion.

**Recommendation No. 68:**

That a trial of a program of Intensive Personal Supervision be implemented for a 12 month period and then be subject to an evaluation. (4.8.8)

**Recommendation No. 69:**

That the Intensive Personal Supervision program be co-ordinated by the Office of Juvenile Justice which would draw on the support of members of the community as appropriate and who would properly monitor the progress of the young offender with his or her "mentor". (4.8.4)

**Recommendation No. 70:**

That adequate guidelines be drawn to ensure the proper accountability of all those involved in the Intensive Personal Supervision program. (4.8.4)

**Recommendation No. 71:**

That any reasonable costs the "mentor" might incur in his or her role with the young offender, under the Intensive Personal Supervision program should be met by the Office of Juvenile Justice. (4.8.4)

**Recommendation No. 72:**

That a circuit for Children's Court Magistrates be established, in order that specialist Magistrates may travel to country areas and preside over all children's matters there. This would require the appointment of at least a further two specialist Children's Magistrates. (4.9)

**Recommendation No. 73:**

That a program of training be established for all Magistrates, including those who may from time to time relieve at Children's Courts, to assist them to understand fully issues affecting young offenders, including sentencing options and available services. (4.9) See also Recommendation No. 62

**Recommendation No. 74:**

That magistrates presiding in courts sitting as Children's Courts, should have available to them, relevant services upon which they can draw, in order that reasonable, appropriate and consistent sentences might be given. (4.9)

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**Recommendation No. 75:**

That the Office of Juvenile Justice establish a position in Head Office, of Information Officer, to advise members of the Magistracy of services available to young offenders in the Department and the community. (4.9)

**Recommendation No. 76:**

That wherever possible, community-based sentencing options must be the first response to young female offenders convicted of a criminal offence. (4.10)

**Recommendation No. 77:**

That girls should only ever be detained in a Juvenile Justice Centre where the offence is of such a serious nature that it would be inappropriate to release them into the community. (4.10)

**Recommendation No. 78:**

That any facility that detains girls must ensure that the girls are kept in sex-segregated accommodation. (4.10)

**Recommendation No. 79:**

That the development of policies and the co-ordination of programs that relate specifically to young female offenders be undertaken by a special Policy Officer (Girls) appointed by the Office of Juvenile Justice who looks specifically at issues affecting girls. (4.10) See also Recommendation No. 12

**Recommendation No. 80:**

That education and training programs offered to girls in custody and secure care should be of a range that is equal to those provided for boys and be particular to the needs of girls. (4.10)

**Recommendation No. 81:**

- That the Office of Juvenile Justice sponsors or develops specialist programs for those young female offenders, both in custody and on community-based sentences, who require sexual assault and drug and alcohol counselling as well as guidance in issues such as self-esteem and living skills. (4.10)

**Recommendation No. 82:**

- That the supervision of community-based sentences for young female offenders should be undertaken by a female Juvenile Justice, Community Services Officer. (4.10)

**Recommendation No. 83:**

- That the majority of staff at Juvenile Justice Centres that detain girls must be female and have appropriate training and expertise in issues affecting girls. (4.10)

**Recommendation No. 84:**

- That the supervisors of staff of girls in Juvenile Justice Centres, should be predominantly female. (4.10)

**Recommendation No. 85:**

- That post-release residential facilities include facilities that are girl-only and include in their program, options that relate specifically to girls. (4.10)

**Recommendation No. 86:**

- That community-based sentencing options be utilised at all times when a young Aboriginal person is sentenced unless the severity of the offence or the protection of the young person warrants otherwise. (4.11)

**Recommendation No. 87:**

That the Office of Juvenile Justice in consultation with members of Aboriginal communities examine the option of establishing a system whereby an Aboriginal elder or a member of the Aboriginal community is available to provide assistance to magistrates sentencing Aboriginal young offenders. (4.11)

**Recommendation No. 88:**

That where Aboriginal young offenders are sentenced to a community-based option that requires supervision, appropriate support services are made available and utilised from local Aboriginal communities. (4.11)

**Recommendation No. 89:**

That where an Aboriginal young offender is sentenced to a period in custody, adequate contact from Aboriginal organisations is made available and that such young offenders have available to them programs that are relevant to their culture. (4.11)

**Recommendation No. 90:**

That community-based sentencing options be utilised at all times when a young person from a non-English speaking background is sentenced unless the severity of the offence or the protection of the young person warrants otherwise. (4.12)

**Recommendation No. 91:**

That the Office of Juvenile Justice, in consultation with members of relevant ethnic communities, examine the option of establishing a system, to provide assistance to magistrates when sentencing young offenders from such communities. (4.12)

**Recommendation No. 92:**

That where young offenders from non-English speaking backgrounds are sentenced to a community-based option that requires supervision, appropriate support services are made available and utilised from local ethnic communities. (4.12)

**Recommendation No. 93:**

That where young offenders from non-English speaking backgrounds are sentenced to a period in custody, adequate contact from ethnic organisations is made available and such young offenders have available to them programs that are culturally appropriate. (4.12)

**Recommendation No. 94:**

That urgent attention be given to developing a career structure for workers in Juvenile Justice Centres including positions of Juvenile Justice Officers and Co-ordinators of the proposed Children's Panels. (5.2.1)

**Recommendation No. 95:**

That the salaries of workers in Juvenile Justice Centres be reviewed in order that they are commensurate with the skills required and responsibilities undertaken in such positions. (5.2.2)

**Recommendation No. 96:**

That prerequisites for employment as a youth worker in Juvenile Justice Centres include criteria such as community experience, ethnic or culturally specific knowledge and personal skills in relating to young people. (5.2.4)

**Recommendation No. 97:**

That, as with all new employees, youth workers in Juvenile Justice Centres generally be employed initially on a trial basis to enable assessment of their capabilities. (5.2.4)

**Recommendation No. 98:**

That formal training for youth workers in Juvenile Justice Centres give due heed to the issues of child development, counselling, personal development, non-violent strategies to deal with difficult children, Aboriginal history and culture and multi-cultural issues. (5.2.4)

**Recommendation No. 99:**

That courses be developed and provision made for acquiring skills through workplace and in-service training for youth workers in Juvenile Justice Centres. (5.2.5)

**Recommendation No. 100:**

That induction and in-service training must be provided to:

- assist youth workers to develop an understanding of their role within Juvenile Justice Centres, and
- to provide information on the relevant mechanisms through which conflicts within their work can be resolved. (5.2.5)

**Recommendation No. 101:**

That counsellors providing specialist services to young offenders be professionally qualified in either social work or psychology. (5.2.6)

**Recommendation No. 102:**

That any training or pre-employment programs for youth workers, particularly those working in Juvenile Justice Centres address matters relating to:

- Aboriginal history and culture,
- Multicultural issues,
- Girls in custody,
- Disabilities, and
- Age and stages of development. (5.2.8)

**Recommendation No. 103:**

That where girls are detained, there be adequate numbers of female staff on each shift, especially in management positions. (5.2.8)

**Recommendation No. 104:**

That the staff composition of Juvenile Justice Centres, especially in management positions, be representative of the racial and ethnic profile of detainees particularly in relation to those who are Aboriginal or Torres Strait Islanders. (5.2.8)

**Recommendation No. 105:**

That the New South Wales Police Service establish a training program specifically relating to policing children and young people which, similar to the Initial Response Officers Course on Domestic Violence, involves pre-residential reading material, a two week residential skills training component followed by six months field work, prior to an appearance before a review panel before graduation, and

That the New South Wales Police Service include in its training program at the Police Academy and "on-the-job" or other professional development courses, programs to adequately equip officers with the skills to liaise with and manage juveniles.

The skills required include a knowledge of:

- the circumstances and characteristics of young people. Such training would need to include differences and difficulties relating to sex, physical or intellectual ability, racial and cultural and ethnic background. The effects of poverty, unemployment, sexual abuse, drug dependence and different views toward the police and authority figures held by Aborigines and some migrants would need to be understood;
  - the techniques and skills needed in dealing and interacting with young people;
  - the specific laws, rules and policies for the policing of young people;
-

- . an understanding and respect of the needs and rights of young people especially the right to use public spaces;
  - . the nature of the dynamics of the policing of young people;
  - . the legal and human rights of young people;
  - . an understanding and respect for the legal and human rights of young people as well as their need for advice and advocacy;
  - . an understanding of why racial and other prejudices and discriminatory actions are not appropriate to the professional policing of young people;
  - . an understanding of the culture and social relationships of Aboriginal Australians;
  - . an appreciation of the effectiveness of cautioning young people, and the preference of a Caution or a Court Attendance Notice rather than a charge;
  - . improved awareness of and compliance with the provisions of the Bail Act regarding the presumption in favour of bail and reasonable bail conditions; and
  - . an awareness of the role of other agencies in the Juvenile Justice System, and other reasons for their powers, policies and programs.
- (5.3)

**Recommendation No. 106:**

. That the selection criteria for Police Youth Officers include the:

- . officer's understanding of and interest in working with youth;
  - . ability to demonstrate effective and sensitive contact with people from diverse cultural backgrounds, especially Aborigines;
  - . ability to promote co-operation between individuals, groups and organisations providing services to young people and their families;
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## Recommendations

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- ability to facilitate culturally relevant decision making processes; and
- competence and flexibility in working with children, young persons and their families. (5.3.1)

### Recommendation No. 107:

- That, in addition to their ongoing training at the Police Academy, the opportunity be created whereby Aboriginal Community Liaison Officers throughout the state could, meet once per year, at a venue to be determined by the Aboriginal Community Liaison Officers. (5.3.1)

### Recommendation No. 108:

- That the Police Service review the adequacy of Aboriginal Community Liaison Officers with the view to increasing the number of positions throughout New South Wales.

In particular, consideration should be given to facilitating the recruitment of female Aboriginal Community Liaison Officers. Where female Aboriginal Community Liaison Officers are difficult to attract and retain in positions, consideration should be given to identifying women in the Aboriginal community who would be willing and appropriate to call upon to assist as required.

- That access be made available to reliable transport for Aboriginal Community Liaison Officers in order that they may adequately fulfil their role. (5.3.2)

### Recommendation No. 109:

- That a training program be established for all magistrates, particularly those who may from time to time relieve at Children's Courts, to assist them to understand fully issues affecting young offenders, including sentencing options and available services. (5.4)



**Recommendation No. 110:**

That wherever juveniles who are Aboriginal, female or from a non-English speaking background, are or have the potential to be involved in programs, participate in schemes or use services, that the staff of those services be chosen who are able to demonstrate a sensitivity to and knowledge of the specific backgrounds and needs of those young people.

That the Office of Juvenile Justice organise training to develop the knowledge of such workers in relation to the often complex and specific difficulties of youth at risk who are Aboriginal, female or from a non-English speaking background. (5.5)

**Recommendation No. 111:**

That the Office of Juvenile Justice undertake evaluations on whether more than one Drug and Alcohol Counsellor needs to be placed in those Juvenile Justice Centres with high rates of detainees with drug and/or alcohol dependencies. (6.3)

**Recommendation No. 112:**

That appropriate and consistent follow-up be organised by the Office of Juvenile Justice for those young offenders, released from Juvenile Justice Centres who require on-going treatment for their drug and/or alcohol dependency. (6.3) See also Recommendation No. 118

**Recommendation No. 113:**

That the Department of Health supervise the development of further specialised drug and alcohol services in the community to assist young people, including young offenders with drug and/or alcohol dependencies. (6.3)

**Recommendation No. 114:**

That funding be made available to increase the provision of services, particularly to Aboriginal children in rural areas of New South Wales, under the Home School Liaison Officer Program. (6.4)

**Recommendation No. 115:**

- . That once a detainee is released from a Juvenile Justice Centre, appropriate post-release follow-up, suitable to the needs and circumstances of the young offender must be co-ordinated by the Office of Juvenile Justice. (6.5)

**Recommendation No. 116:**

- . That a fostering scheme be established for a period of 12 months, to be available to Children's Courts Magistrates in relation to both remanded and sentenced young people. That scheme should operate in the following way:
  - . the scheme be evaluated 12 months from the date it is established;
  - . the scheme be co-ordinated by the Office of Juvenile Justice in conjunction with the specialised foster care program of the Department of Community Services;
  - . the prospective care-givers be thoroughly screened as to their suitability in providing a safe, secure and supportive environment for the young person;
  - . a mechanism for regular assessments of the progress of the young person and the suitability of the placement be established;
  - . the care-giver be paid and be provided with any reasonable expense he or she may incur during the course of the placement;
  - . appropriate support systems be established within the relevant Departments, which can be utilised whenever the care-giver or the young offender requires assistance in relation to the placement; and
  - . where a young Aboriginal person is fostered under this scheme, placements should be made with Aboriginal families. (6.6.1)

**Recommendation No. 117:**

That there be established throughout New South Wales small residential facilities, adequately resourced and suitably staffed to assist young offenders, released from their committal, in their transition back into the community. (6.6.2)

**Recommendation No. 118:**

That whilst at a residential facility, the young person should have follow up on his or her drug and alcohol counselling, sexual assault counselling, schooling and any other programs or courses that may have been undertaken in the Juvenile Justice Centre. Appropriate liaison with community drug and alcohol workers, schools, job training services, accommodation services and families should be undertaken so that the young offender has appropriate contacts when leaving the facility, or can be placed in a school, a job or obtain further job training, or safe accommodation if the family home is not appropriate upon his or her departure. (6.6.2) See also Recommendation No. 112

**Recommendation No. 119:**

That psychologists and other counsellors from the Community Youth Centres be available for consultation with the young people at the residential facilities. (6.6.2)

**Recommendation No. 120:**

That the length of the young person's stay at a residential facility, be determined according to the young person's need. (6.6.2)

**Recommendation No. 121:**

That:

- (a) following a young person's departure from the residential facility, resources be made available to Juvenile Justice Community Services to continue, where necessary, the supervision of a young offender.

- (b) there be a wide range of services, training and counselling programs available to assist with such supervision. In this regard, services provided by community organisations should be utilised, and where appropriate, adequately resourced and accredited to fulfil this function. (6.6.2)

**Recommendation No. 122:**

- That the establishment of residential facilities be co-ordinated by the Office of Juvenile Justice with the co-operation of the Department of Community Services, the Department of Health, the Department of School Education and the Department of Housing. (6.6.2)

**Recommendation No. 123:**

- That magistrates in rural areas, make every effort to find local solutions to issues of sentencing young offenders, to avoid the option of incarceration and the removal of young offenders from their communities. (6.7)

**Recommendation No. 124:**

- That a family assistance scheme be established to assist those families from rural areas who cannot meet the cost of visiting children in Juvenile Justice Centres. (6.7)

**Recommendation No. 125:**

- That facilities be established in Juvenile Justice Centres to assist families, particularly families from rural areas, to be close to the children during visits. (6.7)

**Recommendation No. 126:**

That the Attorney General's Department, the Department of Courts Administration, the Legal Aid Commission and the Law Society review the option of the expansion of the children's duty solicitor scheme and provision of a social worker, to other Children's Courts, using the scheme at Cobham Children's Court as a model. As part of the review, consideration be given as to whether more than one salaried solicitor would be required to service Children's Courts. (6.9)

**Recommendation No. 127:**

That the duty solicitor scheme be expanded to include a legal service for young people in Juvenile Justice Centres that could assist detainees with bail applications, appeals, complaints and any other relevant legal matter. (6.9)

**Recommendation No. 128:**

That a special Children's Section be established in Head Office of the Legal Aid Commission that would be responsible for the co-ordination and monitoring of the duty solicitor scheme, including an expanded duty solicitor scheme. (6.9)

**Recommendation No. 129:**

That a scheme be established by the Legal Aid Commission whereby a children's solicitor travel on circuit to country areas where there is no specialist Children's Court or specialist children's solicitor to assist in children's criminal proceedings. (6.9)

**Recommendation No. 130:**

That all solicitors participating in the Children's Court duty solicitor scheme be provided with training and education on issues relevant to the needs of the clients that they are to represent and that such training and education be ongoing throughout their time on the roster. (6.9)

**Recommendation No. 131:**

- That the Attorney General's Department, the Department of Courts Administration, the Legal Aid Commission and the Law Society examine the option of setting up a 24 hour telephone advice line for young people at police stations, who are charged with a criminal offence. (6.9)

**Recommendation No. 132:**

- That Children's Court proceedings be conducted in language that is simple and able to be understood by young people appearing at court and that young people and their families or other support people, be encouraged to participate in the proceedings. (6.9)

**Recommendation No. 133:**

- That a Youth Information Service be established and co-ordinated through the Office of Youth Affairs, to provide assistance to young people with inquiries on a number of issues, including housing, income assistance, employment and any other relevant matter, and to act as a referral agency. (6.9)

**Recommendation No. 134:**

- That a position be created in the Office of the Ombudsman, with the status of Deputy Ombudsman, that would be responsible for the co-ordination of complaints made by children, including those in the Juvenile Justice System, and for the establishment of a system of education and information for children about the role of the Ombudsman. Adequate resources should be made available to assist in the creation of this position. (6.10)

## INTRODUCTION

On 14 August, 1991 the Attorney-General, the Hon. Peter Collins, M.P., and the Minister for Justice, the Hon. Terry Griffiths M.P. referred to the Standing Committee on Social Issues of the Legislative Council, an Inquiry into the Juvenile Justice System in New South Wales.

The Terms of Reference for this Inquiry are:

That the Standing Committee on Social Issues undertake a full Inquiry into the Juvenile Justice System in New South Wales and in particular report on:

- (a) crime prevention programs;
- (b) court diversion schemes;
- (c) sentencing and community-based options for the care and management of young offenders;
- (d) selection and training of staff in relevant youth services; and
- (e) the adequacy of services to young people in the juvenile justice system.

This Report is the result of that Inquiry.

An inquiry into Juvenile Justice, resulting from the New South Wales Legislative Council unanimously endorsing a motion proposed by the Hon. Paul O'Grady, M.L.C., previously had been referred to the Committee on February 24, 1990. That motion also requested the Standing Committee on Social Issues conduct a complete investigation into the Juvenile Justice System in this State:

That the Standing Committee on Social Issues undertake a full inquiry into the Juvenile Justice System in New South Wales and in particular report on:

- (1) The implications of:
  - (a) pre-sentencing and court diversion schemes;
  - (b) selection and training of staff in relevant youth services; and
  - (c) community-based options for the management and care of young offenders.

## Introduction

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The Committee's investigation, using these terms of reference, was terminated with the calling of a State election in May 1991. The results of that election resulted in a slightly changed and expanded membership and a new Chairman of the Committee, the Hon. Dr. Marlene Goldsmith, M.L.C., when it was reconstituted on 2 July, 1991.

All information and evidence collected under the original Terms of Reference were utilised in the production of this Report.

## COMMITTEE PHILOSOPHY

The Juvenile Justice System in New South Wales covers young people from the age of 10 to 18. It attempts to recognise the "... unique physical, psychological, and social features of young persons and the application of delinquency standards."<sup>1</sup>

During the course of the Inquiry, a number of important factors became apparent to Committee Members. The first and most relevant of these was the peculiar nature of juvenile crime, or more specifically, the fact that the overwhelming majority of young people come in contact with the Juvenile Justice System only once.

"There are some (in fact, many) adolescents who will be caught breaking the law once and for whom this will be their only contact with the juvenile justice system. Because of the associated developmental stages of adolescence (risk taking, peer approval, etc) some young people will engage in behaviour which is atypical for them and they will generally move on in their development to more socially acceptable behaviours. ... These adolescents will generally not re-offend - not because of the threat of heavy penalties - but because of the understanding they have about the consequences of their behaviour."<sup>2</sup>

Consequently, the Committee is committed to strategies that will minimise the contamination of first and minor offenders by exposure to the justice system, especially exposure to hardened offenders.

The Committee also became aware of the extraordinary complexity involved in successfully reconciling the varying interests associated with juvenile justice.

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<sup>1</sup> Freiberg. 1988 p.209

<sup>2</sup> Submission 4. p.1

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Through its juvenile justice legislation and administrative arrangements, the Parliament must strike a proper balance in responding to the needs of the groups interested and involved in Juvenile Justice. The groups interested and involved in Juvenile Justice are identified as follows:

- . young offenders, who often come from dysfunctional families and an abusive past, who are dealing with problems such as drug abuse and homelessness but who nonetheless must be held accountable for their actions;
- . the families of young offenders who must be assisted to perform a caring, protective and responsible role for family members and who must, where feasible be part of the consultative process when decisions regarding the care and management of young offenders are made;
- . the victims of both property and personal crime who must be incorporated into the justice system and where possible recompensed for their suffering and loss; and
- . the community, which demands as safe a home environment as possible, a sense of justice and an appropriate response to crime of any form and sufficient confidence in government responses in relation to value for money.

The Standing Committee on Social Issues is composed of Members from the most diverse backgrounds. However, it was universally recognised that on this issue non-partisan support is essential if meaningful change is to be achieved for the benefit of the community as a whole.

Education and leadership in the community and amongst practitioners are essential to ensure confidence and credibility in proposed change.

It is the Committee's hope that this report will go some way to providing a framework for a sympathetic and objective approach to juvenile justice reform in this state.

The Committee strongly endorses the view that because of the peculiar nature of juvenile crime, there should be no attempt to combine the systems of adult and juvenile justice.

The original Child Welfare Act, 1923 and its successor the Child Welfare Act, 1939 governed young people in this state for most of this Century. However, current legislation, in recognition of a more enlightened age and in association with Australia's international responsibilities (see reference to U.N. Conventions in Chapter One), differentiates between young people and adults in the way they are cautioned, arrested, dealt with by the judicial system and held in custody. It is the Committee's firm opinion that such a distinct system should continue.

## Introduction

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The Committee wishes to state that in a very real sense, reviewing the Juvenile Justice System in New South Wales is addressing the problems after they have occurred. Homelessness, family dysfunction, sexual and physical abuse, poverty, and drug addiction are among the major circumstances which underly juvenile offending and which must be addressed effectively if juvenile offence rates are to be reduced.

The Committee firmly believes that young people should be held accountable for their actions, albeit with some recognition given to their age and particular circumstances. While community representatives, occasionally encouraged by irresponsible media coverage, are often the first to suggest harsher penalties and a stricter response to juveniles, it is this same community which has the most to benefit from crime prevention and the better utilisation of resources. However, none of the above should be seen as an "excuse" for juvenile crime.

The Committee also determined that the personal needs of the offender should be addressed, particularly where such needs are considered to have contributed to the offence. The "needs" of a young offender and the fact that a "deed" or offence has been committed both have to be managed. It is considered by the Committee, that it is important for the young offender, to have their "needs" addressed separately from the "deeds" they have committed. This view was taken in order that assistance to a young offender is not perceived as a reward for offending.

## CHAPTER ONE

### BACKGROUND

#### 1.1 BACKGROUND TO JUVENILE JUSTICE IN NEW SOUTH WALES

The management and care of young offenders in New South Wales has been a cause of considerable concern for all Governments of this State since the middle of last century. The notorious Parramatta Reform School for "uncontrollable and delinquent girls" was founded as early as 1829. In 1881, Edmund Fosberry, the New South Wales Commissioner of Police, in a report to the Principal Under Secretary in London noted that:

"It is useless to ignore the fact that intemperance, obscenity, and disorderly conduct are growing evils amongst a large class of the youth of the city; well grounded complaints are constantly made of wanton injury to property and annoyance to citizens."<sup>1</sup>

In 1971, 1,265 young people were detained in nine institutions. A further 240 young people were held in six remand centres and 102 in a school for truants.<sup>2</sup> The total of 1,600 detainees in 16 different centres required 800 staff, one third of the total of the then Department of Youth and Community Services.

The average length of stay in institutions was 8.5 months, indicating that many young people were held for longer periods and that:

"... many were in fact detained for quite trivial offences, some of which would not have rendered adults liable to imprisonment, and also for behaviour which was not "criminal" at all".<sup>3</sup>

The historical response by governments, law enforcement officers and the legal and welfare systems to juvenile offending in this state has overwhelmingly been incarceration.

In 1980-81, the State Government embarked on a major overhaul of the 1939 Child Welfare Act. This review particularly targeted the area of juvenile justice, including sentencing options, court diversion, community welfare facilities and detention centres. While a number of sections of the resulting Community Welfare Act of 1982 were never

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<sup>1</sup> Submission 30. p.1

<sup>2</sup> Submission 1. p.1

<sup>3</sup> Submission 23. p.2

proclaimed, the review signalled the commencement of a more enlightened, compassionate and detailed government response to this difficult management area of which this report is only the latest contribution.

The Australian Institute of Criminology conducted in 1983, a state by state comparison of juvenile incarceration rates. New South Wales was the highest in the country with a figure 60 per cent higher than Victoria and 200 per cent higher than South Australia.<sup>4</sup>

In response to those figures the Department initiated two task forces. The so-called "Houston Report" recommended that young people in detention should remain as close as possible to their own community or region and that alternatives to incarceration, incorporating community participation and other alternatives, be developed on a local basis and that these alternatives be made available to Children's Courts.<sup>5</sup>

The second report from the Department's task forces was the "Pryke Report" which examined each person in custody with a view to releasing those who posed no threat to the community, the future use and possible closure of various institutions and the staffing and location of non-custodial alternative programs.<sup>6</sup> The Pryke Report concluded that large congregate detention centres were ineffective and contributed to greater recidivism. Smaller regional units and "community cottages" would better serve the needs of young offenders and supervision in the community could be undertaken by a reallocation of youth workers freed up from the closure of detention centres.<sup>7</sup>

The net effect of the Pryke Report was to reduce slightly the number of institutions and almost halve the number of young people who were detained to approximately 450, a figure which has remained fairly static right into the 1990's.

However, the planned creation and revitalisation of community-based alternatives did not eventuate. Nor did the implementation of a detailed and thorough assessment service, considered by the Pryke Report to be crucial to the transfer of young people from institutions back into the community. The "community cottage" scheme was unsuccessful for a number of reasons. Based on an attempt to keep low-risk offenders in closer contact with the community, the scheme:

"... faltered - principally because properties were purchased without community consultation and explanation of their role. Understandably there was a community backlash against the concept."<sup>8</sup>

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<sup>4</sup> Submission 1. p.1

<sup>5</sup> Houston. 1983

<sup>6</sup> Pryke. 1983

<sup>7</sup> Submission 1. pp.2-3, Submission 23. p.4

<sup>8</sup> Submission 23. p.5

While not everyone accepts this assessment, the community cottage scheme was representative of a broader malaise attendant upon all attempted reforms in the juvenile justice area. Selling the idea of change, particularly change which emphasises treatment and rehabilitation, to a public bombarded with media stories of juvenile gang warfare and "drug-crazed" homeless youth prowling the streets intent on causing physical injury, was exceptionally difficult. Furthermore, "Law and Order" has frequently been a first-order election issue along with health policy and education for all the major political parties:

"This final phase, i.e. the careful and thorough implementation of the whole reform process, demanded both political will and bureaucratic commitment in order to guarantee its success. Neither was forthcoming. As community and media nervousness grew the political will wavered and the Department's executive gradually withdrew even its "support in principle". The underpinning legislation which might have saved the reform was said to be too costly to implement."<sup>9</sup>

The last five years have seen some considerable change in the legislative base and administrative arrangements governing juvenile justice in New South Wales, but more effective community supervision, more successful rehabilitation programs and a significant decrease in the number of juveniles in secure care are yet to be achieved.

A package of legislative reform was introduced in 1987 in which "care" (i.e. welfare) matters were separated from criminal proceedings, set up a distinct Children's Court of New South Wales with specially appointed Children's magistrates, detailed a series of non-custodial sentences available to magistrates, confirmed the age of criminal responsibility at 10 years and regulated the proceedings and conduct of juvenile courts, detention centres and community service orders.

Legislation among that reform package includes the:

- . Children (Criminal Proceedings) Act 1987
- . Children (Care and Protection) Act 1987
- . Children (Community Service Orders) Act 1987
- . Children (Detention Centres) Act 1987
- . Children's Court Act 1987.

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<sup>9</sup> Submission 11. p.4

It is generally recognised that the gradual improvement in the attitudes and facilities associated with juvenile justice in the state of New South Wales commenced in the early 1980s. This was also true of many other states in Australia at this time.

The passage of the 1982 Community Welfare Act was preceded by considerable research and investigation. Changes in the provision of juvenile justice services began as far back as December 1978 when a Green Paper on proposed changes and reforms to the Child Welfare Act, 1939 was released for public comment by the then Minister, Mr R.F. Jackson, M.P.

Whilst some sections of the Community Welfare Act were never proclaimed, most commentators agree that the review which preceded the legislation, proved to be the catalyst for the development of a range of community-based alternatives which emerged during the 1980s. The process also is considered to have engendered the Pryke and Houston Reports and provided much of the background to the package of legislation which was eventually passed in 1987 and implemented.

Many people involved in the process gained extensive knowledge of the Juvenile Justice System. The Committee spoke to a number of those people whose evidence proved particularly valuable for the Inquiry.

In July 1990 the Youth Justice Coalition, under the auspices of the Law Foundation of New South Wales, released a report entitled "Kids in Justice: A Blueprint for the 90's". This is undoubtedly the most comprehensive report on the New South Wales Juvenile Justice System yet released. The Report had as its focus the experiences and perspectives of young offenders, their families, victims, members of the community and relevant workers. It dealt with the social context of juvenile crime and juvenile justice, the administrative agencies involved with juvenile offending, the policing of young people, community-based options and Juvenile Justice Centres, all of which the Committee carefully considered within this Report.

It must also be noted that the Committee was greatly assisted by the major relevant Departments, who provided much more than submissions and briefings. Representatives of the then Department of Family and Community Services and, more recently, the Office of Juvenile Justice co-ordinated many of the visits of inspection and provided the Committee with an extraordinary array of statistical, research and background material. The Committee is indebted to the professionalism and co-operation of these departmental officers and the support of the Ministers.

## 1.2 CURRENT ADMINISTRATION OF THE SYSTEM OF JUVENILE JUSTICE

"Operational responsibility for Juvenile Justice was transferred from the Minister for Health and Community Services to the Minister for Justice from 1 July 1991. The Attorney-General assumed responsibility for policy matters."<sup>10</sup>

Subsequent to that transfer, and following a review of the management of juvenile justice by the Office of Public Management a separate Office of Juvenile Justice, reflecting the distinct philosophical differences between the children's and adult correctional systems was created and became operational on 1 November 1991:

"Juvenile Justice retains control of its own operational activity, and the Head of the Office of Juvenile Justice reports directly to the Minister for Justice on management issues and to the Attorney-General on policy matters."<sup>11</sup>

The Office of Juvenile Justice controls the operations of Juvenile Justice Centres, formerly known as detention centres, the Juvenile Transport Service, Community Youth Centres, Juvenile Justice Community Services (formerly known as Young Offender Support Service), community based programs, policy research and evaluation.

In September 1991, the Attorney-General and the Minister for Justice established the Juvenile Justice Advisory Council. The establishment of such a Council was originally recommended in the Kids in Justice Report. Established to provide advice to the government on juvenile justice policy for an initial period of two years, the Juvenile Justice Advisory Council is independent of the Office of Juvenile Justice and consists of ten members including community representatives, service providers and experts on juvenile justice and crime prevention issues. The Council's role is to advise the State Government, and particularly the Ministers to whom they report directly, on the future policy and management directions for juvenile justice:

"It will develop and recommend a long-term strategic plan for juvenile justice, with a view to appropriate reforms to laws, policies and programs."<sup>12</sup>

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<sup>10</sup> Evidence 25.11.91

<sup>11</sup> Ibid

<sup>12</sup> Ibid

The Terms of Reference for the Juvenile Justice Advisory Council are:

- "1. To advise the Attorney General and the Minister for Justice on the future policy and management directions of juvenile justice in NSW within the existing budget allocation.
2. To examine and report on models for dealing with juvenile justice, taking into account the recommendations of the Legislative Council Standing Committee on Social Issues Inquiry into Juvenile Justice, the Cabinet Justice Committee response to the Kids in Justice Report and the recommendations of the Office of Public Management Review of the management structure of juvenile justice and to advise the Government on priorities for implementation.
3. To develop and recommend a long-term strategic plan for juvenile justice in NSW.
4. To develop and recommend methods and strategies relating to juvenile crime prevention.
5. To recommend improved coordination across Government and community agencies, taking into account the legal, police, rehabilitation, education, accommodation, health and family issues involved.
6. To make recommendations to the Government on appropriate reforms to laws, policies, and programmes concerning juvenile justice and to include in all recommendations administrative responsibilities, cost, time-frame for implementation and performance measures.
7. To recommend the commissioning of research and to review other reports and studies relating to juvenile justice.
8. To develop and recommend, in liaison with the Bureau of Crime Statistics, a coordinated data gathering system relating to juvenile justice which will provide an essential resource for continuing research and evaluation.
9. To identify and report on the direct and indirect costs of juvenile justice in NSW.



10. To consult with and promote awareness among young people, families, community groups, the media, the public and Government on issues concerning juvenile justice.
11. To undertake such other activities as determined by the Attorney General or the Minister for Justice."<sup>13</sup>

### 1.3 WHY SHOULD JUVENILES BE TREATED DIFFERENTLY?

It has been a universally accepted precept that the care and management of young offenders needs to be handled distinctly from actions taken against adult offenders.

More particularly, a separate system has emerged with the intention of saving "...children from the contamination and stigma of being dealt with like and along-side adults, ... it is the very nature of children and their situation [which] demands a different jurisdiction."<sup>14</sup>

Articles 37 and 40 of the United Nations Convention of the Rights of the Child (adopted by the General Assembly of the United Nations on 20 November 1989), deal specifically with the administration of juvenile justice. This convention states, amongst other things, that:

"Article 37

- (b) ... The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) ... every child deprived of his or her liberty shall be separated from adults ... and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance; ...

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<sup>13</sup> Juvenile Justice Advisory Council, 8.5.92

<sup>14</sup> Submission 33. p.35

Article 40

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children;

...

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programs and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

The more the Committee investigated the whole area of juvenile justice the more apparent became the level of misinformation and incorrect assumptions which presumably have formed the basis of much public discussion in this area.

At the outset of this report, the Committee wishes to take issue with a number of myths and perceptions, and to re-affirm a number of facts and principles of juvenile offending and care which have formed the basis of its deliberations and recommendations.

Misperceptions

There is a juvenile "crime wave", currently overwhelming the citizens of New South Wales.

The Juvenile Justice system has "gone soft" on juvenile crime and Juvenile Justice Centres are "holiday resorts" which encourage absconding.

Having absconded, juvenile criminals engage in an "orgy" of criminal behaviour, threatening the safety of the ordinary citizens of the state.

Facts

Overall, patterns of juvenile offending have remained static for more than a decade, even during periods when adult crime has increased.

Most young offenders grow out of crime. The most common juvenile offender is male and aged between 16 and 18 years of age. More than 60 per cent of young

offenders do not re-appear in court after a first offence and only a small minority pursue criminal careers.<sup>15</sup>

"Most juvenile crime is episodic, opportunistic and transitory."<sup>16</sup>

Very little crime, particularly involving offences against the person, is committed by juveniles who have escaped from training centres.

These issues will be expanded on later in this Report.

#### 1.4 PRINCIPLES

Following its Inquiry, the Committee has adopted the following principles in relation to Juvenile Justice within New South Wales:

The first response of an effective Juvenile Justice System must be crime prevention.

The Juvenile Justice System must continue to be discretely managed, with every effort being made to prevent the progression by young people from Juvenile Justice Centres to adult gaols.

Young people detained on "care" matters must be separated from those incarcerated on criminal matters.

Diversion, particularly Police Cautions, should be the first response to minor offences and community based orders should be the most frequent sentencing options.

Selection and training of all persons involved with juveniles should be of the highest order.

Community treatment programs hold the best opportunity for the rehabilitation of young offenders by offering the least disruption to the young person and the greatest protection to the wider community. Community consultations regarding the location and operation of such centres should be as detailed as possible.

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<sup>15</sup> Submission 1. p.5

<sup>16</sup> Submission 15. p.6

Institutionalisation should always be a last resort, preferably for serious recidivist offenders and those who commit violent crimes.<sup>17</sup>

A co-ordinated approach between the law enforcement, health, community service, education, housing and juvenile authorities shall be developed.

Within the juvenile justice process, the victim should be considered and respected.

The young offender and where appropriate his or her family should be involved at all levels of proceedings.

There is a need for the community to be accurately and sensitively informed of the facts relating to juvenile justice and the rationale behind the determinations of government. This responsibility lies with all members of Parliament, the media and relevant educational outlets.

### **1.5 STRUCTURE OF THE JUVENILE JUSTICE SYSTEM**

In acknowledgment of the principles outlined above, the Committee has outlined in the following paragraphs its perspective on the composition of the Juvenile Justice System in New South Wales.

The juvenile justice system in New South Wales has been described as:

"a combination of rules, institutions and people involved in the control and punishment/rehabilitation of young people as suspects and, primarily, as offenders."<sup>18</sup>

The responsibility for the "formal" system lies primarily with four state government departments, viz Attorney-General's, Police, Courts Administration and the Office of Juvenile Justice. The first three of these departments have policy and operational responsibility for both juveniles and adult offenders, with the Office of Juvenile Justice the only one of the four departments which has responsibility solely for juveniles.

Some local councils are involved in the area of juvenile justice, through their provision of crime prevention programs in the form of community services. The Federal government also plays an indirect role in the Juvenile Justice System. Its role includes resourcing through direct and tied grants to the states relating to health, accommodation and human rights.

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<sup>17</sup> Submission 15. p.4

<sup>18</sup> Submission 33. p.59

The New South Wales government provides services for families and juveniles at risk, either directly by the Department of Community Services or through grants to a number of non-government organisations.

A wide range of non-government agencies provides services to juveniles at risk and young offenders. The types of non-government agencies involved include service clubs, community and church groups, welfare organisations such as Burnside, Careforce, Centrecare and the Sydney City Mission. In addition youth refuges, other accommodation services and legal services such as the Aboriginal Legal Service provide services to juveniles at risk and young offenders.

## **1.6 METHOD OF INQUIRY**

There has been a dramatic increase in both general research material and the implementation of alternative systems in the juvenile justice area in Australia and overseas in the previous decade. To this end, the Committee sought to access as much research and statistical information as was available to it.

All Government departments and instrumentalities were asked to provide information to the Committee and the Committee held detailed briefings with the Departments of Police and Community Services on two occasions. A briefing was also held with the Minister for Justice and members of the Juvenile Justice Advisory Council.

The Committee sought information from academics, bureaucrats, field officers, youth workers, community and welfare workers, community representatives, a range of Juvenile Justice Centre employees, solicitors, the judiciary, police officers and young people themselves.

The Terms of Reference for the Inquiry inviting submissions from the general public were advertised in the major metropolitan dailies and specific invitations to provide a submission were posted to 48 individuals, Departments and organisations.

### **1.6.1 Submissions**

The Committee received 91 submissions. Overwhelmingly these came from professionals either currently or previously operating in the juvenile justice field. Given the complexity of the issues this is not surprising and it did provide the Committee with a perspective from almost all areas of juvenile justice administration.

As detailed above, the Committee received submissions from all the relevant Departments including the newly established Office of Juvenile Justice.

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These submissions detailed the respective role of Departments, their programs and responsibilities.<sup>19</sup>

Appropriate government instrumentalities such as the Ombudsman's Office, the Office of Aboriginal Affairs and the Legal Aid Commission also supplied submissions. These bodies explained their specific function within the Juvenile Justice System and commented on their ability to meet that demand.

The Office of Aboriginal Affairs, for instance, deplored the high arrest, conviction and incarceration rate of young aboriginal people:

"Thus, in summary, Aboriginal children are over represented at all stages of the juvenile justice system. This over-representation actually increases with an individual's penetration of the system. Data from both New South Wales and South Australia indicates that the over-representation of Aboriginal children at the prosecution level increases at the Court level, and again at the institutional level."

In its submission, the Legal Aid Commission of New South Wales stated that "the Commission would support the further development and improvement of diversion schemes for juveniles to ensure that custodial sentences are imposed only as a last resort". The submission from the Ombudsman stated that they were simply unable to cope adequately with the demands on their resources.<sup>20</sup>

"It is my view that my office should be an avenue of last resort except perhaps in those cases of important public interest which require the early intervention of an independent body with significant powers, but to carry out this role more effectively, the resources have to be available and, given the current budget limitations, no further allocations of resources are possible. Indeed... that highlights our problem at the moment."<sup>21</sup>

The greatest single group of submissions came from current and past juvenile justice professionals and young people themselves. This group includes social workers, youth workers, charity workers, lawyers, community health and welfare workers, Children's Court Magistrates, Juvenile Justice Officers (formerly known as YOST workers), children's aid agencies and schemes offered by the traditional church agencies. Without exception, these submissions urged a compassionate and understanding approach to juvenile justice:

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<sup>19</sup> Submissions 1, 2, 3, 4, 30.

<sup>20</sup> Submissions 46, 52, 57.

<sup>21</sup> Evidence 4.4.91 p.204

"As a former professional social worker with many years of experience of working with troubled adolescents, I am much concerned with the backward step to have juveniles committed to adult prisons... To take an increasingly punitive line is not the answer."<sup>22</sup>

and a detainee said:

"I spent many hours in (solitary) confinement, a cage, empty room, whatever the label, this sort of (psychological) punishment did more damage than good! I began to mutilate my arms; I tried to hurt, slash, bruise myself just to release the anger and pain which I felt."<sup>23</sup>

Alternatively, submissions from current and past juvenile justice professionals and young people emphasised the need for incarceration to be used only as a last resort and almost all stated that juvenile justice services in general were understaffed and inadequately resourced:

"... incarceration is notoriously ineffective in preventing further criminal behaviour on release. Often it increases the likelihood of such an event due to the negative impact of institutional living."<sup>24</sup>

"During my time it was often the case that pre-sentence reports could not be written properly or, in fact, not at all due to chronic staffing shortages. Low staff numbers had the effect of creating a number of problems:

- 1) Reports were of variable quality and inconsistent depth
- 2) People may be employed as YOST workers who were neither suited for the position or, if they had potential, were placed in situations which created difficulties due to their inexperience and lack of training."<sup>25</sup>

The final significant group of submissions were from academics, many of whom had previously worked as professionals in one or more areas within the Juvenile Justice System. They detailed a variety of what they saw were shortcomings in the system and echoed the sentiments of the professionals by recommending a flexible, co-ordinated and compassionate response to juvenile offending.

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<sup>22</sup> Submission 8. p.1

<sup>23</sup> Submission 36. p.3

<sup>24</sup> Submission 15. p.7

<sup>25</sup> Submission 14. p.3

### 1.6.2 Evidence

The Committee heard a considerable amount of evidence. In addition to the 91 submissions received, evidence was taken at formal hearings and through detailed discussions with 205 people involved in, or concerned with juvenile justice in Australia. A genuine attempt was made to speak to young people, with the Committee meeting with 29 juveniles inside or outside Juvenile Justice Centres.

Sub-Committees also met with over 45 people in other countries. While not exhaustive, Committee members can claim to have examined in some considerable depth most of the current themes and issues in contemporary juvenile justice philosophy and discussed with experts all of the proposals contained in this Report.

### 1.6.3 Research Material

The Committee accessed a great deal of printed research material. The most significant single piece of research work in the area in recent times is the Kids in Justice Report released in June 1990 by the Youth Justice Coalition, funded by the Law Foundation of New South Wales. This detailed examination of the system is currently being considered by the Government and comments on some of its recommendations are to be found throughout this Report.

Other reports examined by the Committee include:

- "Our Homeless Children: The Report of the National Inquiry into Homeless Children", by the Human Rights and Equal Opportunity Commission, 1989.
- "Diversionary Scheme for Aboriginal Young Offenders", A Report to the Department of Family and Community Services, May, 1991
- "Community Crime Prevention Project: Final Report," Waverley Municipal Council, April, 1991
- "Preventing Juvenile Crime: Proceedings of a conference held 17-19 July, 1989," Australian Institute of Criminology, 1991
- "Sentencing Young Offenders", The Law Reform Commission, 1988
- "Girls at Risk", Women's Co-ordination Unit, June 1986



- "Criminal Justice in North-West New South Wales," Bureau of Crime Statistics and Research, 1987
- "Sentencing Juvenile Offenders and the Sentencing Act 1989 (NSW)", Judicial Commission of New South Wales, 1991
- "Young People and Crime: Costs and Prevention", Australian Institute of Criminology, 1990
- "Youth Crime Prevention: Proceedings of a Policy Forum held 29-29 August, 1990", Australian Institute of Criminology, 1990
- Royal Commission into Aboriginal Deaths in Custody, "National Report Overview and Recommendations", 1991.

#### **1.6.4 Visits of Inspection**

Members of the Committee were able to observe, first hand, a variety of systems operating in other states of Australia and overseas.

Committee members visited South Australia to speak with relevant officials in charge of the Screening Panel that operates in that State, spoke with police officers in Queensland about the operation of the "special youth police", and with the relevant people from the Youth Advocacy Centre, both initiatives peculiar to Queensland. The Committee visited Victoria for discussions with Departmental Officers about the implementation difficulties involved after the tabling of the "Carney Report"<sup>26</sup> in that state.

A sub-Committee visited New Zealand to examine the operation of the Family Group Conference scheme introduced in 1990 and two Committee members were able to observe the differing systems of juvenile justice in Holland, Sweden and the United States.

Committee members also visited five of the nine Juvenile Justice Centres in the State and held discussions with staff, administrators and the young people themselves. Notwithstanding the contained nature of the audience, Committee members utilised the opportunity to discover what was important to young people in these centres and most of them were very forthright in their suggestions.

The Committee visited Dubbo, Bourke and Moree in an attempt to obtain some sense of the conditions operating in country New South Wales and to more closely examine the environment in which an over-representation of young Aboriginal people end up in custody.

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<sup>26</sup> Carney. 1983

Finally, the Committee attempted to look at some of the huge variety of other programs and initiatives involved in the juvenile justice area. While not every program or youth centre could be visited, the Committee or its representatives studied crime prevention programs, youth "drop-in" centres and community youth centres, and spoke with Juvenile Justice Officers, youth workers, magistrates and solicitors.

## **1.7 STRUCTURE OF THE REPORT**

This Report seeks to do a number of things:

- . Review the available literature and distil the collective wisdom of the hundreds of people involved in juvenile justice with whom the Committee has spoken;
- . Examine other systems and innovations in operation in Australia and other parts of the world, decide on their applicability for New South Wales and make recommendations accordingly; and
- . Review the current administrative arrangements governing juvenile justice in New South Wales, including the Ministerial advisory mechanisms and comment upon their effectiveness.

The Report does not attempt to review each individual program, Juvenile Justice Centre or crime prevention strategy currently in operation in this state. That is a task which was beyond the resources of this Committee and is also more appropriately undertaken by the relevant Departments.

What this Report does seek to do is to make recommendations to the government concerning the principles, some particular needs and general structure of juvenile justice administration in New South Wales.

The Report follows the parameters set down by the Terms of Reference as closely as possible. Initially outlining the current administrative arrangements in operation, the Report examines the available evidence to make recommendations on crime prevention programs, court diversion schemes, sentencing and community-based options for the care and management of young offenders, selection and training of staff, and the adequacy of services to young people in the Juvenile Justice System.

The most pronounced groups which are either disproportionately represented, or have a set of needs which sets them apart from the bulk of the juvenile justice population are:

- . Aborigines;

- . Girls;
- . People from non-English speaking backgrounds; and
- . Rural young people.

Recommendations in the body of the Report will obviously affect all of these groups. However, the Committee has also looked specifically at these groups and in some instances made recommendations to address their particular needs.

The Committee understands that some young people in the Juvenile Justice System have an intellectual disability. Very limited evidence was presented to the Committee in this regard, and it acknowledges that such young people can be a "hidden group".

The Committee recognises that intellectual disability among young people in the juvenile justice system is a significant issue that needs further examination. The Committee therefore recommends that the Office of Juvenile Justice continues to examine this issue, including a review of the recommendations contained in the "Report from the Working Party on Services to Young Persons with Intellectual Disabilities in the Juvenile Justice System", produced by the then New South Wales Department of Family and Community Services in 1988. Given the limited range of material presented to the Committee no specific comments are made in this area.

The final sections of the Report contain a dissenting opinion, a list of the submissions received, the glossary, the bibliography and lists the witnesses and people with whom the Committee held formal discussions both interstate and overseas.

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## CHAPTER TWO

### CRIME PREVENTION PROGRAMS

#### 2.1 INTRODUCTION

Term of Reference (a) of this Inquiry requires the Committee to examine and report on crime prevention programs in the context of the Juvenile Justice System.

From the Committee's research throughout the Inquiry it is clear that crime prevention is the key to an effective policy on Juvenile Justice. Indeed, the issue of crime prevention is fundamental to the successful working of many of the recommendations contained in this Report.

Information presented to the Committee has shown that the cost of juvenile crime is very high. A witness before the Committee explained in evidence:

"Drawing on some work by the Institute of Criminology, in the Kids In Justice Report we were able to guesstimate at best a cost of \$250 million a year in direct costs of juvenile crime's damage and injuries and another \$150 million a year in indirect costs, insurance premiums and the like. It is a very expensive business for the state."<sup>1</sup>

Despite the expense incurred from juvenile crime, including the expense used in policing, legal services and courts, and corrections, the Committee has heard that there has yet to be developed in this state an effective means of dealing adequately with such offending. According to a paper tabled at a briefing given by representatives of the New South Wales Police Service:

"the New South Wales Juvenile Justice System does not effectively prevent or reduce the involvement of children and young people in criminal or anti-social behaviour."<sup>2</sup>

The Committee has heard that a number of factors have contributed to the limited measures undertaken to address juvenile crime, and recidivism, including:

a failure to identify and address the causes of juvenile offending,

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<sup>1</sup> Evidence (M. Hogan) 19.12.91 p.25

<sup>2</sup> NSW Police Service. 1990 p.2

a failure to include juvenile crime, "in the formulations of social and economic policy,"<sup>3</sup> and

a failure to take into account local and cultural issues and to satisfactorily involve local communities in juvenile crime prevention strategies.

The Committee notes that such omissions have meant that the initiation of effective crime prevention programs as part of a co-ordinated policy has, to date, been limited and inconsistent.

Evidence received by the Committee reveals that in many instances the nature and extent of juvenile offending has been misrepresented, and media reports of it exaggerated. Whilst the Committee acknowledges that there are some juveniles who commit very serious offences it notes that "for the most part, the "criminal careers" of juveniles are over by the time they are of age." Moreover, juvenile crime is "most often minor in nature and quickly passes. Typical of the offences committed by juveniles are offences against public order, street offences and minor dishonesty offences... It is apparent that the media has a view of the state of juvenile crime that is very different from the conclusion that can be drawn from available statistics. **There is clear indication from the court and cautioning statistics that there is no juvenile crime wave.**"<sup>4</sup>

It has been submitted to the Committee that:

"juveniles are disproportionately under-represented in arrest rates for serious offences, both personal and property; and over-represented in arrest rates for offences such as car theft, burglary, and "good order" offences; serious assaults are overwhelmingly committed by young adult males, as opposed to juveniles; a disproportionately small number of juveniles commit a large proportion of juvenile offences; there have been some increases in the seriousness of offences for which juveniles are apprehended; young people are less likely to cause injury and to use a weapon, and cause less damage or injury when committing an offence than adults..."<sup>5</sup>

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<sup>3</sup> Hogan. 1990 p.5

<sup>4</sup> Submission 30. p.2 (Emphasis added)

<sup>5</sup> Submission 33. p.21

In its submission to the Inquiry, the then Department of Family and Community Services noted that "for those young offenders who appear in court, statistics have consistently indicated that approximately 60% of those on their first court appearance do not subsequently re-offend."<sup>6</sup>

According to a further submission, provided by the Association of Child Welfare Agencies:

"There are some (in fact many) adolescents who will be caught breaking the law once and for whom this will be their only contact with the juvenile justice system...These adolescents will generally not re-offend - not because of the threat of heavy penalties - but because of the understanding they have about the consequences of their behaviour...There is a group of adolescents for whom serious offending behaviour is the result of disjointed and deprived care conditions much earlier in life. These are the recidivist offenders who, in all likelihood, end up in our gaol system...there are identifiable indicators for the social welfare system early in childhood and early adolescence which, if ignored, will give a high probability of offending behaviour which must then be treated expensively and with less than optimum results."<sup>7</sup>

In noting this evidence the Committee considers that any appropriate or effective response to juvenile crime must be based on an understanding of the causes of offending behaviour as well as a proper understanding of the extent and nature of that behaviour.

Further evidence presented to the Committee has revealed that the nature of crime can be affected by the local community and that crime mainly affects those communities that are the most disadvantaged and where services are the most limited. The Committee notes from a submission from the Public Interest Advocacy Centre for instance, that:

"... the impact of crime is very unequally distributed across the community. It is the vulnerable and marginalised who are most likely to be victimised, and upon whom being victimised has the most effect. They are the least able to protect themselves from crime (insurance, security), to isolate themselves from it geographically (moving away) and to ameliorate its damage (fewer financial resources)."<sup>8</sup>

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<sup>6</sup> Submission 1. p.5

<sup>7</sup> Submission 41. p.1

<sup>8</sup> Submission 82. pp.11-12

These factors, the Committee has heard, raise a number of issues including the role of local government in implementing crime prevention strategies and the need to examine specific services, facilities and even environmental features within a community. According to one witness before the Committee:

"Where we put our car parks and shopping centres and our railway stations and child care centres and the like all have an impact on crime. Where we put our windows in our building developments which determine whether or not there is natural surveillance, are all very important issues."<sup>9</sup>

For juvenile crime to be responded to appropriately all the issues raised above need to be acknowledged. In this regard, a commitment to effective juvenile crime prevention must be seen as a priority of government. Included in this would be a recognition of the need to evaluate any juvenile crime prevention strategy to ensure its effectiveness at potentially reducing crime and cost.

The Committee understands that in New South Wales there have been a number of initiatives operating that deal specifically with juvenile crime prevention. These include such projects as the Youth and the Law Project and the crime prevention workshops being undertaken by police General Duties Youth Officers, in conjunction with the Department of School Education. It has also heard of broader programs, such as that undertaken by the Redfern Aboriginal Corporation which sees as one of its outcomes, crime prevention. The Committee's resources and time frame have not allowed it to make a detailed analysis of all initiatives operating in New South Wales. Rather, whilst drawing on some specific examples, the Committee proposes to deal with the issues relating to the establishment of crime prevention programs, generally.

In examining the issue of Crime Prevention Programs for the Inquiry, the Committee has taken a broad approach. That is, drawing on the evidence and the submissions received, the Committee felt that it could only properly approach the issue of Crime Prevention Programs by examining the issue of juvenile crime and its prevention, generally. The Committee has therefore attempted to look at a range of issues that have relevance to the prevention of juvenile offending. Where appropriate, recommendations have been made on these broader issues.

The Committee acknowledges that a proper response to juvenile offending requires the development of long term strategies. In this regard, the Committee does not propose to offer any "quick fix" solutions. Rather, it hopes through its observations and recommendations, to assist people with a better understanding of the nature and causes of

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<sup>9</sup> Evidence 19.12.91 p.6



juvenile crime and to suggest strategies that might be implemented to minimise offending behaviour, in the long term.

## 2.2 FEATURES OF JUVENILE OFFENDING

Evidence received by the Committee throughout the Inquiry has shown that tackling juvenile crime involves tackling a number of very complex issues. As the Kids in Justice Report observed:

"Juvenile crime is a complex social and economic phenomenon. No single cause can explain it."<sup>10</sup>

From the evidence received the Committee accepts that for some offenders, age can be a significant factor in offending behaviour. It believes also, that deeper, more far-reaching factors may contribute to the behaviour of others. The Kids in Justice Report observed that among the many factors associated with juvenile offending:

"juvenile crime can be accounted for as a consequence of such factors as social change, urbanisation, poverty, difficulties in integration, exclusion from the mainstream, lack of opportunities, gender, increased temptation of but lack of access to disposable goods, economic crises and the exigencies of "growing up". It is clear that there are strong links between social disadvantage, deprivation and particular sorts of crime and its control...

More specifically, it has clear connections with unemployment, homelessness, school alienation, family breakdown, drug abuse, boredom and inactivity, low morale and poor self-image, inadequate community, family and youth support services, etc. Criminal statistics consistently show an over-representation of the unemployed, the poor, the poorly educated, of Aboriginal people, and of those living in particular socio-economic areas, in property, street crime and street offences, as perpetrators and as victims."<sup>11</sup>

The Committee has heard much testimony regarding many of these factors. It has also, heard that many young female offenders, particularly those in custody, have been victims of child sexual abuse.

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<sup>10</sup> Submission 33. p.27

<sup>11</sup> White. 1989 cited in the Kids in Justice Report p.27

Whilst the Committee acknowledges that unemployed people are not necessarily predisposed to criminal behaviour it has received testimony that unemployment coupled with other factors, may affect a young person's involvement in the Juvenile Justice System.

### 2.3 TRADITIONAL RESPONSES TO JUVENILE CRIME

The Committee has heard that responses to juvenile crime have consistently tended to focus on the "end" result, that is, when the offending behaviour has already occurred. Specifically, responses to juvenile crime have tended to concentrate on the policing, adjudication and sentence of the offender rather than on finding consistent and effective strategies to try to preventing offending behaviour; indeed, it is in those areas that most of the resources of the Juvenile Justice System have been historically directed. Evidence presented to the Committee, as well as information gathered from studies show that such responses have done little to minimise offending behaviour or to curb the costs associated with such behaviour.

The Committee notes for instance, that increasing police numbers in certain areas may not necessarily stop offending behaviour. For example, in examining such increases in Bourke from the period 1976-1986, Cunneen and Robb found in their study, "Criminal Justice in North West New South Wales" that:

"this policy of increasing police strength has not been successful in improving Aboriginal/police relations... nor in increasing feelings of security within the community... nor in dramatically changing rates of offending... The failure of a policy of simply increasing police strength is a clear indication of a failure to see public disorder and crime as a social phenomenon not amenable to simple "deterrence".<sup>12</sup>

Further, considerable evidence has been put to the Committee that tougher penalties and incarceration, whilst a very costly response to juvenile crime, are a largely ineffective deterrent to offending behaviour. From the Committee's visits to Juvenile Justice Centres, Members heard that up to two-thirds of detainees had been incarcerated on a previous occasion. A submission to the Committee from the Factory Youth Centre noted in relation to incarceration, that:

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<sup>12</sup> Cunneen. 1987 p.211

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"to isolate the child from its perceived "normal" situation in a family would run the risk of the same child developing even more "abnormal" behaviour. The answer is to look at the cause and not the symptoms of juvenile anti-social behaviour. Far better to prevent it at an earlier age by the intervention of suitable support..."<sup>13</sup>

Moreover, according to the evidence of a young person who had contact with the Juvenile Justice System:

"I don't reckon the juvenile detention centres are doing much, they are just learning more when they go in... the (kids) I hang around there is a lot of them that have been in and out of detention centres..they still keep getting charged, they still keep getting into trouble and it is not doing much. All they are doing is just getting locked up, that's all they are doing, the same routine."<sup>14</sup>

Common to much of the evidence received by the Committee is the fact that crime prevention programs that target specifically those young people most at risk of entering and becoming entrenched in the Juvenile Justice System can only be effective if there is early identification of the factors contributing to offending behaviour and that proper intervention strategies are implemented prior to the commencement of criminal activity. The Committee has also heard that taking away the temptations to offend can also go some way to prevent potential criminal behaviour by a young person.

From a purely cost-benefit analysis, a study for the Australian Institute of Criminology maintains that:

"Though we analysed conventional and experimental methods of both processing and preventing delinquency, we believe a strong economic argument can be made for directing resources away from the criminal justice system and into social programs in order to prevent delinquent behaviour. By focusing on educational, health, housing and employment problems of the young and disadvantaged, it may well be possible to reduce our need to put increasing resources into the criminal justice system."<sup>15</sup>

Consistent with much of its evidence, the Committee endorses this finding.

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<sup>13</sup> Submission 58. p.1

<sup>14</sup> Evidence 29.1.92 p.4

<sup>15</sup> Potas. 1990 p.4

As much of the information received by the Committee acknowledges, there needs to be commitment by government at all levels in order that effective responses to juvenile crime can be put in place.

Information put to the Committee notes the significance of the establishment of a specific Government Unit or Division dealing with crime prevention issues. The Committee notes that the establishment of a special Division within the Attorney-General's Department could significantly address those issues. The Committee considers that the establishment of such a Division could be effective in co-ordinating the roles and responsibilities of relevant Departments and Offices, and local councils, to assist in the formulation of policies and strategies relevant to crime prevention. That Division should also liaise with relevant Federal Departments on this issue. The Committee considers that a priority of that Division would be juvenile crime prevention.

**Recommendation No. 1:**

- **That a Crime Prevention Division be established within the Attorney-General's Department, a priority of which is to develop policies and strategies relevant to juvenile crime prevention.**

**Recommendation No. 2:**

- **That a consultation and liaison process, similar to the French Bonnemaïson Scheme, be established under the co-ordination of the proposed Crime Prevention Division of the Attorney-General's Department, so that State Government Departments and Offices, the Federal Government, local councils and relevant community organisations can assist in the formulation of long term policies and strategies relevant to juvenile crime prevention.**
- **The Committee considers that relevant State Government Departments and Offices would include the Office of Juvenile Justice, the Police Service, the Department of Local Government and Planning, the Department of School Education, the Department of Community Services, the Department of Health, the Department of Housing, the Department of Industrial Relations, Employment, Training and Further Education, the Technical and Further Education Commission, the Department of Sport, Recreation and Racing and the Office of Aboriginal Affairs.**

**Recommendation No. 3:**

That any initiatives and strategies designed to prevent juvenile offending should be based on an appreciation and recognition of the causes of such offending, an assessment of how the offending might affect particular communities and an understanding of the needs, including the cultural needs of particular communities.

**2.4 INVOLVEMENT IN THE JUVENILE JUSTICE SYSTEM - SOME RELEVANT FACTORS.**

**2.4.1 Accommodation**

Evidence presented to the Committee has indicated that homelessness or inadequate accommodation may be seen as a significant contributing factor to involvement in the Juvenile Justice System. According to Dr Ian O'Connor, who conducted interviews with young people for the Human Rights and Equal Opportunities Commission Inquiry into Homeless Youth:

"The interviews showed that homeless young people engaged in a wide variety of offending, from avoiding fares on public transport to robbery with violence in order to survive and supplement their income."<sup>16</sup>

Moreover, among the findings of the Girls at Risk Report was that:

"The circumstances that often bring girls before the courts on both welfare and criminal proceedings arise from a lack of safe, supportive accommodation."<sup>17</sup>

The Committee has heard that for many young people there is no real choice about leaving home; many are victims of violent and sexually abusive family lives, many have irreconcilable conflicts with family members, and for others there merely is not enough income in the family home to allow them to stay. Many of these young people who "end up on the streets" or in transient accommodation, subsequently become involved in substance abuse and prostitution.

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<sup>16</sup> Human Rights and Equal Opportunities Commission. 1989 p.49

<sup>17</sup> Women's Co-ordination Unit. 1986 p.130

For young women who must leave home, the problem can be particularly pronounced. The Committee acknowledges that life on the streets for girls is more dangerous than for boys. The Committee has heard that without adequate supports these girls can be more vulnerable to drug abuse and can quickly enter a cycle of self-destructive behaviour.

The Girls at Risk Report observed that:

"Most girls interviewed were living in an out-of-home situation through no fault of their own. Indeed many girls said they would like to be living at home with their family. However, for most (of those) girls this was not possible."<sup>18</sup>

The Committee notes that Department of Housing criteria for rental housing assistance, includes that an applicant be 18 years of age. The Committee has been informed that:

"There is limited provision for people under 18 years of age to be allocated public housing where they can demonstrate they have adequate living skills and are able to meet normal tenancy obligations. Housing would also be considered where the client has access to, and accepts, appropriate community support services."<sup>19</sup>

Information provided to the Committee by the Department of Housing indicates that that Department administers certain programs, funded by the Federal Government, that are relevant to the needs of young people. These include the Local Government and Community Housing Program and the Crisis Accommodation Program (CAP), "the capital program which complements the Supported Accommodation Assistance Program administered by the Department of Community Services."<sup>20</sup>

The Committee has also been informed that:

"a number of refuges, including those for youth, have been built/acquired since the program's inception. The proposed budget allocation for CAP is \$13,511,000 in 1991/92. The draft State Plan for CAP in 1991/92, which is yet to be considered by the State and Commonwealth Ministers, recommends some \$4.8M worth of projects targeted specifically for youth services."<sup>21</sup>

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<sup>18</sup> Women's Co-ordination Unit. 1986 p.62

<sup>19</sup> Submission 85. p.1

<sup>20</sup> Ibid

<sup>21</sup> Submission 85. pp.1-2

The Committee notes that funds from the joint Federal and State Mortgage and Rent Assistance Program support "the Community Tenancy Scheme where subsidies are paid to community groups to access (mainly) private rental housing for sub-lease to eligible households, including youth."<sup>22</sup>

The Committee heard in evidence of an independent community residential program, known as the Stepping Out program, jointly funded by the Department of Housing and the Department of Community Services, that caters for female incest survivors. According to evidence before the Committee:

"The staff provide a combination of counselling, and basically clinical care for the problems arising out of incest abuse. (There is) support work for dealing with any of those outcomes including going to court to give evidence, those sort of things. (There is also) support for the development of independent living skills. It provides self-esteem development. They have group outings, things like that... The worker comes round and checks that the washing up is being done and the garbage is getting out and the bills are being paid, and those sort of things. The idea is that it is a medium term stay, they then move on to independent living. I think that it is a successful model for providing secure accommodation."<sup>23</sup>

The Committee is aware also of some residential programs run by the Sydney City Mission, including project Triple Care. The Sydney City Mission operates a Crisis Centre as well, in Kings Cross, Sydney. The Committee notes that this Centre:

"has 9 beds, short term but deals with up to a thousand young people per year, providing counselling, assistance, direction and crisis accommodation."<sup>24</sup>

The Committee has been informed by a number of sources that current levels of available accommodation to young people are inadequate. Some evidence has indicated that youth accommodation services are not meeting the demand of present levels of homelessness.

Further information presented to the Committee has noted that some accommodation services are closed at night and other accommodation services, including refuges, are closed during the day, because of staffing shortages. The Committee notes that this may result in some young people spending a lot of time "on the streets".

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<sup>22</sup> Submission 85. p.2

<sup>23</sup> Evidence 25.10.91 p.13

<sup>24</sup> Submission 88. p.2

The Committee notes that fostering can be a significant accommodation alternative for some young people. This issue is looked at in Chapter Six.

**Recommendation No. 4:**

- That the Department of Community Services and the Department of Housing increase the provision of services that can provide safe and suitable crisis, medium-term supported and long-term accommodation for those young people who are homeless and either cannot return home or cannot remain at home.**
- That such services provided by the relevant Departments be suitably staffed and provide a range of relevant programs including independent living skills, and any relevant counselling.**
- That girls who can no longer remain at home and who may have been subject to violence and abuse should have available accommodation that caters specifically for girls, is staffed by women, and offers a range of programs suitable to the needs of girls.**
- That accommodation services should be responsive to the needs of specific groups, including young Aboriginal people and young people from non-English speaking backgrounds.**

**2.4.2 Family Breakdown and Abuse**

Evidence presented to the Committee revealed that in certain cases family breakdown may contribute to a young person's involvement in anti-social behaviour. The Committee has heard that family breakdown may involve the separation of the parents, and the subsequent feelings of loss that may ensue for the child or, it can include violence and abuse by one family member against another. Whilst the Committee acknowledges that not all children from such families end up in the Juvenile Justice System, it does believe that where there are no appropriate supports available, a dysfunctional background may contribute to some young people becoming involved in that system.

According to a submission presented to the Committee:

"If young children are growing up in a family home where they experience abuse or neglect, they will not learn the skills to engage in responsible social relationships when they are older. The effective identification, assessment and treatment of abuse and neglect during the early critical



years of a child's life can mean the difference between healthy relationship building and destructive behaviours."<sup>25</sup>

Further evidence received by the Committee has indicated that violence in families can contribute significantly to a child later exhibiting violent behaviour.

With regard to girls the Committee has been told on numerous occasions that many girls involved in the Juvenile Justice System have been victims of abuse, often by a family member. Evidence presented to the Committee by Ms Helen Campbell, a solicitor with expertise in the area of women and girls and the law commented, when asked her opinion on why some girls become involved in the Juvenile Justice System:

"Overwhelmingly, I believe it to be a direct reaction to an abusive home environment. I seldom if ever come across a girl in trouble that had a secure and supportive home."<sup>26</sup>

This view was corroborated by many of the witnesses who gave evidence before the Committee in relation to girls.

Other factors cited included low self-esteem, involvement with young male offenders and a desire to assert oneself.

A major thrust of evidence to the Inquiry was that a large proportion of girls first had contact with the Juvenile Justice System by way of a welfare-related matter, that often had direct relevance to abuse or neglect at home. The issue of girls in this context is discussed further below.

A submission provided to the Committee noted that:

"Young people who have experienced ongoing sexual or other abuse, usually have low self-esteem, poor motivational ability and often lack maladaptive coping and survival mechanisms. Coupled with a lack of adequate or secure housing, emotional and financial support, they become at high risk of involvement in criminal behaviour:

- (a) as a means of acting out frustration and aggression;
- (b) to support themselves and/or their alcohol dependencies;

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<sup>25</sup> Submission 41. p.2

<sup>26</sup> Evidence 25.10.91 pp. 3-4

- (c) to gain acceptance or improve status amongst their peers."<sup>27</sup>

Consistent with its evidence, the Committee considers that a means of reducing potential breakdown in families is to provide support at an early stage. Assisting parents with suitable parenting skills has been seen as one effective strategy that can assist vulnerable families.

The Committee recognises the value and importance of family support programs that can help prevent families that are experiencing conflict, from breaking down.

It also recognises that there needs to be a range of services available to young people who may be experiencing difficulties in the home, particularly for those who have experienced abuse.

The Committee notes that a responsibility of the Department of Community Services is to provide and fund programs and services to assist families experiencing crisis and to assist children subjected to abuse. Evidence presented to the Committee suggested that currently, resources are limited and staff in areas of family support and child abuse carry very large case loads. Service delivery can therefore be restricted. Some evidence presented to the Committee indicated that in some cases, both the Department and non-Government organisations are unable to meet the demand of people seeking assistance.

In consideration of services to families experiencing crisis and potential breakdown, and to those children subjected to abuse, the Committee considers that there needs to be available to the Department of Community Services adequate resources to ensure that those services can be appropriately delivered. The Committee considers that the provision of such services should be delivered jointly by the Department of Community Services and relevant non-government organisations, that are adequately funded and accredited. The Committee's position on service delivery and accreditation is outlined in Chapter Six.

The Committee notes that the provision of relevant and adequately resourced services that are directed towards families experiencing crisis and breakdown and to children who are victims of violence and abuse, can be crucial to assisting children from such backgrounds develop with greater stability and security. This, the Committee notes, may lessen the possibility of any future offending behaviour.

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<sup>27</sup> Submission 45. p.1

**Recommendation No. 5:**

- That resources be made available to the Department of Community Services, to ensure that there are adequate services available to assist families experiencing crisis and breakdown. The provision of such services should be delivered jointly by the Department and relevant non-government organisations, that are properly funded and accredited. Relevant liaison with Federal Departments on this issue should also take place.
- That a range of accommodation and counselling services for young people who are victims of neglect, violence and abuse be further developed under co-operative schemes with the Department of Community Services and properly funded and accredited non-government organisations. There should be specific services of this kind for girls, staffed by women.

**2.4.3 Education - Schooling and Training**

The Committee's evidence has shown that learning problems and problems at school, even at a young age, may be a contributing factor to a juvenile later engaging in offending behaviour. According to one commentator:

"Many of the children who are experiencing difficulties at home and school will ultimately enter the welfare and judicial processes. They increasingly feel alienated from mainstream society (Burdekin 1989). The recommendations of the Homeless Children Inquiry suggest that our schools need to be structured in ways that will better meet the needs of all pupils and so prevent alienation or reduce risk in youth... At the heart of the issue is the need for the various agencies and institutions dealing with at risk youth to communicate their respective knowledge so that the best available intervention and services can be applied."<sup>28</sup>

Among the problems that the Committee has noted that can be typical of a young offender who has had difficulties at school are that he or she has been an under-achiever, manifests behavioural problems or is a habitual truant. As case histories have demonstrated to the Committee, often these young people may first become suspended or expelled from school before engaging in further anti-social or criminal behaviour.

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<sup>28</sup> Thorley-Smith. 1991 p.167

Thorley-Smith identifies those groups that require specialist educational, emotional and physical support resources as including:

- " . behaviour disordered or conduct disordered youth;
- . violent, acting out youth;
- . homeless youth, neglected youth and/or those in need of care and protection;
- . young offenders and youth in custody;
- . youth gangs;
- . refugee youth;
- . abused youth;
- . emotionally disturbed youth; and
- . self-injurious or suicidal youth."<sup>29</sup>

The Committee has heard that early school intervention for a child that exhibits learning or behavioural problems may avert any later criminal behaviour that child may become involved in. The study for the Australian Institute of Criminology observes that:

"There is strong empirical evidence to suggest that pre-school based prevention strategies - such as pre-school education - reduce the potential for individuals to engage in delinquent behaviour. Components of these programs that appear to be successful include well-trained staff, a low staff to pupil ratio, good relations between staff and parents and the use of an effective curriculum model derived from principles of child development. (and further) There is strong empirical evidence to suggest that school-based strategies focused on low-income schools can reduce delinquency levels."<sup>30</sup>

Information provided to the Committee relates to the Parents as Teachers program, co-ordinated by the Department of School Education and currently being piloted in three schools in New South Wales. This program recognises that a child's first and most influential teacher is his or her parent. The program seeks to empower parents through the provision of practical information and guidance which will assist their children to develop skills that are essential to later learning.<sup>31</sup> The pilot program is available to first time parents who enrol through the local school before their child is six weeks old. There are three elements of the program including:

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<sup>29</sup> Thorley-Smith. 1991 p.169

<sup>30</sup> Potas. 1990 pp.2-3

<sup>31</sup> NSW Department of School Education. p.4

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1. monthly home visits by trained parenting consultants that allow for the provision of programs for individual families;
2. monthly group meetings for parents of similar aged children and three monthly meetings of all families in the program;
3. developmental screening of children by the Department of Health.<sup>32</sup>

Parents as Teachers is based closely on the American program of the same name, available throughout the state of Missouri and in a number of other school districts throughout the United States. Research on this program since its pilot implementation in 1981 has shown that it improves later school performance, and is a far better identifier of families at risk (of child abuse or neglect) than traditional methods of categorising families. Children who have come through the program do better at school and have more self confidence, regardless of socio-economic background.

**Recommendation No. 6:**

**That relevant programs of pre-and early school intervention, such as the Parents as Teachers program, which can assist in the identification of behavioural or learning problems in a child and offer support to parents be encouraged, supported and developed by the Department of School Education, Department of Health and the Department of Community Services.**

The Committee notes from a submission provided by the Department of School Education that that Department provides the following services and programs to youth at risk:

1. Generic Student Welfare Services;
2. School Counsellor Service;
3. Itinerant Support Teachers;
4. Home School Liaison Officers;
5. Behaviour and Attendance Programs;
6. Support Classes and Units in Regular Schools;
7. Joint Units and Facilities (in conjunction with the Department of Health which provides the therapy and residential services);
8. Conduct Disorder Units;
9. Community Care Program (for detained young offenders).<sup>33</sup>

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<sup>32</sup> Langham. 1991 p.4

<sup>33</sup> Submission 89. pp.3-4

The Committee supports and encourages such education programs that may assist young people who are at risk of entering the Juvenile Justice System. The Committee notes particularly, from its evidence, the valuable service provided by Home School Liaison Officers and their work with school non-attenders. The Committee encourages the provision of this service throughout New South Wales. The issue of Home School Liaison Officers is discussed further in Chapter Six.

The Committee understands that the Department of School Education provides in some schools a specific program on crime prevention with the New South Wales Police Service.

The Committee notes that the Office of Youth Affairs co-ordinates services that are relevant to the educational needs of young people and may assist those who can be at risk. Among those are the Helping Early Leavers (HELP) Program, the Circuit Breaker Program and the Koori Youth Program. Information presented to the Committee outlines those services as follows:

"HELP targets unemployed early school leavers and young people at risk of leaving school early. It is designed to remove barriers to further education, training and employment by assisting young people to improve their basic literacy and numeracy skills and self esteem. Circuit Breaker assists young people of non-English speaking backgrounds (NESB) at risk in their transition from school to further education, training or employment. It is an intervention program which helps these young people to bridge the gap between school and future options. Koori Youth Program is directed to increasing literacy and numeracy skills and self esteem of young Aboriginal people. A focus of the program is increasing cultural identity and pride to assist young people through school or to enter further education, training and employment."<sup>34</sup>

The Committee considers that the programs noted above may be significant in assisting some young people who may be at risk of entering the Juvenile Justice System because of learning problems or because of disadvantage that may prevent them from utilising future opportunities.

The Committee understands that young Aboriginal people can face difficulties with mainstream education and the whole schooling environment. Some factors contributing to this include the historical failure of the education system to address fully issues that are culturally appropriate to Aboriginal students, a lack of teachers that are Aboriginal and

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<sup>34</sup> Submission 89. p.8

who might provide role models for Aboriginal students within the school environment, and discrimination. Drawing on Australia wide figures from the Department of Employment, Education and Training the Kids in Justice Report notes that:

"Education participation rates amongst Aboriginal and non-Aboriginal people highlights the stratification in educational and future employment patterns amongst specific social groups. Amongst 16-17 year olds, only 31.6% of Aboriginal people stay in school or college whereas 74.6% of non- Aboriginal young people do."<sup>35</sup>

The Committee notes that the establishment in the Office of Youth Affairs of the Koori Youth Program may be one means of addressing these issues in New South Wales. It supports the continued development of the program in increasing the literacy and numeracy skills and fostering the self esteem of young Aboriginal students and thereby encouraging them to remain within the education system. The Committee commends the new initiatives forecast by the Department of School Education, in the area of Aboriginal Education, including the establishment of a new two unit Aboriginal Studies syllabus for Years 11-12, the Priority Schools Program, the creation of 200 positions of Aboriginal Education Assistants and the creation of 10 positions of Regional Aboriginal Community Liaison Officers. The Committee notes that these initiatives may go some way to help redress the problems and disadvantages experienced by many young Aboriginal people in the school system.

The Committee understands that the Federal Department of Employment Education and Training, under the auspices of the Aboriginal Tutorial Scheme funds Homework Centres that aim to provide a facility and tutorial assistance for children when doing their homework. The Centres are targeted to Aboriginal children, although non-Aboriginal children may use them also.<sup>36</sup> The Committee strongly commends and supports the use of Homework Centres.

**Recommendation No. 7:**

**That the Department of School Education in consultation with the Department of Employment, Education and Training, examine the feasibility of establishing Homework Centres throughout New South Wales that can assist disadvantaged young people.**

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<sup>35</sup> Submission 33. p.30

<sup>36</sup> Discussion, Department of Employment, Education and Training. 21.2.92

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That the extended use of school and community premises be examined as an option for facilities from where Homework Centres may operate out of school hours and which may be staffed by those other than the particular school's teachers.

As well as effective schooling the availability of appropriate vocational and training programs for young people has implications for future employment opportunities. The Committee understands that training programs need to be situated in areas that are readily accessible to young people and that they need to be diverse enough to be suitable to the needs of all young people including Aborigines, young people from non-English speaking backgrounds and girls. The Kids in Justice Report argues that:

"In order to overcome some of the problems facing disadvantaged young people there needs to be more integration of welfare, education and training which pays attention to the specific short-term and long-term needs of young people and the communities in which they are based."<sup>37</sup>

The Committee notes that the Joint Secondary Schools TAFE Program allows students entering years 11 and 12 to elect to study certain subjects from vocational TAFE courses as part of their regular schooling. Should courses be studied in year 12 the results appear on the Higher School Certificate. Approximately 11,300 students from both government and non-government schools were enrolled in almost 700 Joint Secondary Schools TAFE courses in 1991. Classes are usually held in TAFE colleges, generally during school hours. Students enrolled in the courses have a greater opportunity to "increase their educational and vocational aspirations and options by including vocational areas of study within a general education."<sup>38</sup>

#### **2.4.4 Unemployment**

The Committee considers that current levels of unemployment among young people are unacceptably high. The Committee has heard that unemployment is one of a number of factors which may contribute to a young person becoming involved in the Juvenile Justice System. Lack of income and limited economic independence, together with feelings of low self-esteem, hopelessness and resentment from being unable to find work and purchase goods, are just some factors the Committee has heard which may lead a young person to offend. Moreover, it has been submitted that as more young people become

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<sup>37</sup> Submission 33. p.31

<sup>38</sup> NSW Technical and Further Education Commission. 1991 p.2

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unemployed they will be more visible in public places and could, as a consequence attract greater police attention and intervention.

Evidence has been supplied to the Committee of young people committing so-called "survival" crimes, that is, crimes which relate generally to accessing food, clothes and even accommodation. The Committee has been told that such offences may be attributed to the current tough economic times and the inability of these young people to find work and hence obtain a reasonable income. In acknowledging the study of White (1989) the Kids in Justice Report observed that:

"As young people are increasingly excluded from the formal waged economy, so they come to rely on the informal waged economy or the criminal economy for their survival."<sup>39</sup>

The Committee has heard that unemployment among youth is very high in certain areas of New South Wales. Some evidence taken by the Committee noted that the parents of many unemployed young people are also unemployed. According to a police witness who testified before the Committee:

"There are stories in my particular area of youth unemployment in the vicinity of 60 per cent. I have nothing to confirm or deny that but I know it is a major problem and very disheartening for young people not to look forward to even a prospect of employment. It has been suggested that in many instances this can result in the parents being unable to provide adequate support or care for the families."<sup>40</sup>

Evidence presented to the Committee indicates that unemployment rates among young Aborigines and young people from some non-English speaking backgrounds can be particularly high. The Committee has heard that for these young people the problems of finding a job can be compounded by existing discrimination in certain areas of employment.

The Committee understands that for many young people there is a sense of hopelessness about finding employment. Members have heard that this in turn may lead to disharmony and conflict within families, drug and or alcohol abuse and involvement in criminal activity. For those who have experienced long-term unemployment, the difficulties of re-entering the workforce can be greatly pronounced.

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<sup>39</sup> Submission 33. p.28

<sup>40</sup> Evidence 28.1.92 p.21

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The Committee notes that young people may be entitled to certain types of income assistance benefits. For young unemployed people these can include, Job Search Allowance, which generally starts at 16 years of age and Young Homeless Allowance. Information from the Department of Social Security shows that Job Search Allowance for 16-17 year olds payment is between \$59.90 and \$128.30, depending on the income of the parents; for 18-28 year olds living at home the rate is \$154.20 per fortnight; for independent 18-20 year olds the rate is \$ 234.20 per fortnight. In relation to Young Homeless Allowance, the rate is \$211.80 per fortnight for 16-17 year olds. To qualify for this allowance a young person must have lived away from home for two weeks and cannot return because of, for example, domestic violence or abuse. However the Committee notes that a Special Benefit may be paid to those facing severe financial hardship and who do not qualify for specific benefits. Newstart and other training allowances commence after a young person has been on Job Search Allowance for one year. Other benefits available to young people include Sickness Allowance, Disability Support Pension for those who are medically certified as unable to work and generally who are aged 16 and over.<sup>41</sup>

Information provided to the Committee suggests that benefits in respect of young people out of work fail to consider that many young people are forced to be economically independent of their families and their income assistance must cover expenses for accommodation, food and other necessities. The Report of the Inquiry into Homeless Children by the Human Rights and Equal Opportunity Commission, observed that:

"The existing youth income support system assumes that families will support their unemployed adolescents... The needs of young people who do not live at home, at least in terms of physical sustenance and shelter, are identical to those of single adults without dependents."<sup>42</sup>

That same Report found that:

"The evidence, both in Australia and elsewhere, is compelling. Homeless children and young people who cannot return to their families, cannot find employment and cannot get income support are sometimes forced, **in a matter of days (not weeks)**, into criminal activity or prostitution to survive."<sup>43</sup>

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<sup>41</sup> Discussion, Department of Social Security, 25.3.92

<sup>42</sup> Human Rights and Equal Opportunity Commission. 1989 p.148

<sup>43</sup> Human Rights and Equal Opportunity Commission. 1989 p.162 (Emphasis theirs)

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The Committee understands that a priority of Governments at both a Federal and State level is to enhance employment training and programs for young people, particularly at the moment when current levels of youth unemployment are so high.

The Committee notes that the Department of Industrial Relations, Employment, Training and Further Education administers three major project areas under the "First Chance" Youth Employment and Training initiative. These are:

- . Get Started Employment Program,
- . Work Experience Program, and
- . Enterprise Training for Youth.

The First Chance initiative was announced in early 1992 and is in the process of being implemented.

The Get Started Employment Program funds incorporated community organisations to provide relevant services to young school leavers. The Committee notes that target groups include:

"Individuals leaving years 9, 10, 11 and 12 of the N.S.W. secondary school system having completed their studies in 1991. Participants from special needs groups, such as Aborigines, individuals from non-English speaking backgrounds and the disabled will be ensured access to assistance under the program."<sup>44</sup>

The aim of the Work Experience Program is:

"to improve the ability of unemployed youth to obtain long term employment by providing vocational orientation and skills through work experience placements."<sup>45</sup>

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<sup>44</sup> NSW Department of Industrial Relations, Employment, Training and Further Education. 1992(a) p.2

<sup>45</sup> NSW Department of Industrial Relations, Employment, Training and Further Education. 1992(b) p.3

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Enterprise Training for Youth Program aims to:

"develop structured on-the-job training for young people aged between 15 and 25 years for a twelve month period."<sup>46</sup>

Evidence from a number of sources has shown that employment training and relevant programs which can assist a young person expand his or her job opportunities may have significant implications for the Juvenile Justice System. For this reason the Committee commends and encourages the development of the "First Chance" Program.

**Recommendation No. 8:**

That Government initiatives in the area of youth employment and training programs be encouraged and developed. That where appropriate, a liaison process to achieve this aim, be established between the New South Wales Department of Industrial Relations, Employment, Training and Further Education and the proposed Crime Prevention Division of the Attorney General's Department and the Federal Government.

**2.4.5 Leisure, Recreation and Entertainment**

Throughout the Inquiry, the Committee has heard that the availability of appropriate and constructive leisure, recreation and entertainment alternatives can have some effect on whether a young person may come in contact with the Juvenile Justice System. The Committee has been told that some young people who have limited access to adequate leisure, recreation and entertainment programs or facilities may, in conjunction with other factors, including unemployment, be vulnerable to involvement with that system.

The Youth and the Law Project, a crime prevention project-based scheme in Campbelltown, recognised the need for improved entertainment facilities for young people in the Macarthur region. The Committee notes that:

"The Project is based largely on the belief that many crimes perpetrated by young people are based on unfulfilled needs. Young people have a need for interesting and entertaining things to do, a need for security and a safe

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<sup>46</sup> NSW Department of Industrial Relations, Employment, Training and Further Education. 1992(c) p.1

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environment, a need for employment and creative and productive pastimes, a need for socialising with their peers, a need to take risks and to be independent and a need for success. When one or more of these needs are not met, young people can, amongst other alternatives, take out their frustration through activities which are destructive to society - vandalism, theft, shop stealing, violence and others."<sup>47</sup>

One young person gave the following evidence to the Committee in relation to the issue of appropriate leisure and entertainment facilities for young people:

"Are there enough places, do you think for young people (in your area)?.....*Not really.*

"What do kids do in their spare time if there aren't enough places?".....

*Just hang around on the streets talking until they get tired of something and then they go home, or they end up doing crime."*<sup>48</sup>

The Committee has heard also, that often, leisure for some young people can be perceived as suspicious behaviour. In this regard, the Committee notes that "hanging around" the streets, often at night can be perceived in this way as the young people are then particularly obvious. The Committee was told that this can be a particular issue between police and Aboriginal young people. Evidence presented to the Committee indicated that some young people, both Aboriginal and non-Aboriginal, can be subject to inappropriate questioning for being on the streets, particularly if there is a group of them. It has been put to the Committee that where adults may similarly congregate in public spaces, similar questioning rarely occurs. The Committee notes that in many different cultures gathering on the street can be a common and legitimate form of leisure or recreation.

The Committee has heard that with levels of unemployment among youth currently very high, the incidence of young people using the streets and public space as a place of leisure may increase. Whilst the Committee understands that it may be undesirable for some that young people congregate on the streets particularly at night, it believes that such activities should not be grounds for inappropriate questioning of young people by police officers.

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<sup>47</sup> Engel. 1991 pp.11-12

<sup>48</sup> Evidence 29.1.92 pp.2-3

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The Committee notes that a barrier to many young people becoming involved in constructive and appropriate leisure, entertainment and recreation can be the cost. It notes also, that many programs that operate after school hours can terminate when a child reaches the age of twelve.

The Committee considers that the establishment of constructive leisure, recreational and entertainment alternatives for young people depends on the particular needs of each community, including those of the young people and the involvement of community members. The particular interests of Aborigines, girls, young people from non-English speaking backgrounds and young people from rural areas, should be assessed in this regard to determine what appropriate alternatives might be set up for them. Further information noted by the Committee shows that young people can especially benefit from programs that they are encouraged to devise themselves.

**Recommendation No. 9:**

**That the proposed Crime Prevention Division of Attorney General's Department, the Department of Sport, Recreation and Racing, and local councils, in consultation with community organisations and members of local communities, collaboratively develop appropriate strategies for the implementation of constructive leisure, recreation and entertainment programs and facilities for young people throughout New South Wales, particularly in areas where there are high rates of involvement in the Juvenile Justice System.**

**2.5 ABORIGINAL YOUNG PEOPLE**

Throughout the Inquiry the Committee has consistently heard that Aboriginal young people are over-represented throughout all processes of the Juvenile Justice System. This finding has been comprehensively documented both in the Kids in Justice Report (1990) and particularly, the Report of the Royal Commission into Aboriginal Deaths in Custody (1991). The Committee strongly believes that the high level of Aboriginal young people involved in the Juvenile Justice System is in no way a reflection that young people from such communities are more predisposed than others to criminal activity. Rather, the Committee acknowledges that a number of far-reaching factors, including levels of poverty within Aboriginal communities, unemployment, difficulties in the mainstream education system and systemic racism can contribute to their involvement in the system.

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A submission prepared by the Office of Aboriginal Affairs, citing a 1988 Family and Community Services Report on Aboriginal Young People in the New South Wales Criminal Justice System, noted the following:

"Aboriginal young people make up 25% of the N.S.W. institutional population, yet their proportion in the State's 10-17 year population is only about 1.8%. While no bias is evident at the Court level there is clear evidence of bias against Aborigines at the Police level. The prosecution decisions of over forty Police stations revealed that, at every station, Aborigines received less cautions and citations and more charges for similar offences. This bias is not necessarily caused by individual racism but may be the result of a "structural racism" e.g. unemployed children receive more punitive outcomes from Police; this affects Aboriginal children as they have a very high rate of unemployment. It is also clear that Aboriginal children have much higher rates of detection for crime generally - it is likely that this is due to greater offending by Aboriginal children and a greater likelihood of apprehension by the Police. Many country towns in N.S.W. with less than 20% Aborigines have over 50% Aboriginal apprehensions."<sup>49</sup>

That same submission noted that:

"towns with equal-sized Aboriginal populations can have different rates of apprehensions. For example: Nowra and Bourke, Griffith and Lismore.

These differences are largely dependent upon:

- (a) the integrity and control exercised by the local Aboriginal community and the related factor
- (b) the relationships between the Aboriginal community and the power brokers in the town."<sup>50</sup>

Evidence presented to the Committee by members of Aboriginal communities confirmed that young Aboriginal people's involvement in the Juvenile Justice System is related to a number of factors including poverty, unemployment, difficulties with mainstream schooling, lack of appropriate, including culturally appropriate leisure and recreational alternatives and alcohol and/or drug abuse. The Committee heard that at the core of

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<sup>49</sup> Submission 46.

<sup>50</sup> Ibid

many of these issues was the fact that discrimination can still exist in many areas of Australian life, thereby alienating many young Aboriginal people.

Evidence of an effective training and employment program, the Redfern Aboriginal Corporation (a Community Development Employment Program) was presented to the Committee. The Committee understands that the Redfern Aboriginal Corporation pays young Aboriginal people the equivalent of approximately half of the unemployment benefit to train, within their own community for 15 hours per week, in a particular trade. The Committee heard that the program allows young Aboriginal people to gain particular skills that offer greater opportunities in employment and provides them with a sense of pride, confidence and increased self-esteem. The Committee heard also, that the program operating in Redfern had a significant effect on the reduction of crime in that area.

The Committee commends and encourages the development of this program. It endorses the Community Development Employment Program which allows Aboriginal people to gain particular skills and enhance the opportunities for future employment.

The Committee recognises also, the importance of Aboriginal culture and history being taught in schools (for both Aboriginal children and non-Aboriginal children).

One witness who has worked extensively with young Aboriginal offenders commented that she encourages Aboriginal young people to attend cultural events within their area and tries to instil in them pride in their Aboriginality and culture. The Committee recognises the value of such an approach. As the witness observed in a tabled document, "Koori kids have natural talents and abilities in the arts, crafts, music and dance and sports"; talents which, the Committee noted, should be encouraged and enhanced.<sup>51</sup>

Common to much of the evidence received from representatives of Aboriginal communities, as well as from our own research has been that crime prevention strategies for Aboriginal youth can be more effective if they involve Aboriginal communities in the decision-making and implementation process.

As Recommendation 62 of the Royal Commission into Aboriginal Deaths in Custody states:

"That governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles

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<sup>51</sup> Evidence 6.12.91



are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise."<sup>52</sup>

**Recommendation No. 10:**

- **That Aboriginal communities and organisations relevant to Aboriginal youth be encouraged, supported and funded to develop relevant crime prevention strategies for young Aboriginal people.**
- **That a liaison process between such communities and the proposed Crime Prevention Division of the Attorney General's Department be developed to facilitate this process.**

**2.6 YOUNG PEOPLE FROM NON-ENGLISH SPEAKING BACKGROUNDS**

Evidence presented to the Committee has shown that the particular ethnic background of a young person does not predispose him or her to criminal behaviour. The Committee has heard however, that some young people from particular non-English speaking backgrounds may become involved in the Juvenile Justice System for a number of reasons. Certain young people who have come from countries of war or unrest, and/or have lost members of their families can, without appropriate supports, be vulnerable to entry into the Juvenile Justice System. Other young people from non-English speaking backgrounds, who may be alienated from school, who cannot find work and whose parents may be unemployed also (just as this situation may occur for people from English speaking backgrounds), or who have difficulty adjusting to a predominantly Anglo-Celtic culture may similarly be vulnerable to involvement with the Juvenile Justice System.

According to evidence presented to the Committee in relation to young people from non-English speaking backgrounds and those from recently arrived migrant communities:

"Kids come to this country and they feel alienated perhaps from their parents' culture to a lesser or greater extent, depending on individual situations. But, in particular, alienation from mainstream Australian society, and I think that this is an experience that they feel very strongly in the education system in schools and so on."<sup>53</sup>

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<sup>52</sup> Royal Commission into Aboriginal Deaths in Custody. 1991(a) p.45

<sup>53</sup> Evidence 29.1.92 pp.26-27

Evidence presented to the Committee indicates that some young people from certain non-English speaking backgrounds can be particularly visible to police by reason of their particular ethnic features or actions. The Committee heard in evidence that:

"(some young people from non-English speaking backgrounds) haven't got, I suppose, whether it is jeans, whether it is clothes, whether it is being able to go to the pictures, the things I suppose we grow up taking for granted and the cheapest recreational thing is hanging around... you feel much better if you are with other people and you are sitting down talking rather than sitting on your own. You feel much more comfortable if you are from similar backgrounds, from similar situations... It costs nothing and you do not feel isolated from anyone else. The obvious results from that are, when you look at the unemployment figures for the 15 to 19 year olds, the highest unemployment figures for that particular age group are the Arabic, the Vietnamese and the Islander communities. Visually, they are the ones that are seen to be hanging around and to our local police force, that is a problem...There is inappropriate questioning that I know that really jumps the bounds of what legal rights young people have."<sup>54</sup>

The Committee considers that for some young people from non-English speaking backgrounds, there needs to be available appropriate supports set up to assist them in their adjustment to their new lives. Moreover, the Committee has heard that there needs to be a greater understanding of other cultures within our systems which would assist in the formulation of effective crime prevention strategies for youth from non-English speaking backgrounds for the long term. For example, according to a Children's Court Magistrate who gave evidence before the Committee:

"let's look at (say) the Vietnamese history. Who of us in this room knew anything about Vietnam at school. We just didn't learn it. It is time now that kids learn about (it) - because these Vietnamese children are with us forever. The same with our Lebanese children, they are with us forever. Greek, Italian...They should all be learning that in school so that these kids belong..."<sup>55</sup>

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<sup>54</sup> Evidence 29.1.92 pp.30-31

<sup>55</sup> Evidence 10.12.91 pp.16-17

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**Recommendation No. 11:**

That ethnic communities and organisations relevant to youth from non-English speaking backgrounds be encouraged, supported and funded to develop relevant crime prevention strategies for young people from non-English speaking backgrounds. That a liaison process between such communities and the proposed Crime Prevention Division be developed to facilitate this process.

**2.7 GENDER**

The Committee has heard that the vast majority of crime committed by juveniles is perpetrated by young males. Whilst girls represent a small proportion of those who have contact with the Juvenile Justice System, the underlying reasons for their involvement can be far-reaching.

Evidence presented to the Committee showed that girls can enter into criminal behaviour for a number of reasons. As outlined above, the Committee has heard that many girls enter the system because of an abusive home environment. The Committee heard that often that environment may lead to a girl running away from home and/or becoming involved in substance abuse which can then lead to criminal activity.

Extensive evidence put before the Committee showed that many girls who have had contact with the welfare system end up in the Juvenile Justice System.

Research undertaken by the Women and Girls in Custody Sub-Committee of the New South Wales Prisons Coalition found the following:

- "Girls are more likely than boys to come before court the first time for welfare reasons rather than for criminal charges.
- Girls are sometimes charged with a minor criminal offence when police have been to respond to a domestic conflict.
- Girls in state care who rebel against the institutional regime may be reported to the police, by staff responsible for their care, charged with a criminal offence and transferred to a detention centre.
- Girls who are state wards are forty times more likely to be detained in custody than other girls. Boys who are state wards are seventeen times more likely to be detained in custody than non state wards.

Girls who are state wards are frequently unable to meet the bail conditions regarding an approved place of residence and, by default, remain in detention.

Studies have repeatedly found that girls charged with criminal offences have a history of being sexually abused at home.

A large proportion of girls before court for criminal offences are drug dependent."<sup>56</sup>

The Girls at Risk Report observed that:

"In some instances girls go to extraordinary lengths to have their needs acknowledged and responded to. All too often the response is to deal punitively with the behaviour rather than address the circumstances that have led to the behaviour."<sup>57</sup>

Evidence received by the Committee indicated that there are very limited programs that cater specifically for girls in the system and those at risk of entering the system. Since boys represent the greater "at risk" and offender population, programs and services seem to be geared more towards their needs and boys tend to dominate those programs that are available. Our information has shown that any effective crime prevention program that hopes to keep girls out of the system as much as possible must be based upon their special needs, including cultural needs, and be sensitive to those with an abusive background.

The issue of state wards has not been independently examined in great detail by the Committee. However, evidence received in relation to this issue indicates that state wards are a particularly vulnerable group to involvement in the Juvenile Justice System. The Committee considers that the Department of Community Services and the Office of Juvenile Justice should continue to monitor the numbers of state wards in the Juvenile Justice System with a view to developing strategies as to how best such young people might be diverted from contact with that system.

Further evidence presented to the Committee, indicated that within the small percentage of girls in custody a significant number, relative to their population in the wider community, are Aboriginal. Dr Kerry Carrington, a witness before the Committee, who

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<sup>56</sup> Submission 65. p.1

<sup>57</sup> Women's Co-ordination Unit. 1986 p.9

has researched extensively in the area of girls in the Juvenile Justice System noted in her submission that:

"Rates of female delinquency in N.S.W. are not surprisingly correlated with the indicators of social disadvantage...In my statistical analysis of female delinquency in Local Government Areas of N.S.W., the single most over-represented group were girls from Aboriginal communities..."

Among the reasons suggested for this, included the over-policing of those communities as well as:

"the fact that Aboriginal youth are the single most over-represented cohort in the ward population...It is my firm belief that some, if not many, of the Aboriginal youth in detention centres today, would not be there if they had not been forcibly, and often unnecessarily removed from their families and communities as children by child welfare authorities."<sup>58</sup>

Throughout various sections of the Report the Committee has outlined its recognition of the complex factors that can contribute to Aboriginal girls, specifically, entering the Juvenile Justice System.

In relation to the issue of girls generally, who present as at risk of entering the Juvenile Justice System the Committee acknowledges that special attention should be given to addressing their needs. Accordingly, the Committee considers that a position should be established in the Office of Juvenile Justice to examine and develop, among other things, strategies that might best prevent such girls entering the Juvenile Justice System.

**Recommendation No. 12:**

That due to the special needs of girls, a position of Policy Officer (Girls) be created within the Office of Juvenile Justice to specifically examine issues affecting girls and develop policies on how these issues might be addressed. One of the responsibilities of that position would be to liaise with the proposed Crime Prevention Division regarding the implementation of appropriate strategies to prevent girls from entering the Juvenile Justice System. (See also Recommendation No. 79)

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<sup>58</sup> Submission 31. p.4

## 2.8 THE ROLE OF THE POLICE

The Committee believes that the Police Service can play a significant role in the establishment of strategies and programs that deal with juvenile crime prevention. Generally, these programs are co-ordinated by the General Duties Youth Officers (GDYOs) or through the Federation of New South Wales Police Citizens Youth Clubs.

Evidence presented to the Committee reveals that merely increasing police numbers to patrol certain areas where there is a perceived need does not offer an effective long-term strategy for crime prevention. Some evidence has even suggested that increased police presence in an area, without a commensurate level of other relevant services, can often exacerbate problems relating to crime and crime control.

The Committee has received evidence from a number of sources in relation to the position of General Duties Youth Officers and the role they play in juvenile crime prevention.

According to one witness:

"A lot of general duties youth officers run what we call crime prevention workshops and they are a joint exercise often between a school, whether it be a primary school or a high school and police officers and the local patrol where we join together with the teachers at the school and through the process of a two day workshop, look at some of the issues concerning crime, concerning the relationship of young people and police, concerning the relationship of also teachers and young people and the police and how we can all work together. Things like self-esteem are looked at. The rights and responsibilities of young people are looked at. The commission of crime and why young people commit crime and alternatives to committing crime and sit down and work out some positive goals with the young people to hopefully reduce crime."<sup>59</sup>

Moreover, the Committee notes that:

"Most of the GDYOs target those young people in the area known to police. They concentrate on establishing constructive relationships with these young people, working on the premise that many of them are in need of protection and assistance which it is impossible to offer to people who do not trust you and see you as the enemy. Once the officer is able to gain

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<sup>59</sup> Evidence 28.1.92 p.6

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the trust of a young person, he/she is then in a position to assist and work with that young person to prevent further offending."<sup>60</sup>

However, the Committee understands that any local initiative involving the General Duties Youth Officers depends on the discretion of the Patrol Commander. Moreover, the Committee notes that budgets for such initiatives are generally received locally and from the community.

In Chapter Three the Committee will be discussing the creation of a position of Police Youth Officer which it recommends will be developed from existing General Duties Youth Officer positions which currently do not operate from all police stations. That Chapter recommends that at least one Police Youth Officer position be established in each patrol area.

The Committee considers that the Police Youth Officer should have an educative role in the area of juvenile crime prevention and continue to develop the programs undertaken by the General Duties Youth Officer. The Committee anticipates that the development of such programs can be especially useful if utilised in conjunction with other community-based initiatives that have the support of government and the support and input of a range of representatives of the local community.

Without limiting the recommendations made in Chapter Three, the Committee makes the following recommendations in relation to the proposed position of Police Youth Officers and their role in relation to juvenile crime prevention.

**Recommendation No. 13:**

**That consistent with Recommendation 30, regarding the development of the position of Police Youth Officer, that Officer co-ordinates and develops programs of the kind undertaken by General Duties Youth Officers in relation to prevention of juvenile crime. Appropriate liaison should be established between those officers and the proposed Crime Prevention Division.**

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<sup>60</sup> McDonald. 1991 p.118

## 2.9 A ROLE FOR THE LOCAL COMMUNITY THROUGH LOCAL GOVERNMENT

Evidence presented to the Committee reveals that the local community through local government can play a crucial role in the development of crime prevention strategies and programs. It has been submitted that as the nature of crime can be different from area to area and local communities have differing needs, local governments are better placed to identify and address those needs.

At a Conference organised by the Australian Institute of Criminology entitled "Local Government: Creating Safer Communities", speaker Barbara Armitage observed that:

"The interest in locally based Crime Prevention Projects stems partly from research which highlights the local nature of certain types of crime (Reiss 1986, Hope and Shaw, 1988, Currie, 1988). For example, crimes such as burglary, vandalism and car theft tend to be committed in local areas by local residents. Some communities experience higher levels of crime than others. These communities more often than not suffer from other disadvantages, such as poverty and low standards of housing. Crime is not evenly spread across society, which strongly indicates that the nature of a community and its institutions may influence local crime trends."<sup>61</sup>

The Committee has examined some local government initiatives in various jurisdictions both here and abroad. The Committee has received information on the schemes operating in the Waverley municipality, as well as crime prevention programs in England and France. The Victorian Good Neighbourhood Program is based on the French Bonnemaison scheme.

The Committee notes that there are a number of advantages in basing crime prevention programs at a local level that are co-ordinated through local government. Among those the Committee notes that:

- " local government is more aware of and therefore can be responsive to the needs of the particular community which it serves, including the particular cultural needs;
- local government is in frequent touch with community representatives including the residents, the police, business people and community organisations;

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<sup>61</sup> Armitage. 1991 pp.4-5

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local government has "existing responsibilities which can have a significant impact on crime prevention e.g., Statutory Development Control responsibilities, design and control of open space areas and public parks, social planning and involvement in community service areas."<sup>62</sup>

In the course of its Inquiry the Committee has examined the system of youth crime prevention in France, which relies heavily on the support and initiatives of local councils and the local community. Known as the "Bonnemaison System", it has been operating in France for a number of years. Bonnemaison grew out of the direct response by the French Government to the dramatic rise in juvenile crime during the summer of 1981 in the disadvantaged areas of Lyons and Marseilles.<sup>63</sup>

Among the immediate approaches taken by the government to the escalation in crime was the establishment of camps and holiday activities over the summer period for young people who did not have any appropriate leisure or recreational alternatives.

An inquiry into ways of tackling the underlying problems associated with juvenile offending rates in France subsequently followed and it was proposed by the chair of that inquiry, Gilbert Bonnemaison, that a three tiered system of crime prevention committees be set up. In 1983, these committees came into effect.

The three committees are represented at all stages of French government. The Conseil Communaux are the local crime prevention committees and operate in individual towns and cities throughout France. According to King:

"There has been no attempt to impose crime prevention committees on unwilling local councils; but there has nevertheless been an impressive take-up, with two-thirds of towns and cities of over 30,000 inhabitants having introduced a Conseil Communal by 1987."<sup>64</sup>

Among the programs undertaken by local crime prevention committees are:

"training programs and job-finding schemes for disadvantaged young people; the encouragement of unemployed young people to devise and claim for grants for sporting, theatrical, educational and recreational projects; the employment of young trainees in schemes to reduce bullying and violence in schools; and schemes to help young drug users, to provide

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<sup>62</sup> Armitage. 1991 p.6

<sup>63</sup> King. 1987 p.29

<sup>64</sup> King. 1987 p.42

supportive accommodation for them and to divert their energies away from self-destructive activities into such directions as theatrical and sporting interests... **All local crime control agencies, local and central government departments and voluntary agencies co-operate with local councillors in providing the stimulus in terms of funding, resources and expertise for projects to be generated.**<sup>65</sup>

As well as these programs and the holiday programs, the Bonnemaïson system has seen the establishment of a number of youth centres throughout France providing a facility for young people to raise concerns about employment, training and accommodation among other things, with experts in those areas from the local community. Such people can also assist the young people in finding solutions to their concerns.<sup>66</sup>

In terms of the effectiveness of the Bonnemaïson system, Mr William Corneloup, a representative of Gilbert Bonnemaïson, commented in the press that French crime had fallen by 20% through the adoption of the system.<sup>67</sup> The Bonnemaïson system offers an example of how local initiatives, with the support of government at all levels can be effective in the area of juvenile crime prevention.

The Committee notes, however, that local councils in France (and England, where local council crime prevention programs exist also) can differ substantially in size from those in New South Wales. In this regard the Committee is mindful of the problems that may face smaller, rural councils for instance, should such programs be implemented without first being evaluated.

The Committee notes the projects undertaken by Waverley and Fairfield Local Councils. Those projects, in examining crime prevention generally, evaluated what the community felt were the most pressing issues relating to crime in their areas and assessed the most effective means of tackling such crime. The projects sought also to seek out means that might provide community members with greater feelings of security.

In relation to the Waverley area, the project began in 1989. A meeting of the Project Advisory Committee was convened, chaired by an Alderman, with members drawn from the local Police, the local Legal Aid Commission Office, the Youth Centre, the Neighbourhood Centre and the local community. As well as seeking the views of community representatives, the Project also looked at the ways in which "Council policies and functions could play a crime prevention role." In this regard, "the concept of "Crime Prevention Through Environmental Design" is one of a number of situational crime

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<sup>65</sup> Ibid (Emphasis added)

<sup>66</sup> King. 1987 p.42

<sup>67</sup> Male. 1991

prevention strategies whereby developers, planners and residents seek to design out opportunities for crime from their physical surroundings."<sup>68</sup>

Among the initiatives undertaken by Waverley Council for the crime prevention project were:

- . the development of a Control Plan on Community Crime Prevention which provides guidelines for the design of structures and the surrounding environment that could lessen the opportunities to offend, incorporates means of dealing with crime prevention through the up-keep of public facilities including parks, and makes provision for advice to members of the community on how they might maintain their physical environment in order to deter offending behaviour in their area;
- . the establishment of Precinct Committees which offered residents the opportunity to participate in the decision making process of the Council;
- . the provision of funding for a domestic violence support service.<sup>69</sup>

**Recommendation No. 14:**

- . **That the proposed Crime Prevention Division of the Attorney General's Department examine the feasibility of implementing a juvenile crime prevention scheme throughout New South Wales that gives greater responsibility and a greater role to local councils. In undertaking this evaluation, the Crime Prevention Division should examine systems operating in other jurisdictions, as well as local council initiatives in New South Wales.**

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<sup>68</sup> Armitage. 1991 p.13

<sup>69</sup> Armitage. 1991 p.14-16

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## CHAPTER THREE

### COURT DIVERSION SCHEMES

#### 3.1 INTRODUCTION

Many witnesses and submissions indicated to the Committee that most juvenile crime is transitory. As statistics confirm, most young offenders grow out of juvenile crime:

"One of the most consistent and basic findings in criminological research is that crime rates tend to peak in the late teenage years and then drop off dramatically. This pattern has been observed across many Western countries and from studies as far back as 1840."<sup>1</sup>

Moreover, the New South Wales Police Service maintains that in general the "criminal careers" of juveniles have been completed by the time they become adults.<sup>2</sup> Evidence also indicated that the vast majority of offences committed by young people relate to public order, street offences, minor dishonesty offences and summary offences.

The Police Service submission notes further that:

"When the proportion of juveniles who come under formal police notice is viewed in relation to all people coming under formal police notice, it appears that juvenile representation has remained relatively stable whilst the percentage of adult representation has increased."<sup>3</sup>

Court diversion schemes are a significant aspect of the Juvenile Justice System. The Committee noted in its introduction a number of the myths surrounding juvenile offending as well as the principles which have formed the basis of its deliberations and recommendations. Those principles include:

the Juvenile Justice System must continue to be discretely managed, with every effort being made to prevent the progression by young people from Juvenile Justice Centres to adult gaols,

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<sup>1</sup> Submission 33. p.22

<sup>2</sup> Submission 30. p.2

<sup>3</sup> Submission 30. p.3

- . diversion, particularly Police Cautions, should be the first response to minor offences,
- . the needs of victims should be considered, and
- . the young offender and, where appropriate, his or her family should be involved at all levels of proceedings.

In addition, the Committee considers that all young offenders in New South Wales are entitled to be treated equally for the same offence irrespective of race, sex or area of residence.

The formal processing of juveniles by the court has long been an area of concern, especially in jurisdictions where formal diversionary procedures are implemented. It is necessary when considering court diversion to evaluate whether the way in which a young offender is dealt with through a diversionary process has a better outcome than proceeding through the court process. Proceeding through the courts may create a perception that the young person is an offender and may lead to harassment of the young person. The court process may have the effect of the young person being stigmatised as a criminal, perceiving themselves as an offender and becoming unnecessarily caught up in the process. Keeping at least first or minor offenders out of the court system is usually justified on three grounds:

"first, that it avoids labelling the child as a known offender, which may subsequently result in the young person coming to perceive himself/herself as a criminal and acting accordingly;

secondly, that informal diversionary procedures often provide the opportunity for dealing with a child's behavioural problems more constructively than does a court appearance, thereby reducing the likelihood of further offending; and

thirdly, that on economic grounds, non-serious matters do not warrant the time and expense of a ... hearing."<sup>4</sup>

Evidence has shown that the Children's Courts are not necessarily appropriate forums to deal with particular offences and offenders. Such evidence has presented a number of issues which are relevant when considering court diversion. These issues are outlined in the following paragraphs.<sup>5</sup>

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<sup>4</sup> Gale. 1989 p.1

<sup>5</sup> Submission 74. pp.11-12

The majority of offences officially processed are not serious offences. Statistics consistently indicate that 60% of juvenile offenders make only one appearance in court and do not subsequently re-offend.<sup>6</sup> Thus, if each young offender is processed through the courts, the cost to the community is considerable. Further, for minor offences it is considered inappropriate that they are dealt with through such a forum as the Children's Court.

Attendance at court and a conviction of a juvenile through the court, gives a stigmatising label which has been said to promote "the development in the juvenile of a deviant self image and a sustained criminal career".<sup>7</sup> As most juveniles grow out of offending behaviour, exposure to events which may lead to the development of a poor self image or an anti-social attitude should be minimised.

The proceedings of the court are often slow, with young people remanded for lengthy periods. This can cause individuals hardship and also have the effect of making the eventual sentence less effective due to the distance in time from the precipitating offence. The Committee has been informed that effective responses to juvenile offending should be as related to the offence as possible, so that the causal connection is clear.

On a number of occasions the Committee heard that it is quite common for young people not to understand court proceedings which may mean that they do not fully comprehend the implications of their offending behaviour.<sup>8</sup> The Committee considers and has heard evidence that it is in the interests of both the community and the young offender to fully understand the implications of his or her offending behaviour. Further, the Committee considers that court diversion schemes provide a framework in which young offenders might understand the effects of their offending behaviour and, more importantly, be dealt with out of the court system.

Diversion is not an end in itself. Both the effect of court diversion on a young offender and its impact on recidivism rates are essential factors in considering the success of court diversion programs.

In the course of its Inquiry, the Committee heard of a concept called "shaming".<sup>9</sup> Described as the communication of disapproval whilst maintaining a relationship of respect for an offender, "shaming" was said to be something effective families within our society could accomplish. Research suggested that institutional practices which brought stigma, degradation, humiliation and disrespect into the process of dealing with offenders

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<sup>6</sup> Submission 1. p.5

<sup>7</sup> Morris. 1987 p.138

<sup>8</sup> Seymour. 1988

<sup>9</sup> Braithwaite. 1989

prohibited the opportunity for "shaming".<sup>10</sup> The concept of "shaming" is fundamental to the New Zealand court diversion system for young offenders which is outlined later in this Chapter.

There are a number of advantages in responding to juvenile offences through court diversion schemes. Generally schemes which divert young offenders from the courts encourage a greater degree of participation by the offender's family. This encourages continued family involvement in preventing further offending by the young person.

Prosecuting young offenders and proceeding formally through the courts places the young person in a position where they risk loss of freedom for either a short period whilst on remand or following a committal for a longer period in a Juvenile Justice Centre.

The Committee heard that institutionalisation, particularly for Aboriginal children, alienates young people further from the society in which they need to learn to survive. Further, offenders in institutions are encouraged into a "criminal" sub-culture and develop knowledge and skills for offending in a more sophisticated manner.<sup>11</sup> The Committee heard that young offenders who were incarcerated were more likely to re-offend and proceed into offending as an adult:

"young people placed in custody in juvenile institutions have a 90% chance of proceeding to the adult system"<sup>12</sup>

### **3.2 TYPES OF COURT DIVERSION**

In the latter part of the twentieth century, various alternatives to prosecution of young offenders have been introduced in other states throughout Australia and in other parts of the world. As previously discussed, court diversion strategies for young offenders serve to remove juveniles from participating in court processes and possible subsequent detention and loss of liberty. Diversionary practices, including warnings and formal cautions by police officers, are outlined below.

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<sup>10</sup> Braithwaite. 1991 p.12

<sup>11</sup> Submission 74. p.15

<sup>12</sup> Submission 48. p.3



### 3.2.1 Warnings

Police have a discretion to issue warnings to those who, due to their age, the nature of their actions or some other reason, do not warrant any further action. The Commissioner's Instructions to members of the New South Wales Police Service direct that:

"no formal action is required in relation to trivial offences committed by a child, rather a warning would be issued either on the run or at the police station"<sup>13</sup>

Such warnings have become known as on-the-spot or informal cautions. This form of action is not acknowledged in legislation and whilst records are maintained by individual police officers in their note books, no formal records are kept enabling a statistical analysis of these actions.<sup>14</sup>

### 3.2.2 Cautioning

The Committee considered that Police Cautioning should be the primary means of court diversion. Cautioning is a formal reprimand given by a police officer, to a young person, who admits guilt to a first and or minor offence. Procedures of charging, bail determinations and court appearances are dispensed with, although a formal record is made which can be produced later in court should the young person re-offend.

The common use of the phrase "informal caution" to describe a warning was perceived to lead to some confusion over the use and value of a formal caution. Throughout this Report the Committee refers to formal Police Cautioning as cautioning. Evidence to the Committee concerning cautioning showed that the process may take about three hours. The process is therefore significantly different to an "on-the-run" warning.

The formal cautioning policy requires an admission of guilt from the young person and the attendance at the police station of the child and a person responsible for the child. Those parties must consent to the cautioning process. As with a warning, there is no statutory right to caution, rather the appropriateness of the action to caution is determined by an authorised police officer. Police instructions specify that a caution should not be administered if it is considered that the child, and the person responsible for the child, agree to the procedure to avoid court proceedings.<sup>15</sup>

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<sup>13</sup> NSW Police Commissioners Instructions. 1991 no. 75.02

<sup>14</sup> Submission 74. p.12

<sup>15</sup> NSW Police Commissioners Instructions. 1991 no. 74.04

In accordance with the Committee's principles to involve the family at all levels of proceedings, the Committee considers that where possible, a Police Caution should be given in the presence of a parent, adult relative or person responsible for the care of the juvenile. In instances where a Police Caution is given other than in the presence of such a person with the care and responsibility for the juvenile, that person should be notified in writing of the fact and details of the caution administered. **The Committee notes and concurs with the recommendations on juvenile cautioning in the Report of the Royal Commission into Aboriginal Deaths in Custody particularly in relation to the presence of a person responsible for the care of a juvenile.**<sup>16</sup>

### 3.2.2.1 Cautioning Practices

In September 1985, revised police cautioning guidelines became operational in New South Wales. Police were encouraged to consider cautioning juveniles for all but the most serious offences. The Committee heard that the aim of formal cautioning was to make the system work better and in particular to overcome the inappropriateness of all offences proceeding through the children's court.<sup>17</sup> New South Wales had, at the time, a higher rate of committal to detention centres of its juvenile offenders than the national average and a higher percentage of formal interventions resulting in prosecutions. These committal rates remained high in a period where juvenile offences remained stable. Official cautioning provided an alternative response to incidents of juvenile crime.<sup>18</sup>

Some changes have been made to cautioning policy since 1985, including the restriction, in 1987, of cautionable offences to those considered to be summary or offences that can be dealt with summarily under Sections 476 and 501 of the Crimes Act. In 1988 the ability to caution a juvenile for car theft was removed.<sup>19</sup>

Matters which were formally subject to a warning or a caution are now frequently subjected to a charge. The Committee believes that cautioning of juveniles is an effective way to deal with some offences such as offensive language which now may incur a penalty of imprisonment for three months.

Cautioning in New South Wales has always been low compared to other Australian states. Prior to 1985, Police Cautions stood at about 7%, rising in 1986/87 to 25% and falling to 18% in 1987/88 and 10% in 1990.<sup>20</sup> In Queensland statistics show that cautioning rates

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<sup>16</sup> Royal Commission into Aboriginal Deaths in Custody. 1991(b) p.184

<sup>17</sup> Ibid

<sup>18</sup> Submission 74. p.10

<sup>19</sup> NSW Police Service. 1991(b) p.26

<sup>20</sup> Ibid

were 70.9% in 1986/87, 70.1% in 1987/88 and 71.9% in 1988/89.<sup>21</sup> Evidence before the Committee indicated that figures for Victoria ranged between 60% to 65%.<sup>22</sup>

Evidence before the Committee showed a lack of consistency in the rate of convictions and cautions between areas within New South Wales with a high rate of cautions not necessarily precluding a high rate of juvenile prosecutions in the same area. In the Western and North-West Region of New South Wales, which the Committee visited, available figures for 1986/87 showed some variation between prosecutions and caution rates. In this period the rate of juvenile convictions for New South Wales was 14.9 per 1,000 of 10-19 year olds. The conviction rates in Bourke, Walgett and Moree, with a high concentration of Aboriginal people were 82, 60.2 and 35.9 respectively.

Over the same period the average rate of cautioning for New South Wales was 5.6 per 1,000 of 10-19 year olds. In Bourke, Walgett and Moree, the rates were about 16.4, 18.2 and 34.8 respectively, significantly higher rates than the state average. Each of the areas concerned had both high prosecution and high cautioning rates.<sup>23</sup>

The Committee noted during its visit to Queensland that police have a discretion to caution a young offender up to three times and in respect of a range of offences.<sup>24</sup> Discussions with relevant people in that state indicated that the use of cautioning is the preferred method of dealing with a young, minor offender and it appears to have the general support of the members of the Queensland Police Service.

### **3.2.2.2 Effectiveness of Cautioning**

In New South Wales, a 1986 survey showed that 70% - 75% of juveniles who were given an official Police Caution did not come under police notice in the following 18 month period. Nevertheless in almost 90% of formal interventions involving young offenders in 1990, police in New South Wales decided to deal with juvenile offenders by sending them on to court. Court outcomes, however do not appear to be the most effective way to deal with juvenile offenders as 79% of juveniles appearing before the court, in 1985-86, did not reappear within the following 18 months.<sup>25</sup>

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<sup>21</sup> Queensland Police Department. 1987-1990

Note: The Committee was advised that the method of gathering statistics is under review.

<sup>22</sup> Evidence 4.2.92

<sup>23</sup> Cunneen. 1988. p.26

<sup>24</sup> Discussion. 4.3.91

<sup>25</sup> NSW Police Service. 1991(b) p.26

More recent figures in 1988 show that Police Cautioning was gaining an 82% success rate. That is, "within a year of being cautioned no more than 18% of those cautioned re-offended."<sup>26</sup> Thus the success rate of court cautioning, under section 33(1)(a) of the Children (Criminal Proceedings) Act 1987, may be less than the police cautioning success rate. Police cautioning can therefore be seen to be an effective tool in preventing repeat offending by juveniles.

Most cautions have been shown to have been given to those with fewer prior formal cautions and Aboriginal children had lower rates of cautions than non-Aboriginals.

Apart from the positive effects for juveniles of cautioning, it has also been shown that cautioning is far less expensive than charging. According to a study, the cost to police in money terms of charging a juvenile is close to \$1,000 per instance. Cautioning can be as effective in its outcome as charging and less than half the cost to police and therefore the community.<sup>27</sup>

However, the Committee heard that there is a reluctance for police officers to caution. Some reasons behind this were related to the paper work involved and that they believed that cautions were ineffective. Evidence from a Patrol Commander indicated that the cautioning system has some flaws. He said:

"I hold a belief that the current cautioning system suffers from some major shortcomings that are clearly obvious ...police are very practical people and tend to see the last possibility first and deal with all matters straight off." and

"the cautioning system as it stands in New South Wales...doesn't do two things. It calls for no commitment from the alleged offender, the person being cautioned. He or she doesn't have to make any effort to improve themselves, not to do the alleged thing that they have been accused of again, or to make any retribution to the people involved. The other aspect is that after the caution is issued...police don't see that as having any positive effect on the young person, having any guidance or assistance or any oversight in ensuring that they don't offend again...It is very ineffectual and police see it as such."<sup>28</sup>

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<sup>26</sup> Submission 15. p.8

<sup>27</sup> NSW Police Service. 1991(b) p.26

<sup>28</sup> Evidence 28.1.92 p.17

The Committee acknowledges the view espoused, but considers that cautioning is an effective means of court diversion and that the problems raised can be resolved through specific training on cautioning and its potential benefits. The Committee considers also that police officers would benefit through a tightening, revision and simplification of the cautioning procedures. It was considered that a standard form for cautioning which outlines the steps to be taken and information given to juveniles such as what a caution means, should be distributed to all police stations. In addition the merits, underlying philosophy and measurable effectiveness of cautioning needs to be communicated in a clear and appreciable manner to police officers.

Similarly the Committee supports the police administration in its encouragement of police officers to proceed by way of cautioning rather than having the matter determined by the court.

The Committee recognises the value of cautioning, particularly in relation to Aboriginal young people. The Royal Commission into Aboriginal Deaths in Custody noted that "the process of (a) police caution ... operates to a significant degree in many jurisdictions and has the benefit of keeping a child totally out of the official and recorded process of the criminal justice system." The Commission recommended in relation to this matter that legislation be reviewed to ensure:

"that police officers do not exercise their powers of arrest in relation to Aboriginal juveniles rather than proceed by way of formal or informal caution or service of an attendance notice or summons unless there are reasonable grounds for believing that such action is necessary."<sup>29</sup>

The Committee supports the views of the Commission and supports amendments to police guidelines. Such amendments would need to indicate that unless an alleged offence is grave or the juvenile is likely to repeat or commit other offences at that time then arrest should not be effected.

**Recommendation No. 15:**

- . **That a Police Caution should be given in the presence of a parent, adult relative or person responsible for the care of the juvenile, where possible.**
- . **That in instances where a Police Caution is given other than in the presence of such a person with the care and responsibility for the juvenile, that that person be notified in writing of the fact and details of the caution administered.**

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<sup>29</sup> Royal Commission into Aboriginal Deaths in Custody. 1991(b) p.184

**Recommendation No. 16:**

- That the Police administration develop a structured policy to assist more police officers to utilise more effectively the option of cautioning.

**Recommendation No. 17:**

- That Police be given revised and simplified procedures for cautioning in order that the process itself does not act as a deterrent to cautioning.

**Recommendation No. 18:**

- That Police be given instruction on the merits and effectiveness of cautioning.

**Recommendation No. 19:**

- That Police be given specific training in respect to the use and philosophy of cautioning.

**Recommendation No. 20:**

- That Police guidelines be amended to indicate that unless an alleged offence is grave or the juvenile is likely to repeat or commit other offences at that time, arrest should not be effected.

In a number of jurisdictions, court diversion schemes involve a panel system. It is most common that the panels include members of the community and are co-ordinated by agencies other than the police who have the primary role as prosecutor. Juvenile and Screening Panels in South Australia and Family Group Conferences in New Zealand offer alternatives to the court process for young offenders. Also in operation is a Council of Koori community representatives who facilitate a local court diversion program for young offenders who are Aboriginal. Attention is given to describing the operation of these schemes later in this Chapter.

### 3.3 THE POLICE SERVICE AND ADMINISTERING DIVERSION

In most matters, a young person's first contact with the Juvenile Justice System is through the police.

"In their interactions with young people, it is the police who have the most influence over a whole series of decisions which will later influence the outcome of the contact with the broader Juvenile Justice System. Such decisions relate to the extent to which youth are targeted, to which types of youth are targeted, to the types of charges which will be laid against individual young people, and to how those young people will be proceeded against."<sup>30</sup>

A submission to the Committee showed that the socio-economic background of the family of a suspected young offender influenced the decision by police on whether or not to caution. Research indicated that those from a "good" background were treated more sympathetically than others.<sup>31</sup> In reference to demonstrated police reluctance to charge "whites" compared to Aborigines in the town studied, a police officer indicated, "you don't like locking up people you know".<sup>32</sup> There is a perception that value judgements by the police about the effectiveness of a caution, impact more on poor, Aboriginal and homeless youth.

Another factor in the determination by police on whether or not to charge was said to relate to the demeanour and reaction of the family at the time. Police action against juveniles was said to often be directed at "punishing" families.<sup>33</sup> That is, unintentionally the action taken may be perceived by the family as a reprimand and result in a defensive, negative response rather than one in which responsibility is accepted. The Committee considered that an effective approach is one in which "shaming" occurs. The "shaming" process requires respect to be engendered in the relationship between the young offender, their family and those involved in communicating disapproval over particular behaviour. In addition the practice of punishing a family was considered to be ineffective in encouraging responsibility for offending behaviour.

Relevant workers in the area, young people and members of the Police Service, in New South Wales and inter-state indicated to the Committee that there is on the one hand a general lack of training in dealing with youth issues that can seriously affect day to day

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<sup>30</sup> Submission 33. p.210

<sup>31</sup> Carrington. 1989

<sup>32</sup> Carrington. 1989 p.299

<sup>33</sup> Carrington. 1989 p.301

practice and procedures and the relations between young people and the police and, on the other, a distrust of and antagonism towards the police by many young people.

Evidence before the Committee suggested that younger police were less flexible or tolerant of a range of behaviour and that they tended to arrest for swearing as a first response. It has been suggested to the Committee that greater tolerance may lessen the risk of confrontation and the possibility of a minor incident escalating and resulting in additional offences such as resisting arrest.<sup>34</sup>

An example of the lack of awareness of options available to some members of the police services in dealing with young offenders, is the limited use of the cautioning system as discussed above. In part, the lack of awareness has come about because of the perceived need for harsher treatment and penalties of young offenders as well as a lack of education in this regard. The Committee heard in South Australia from a Police Commander that one of the problems with encouraging police to issue more cautions is that it is perceived as involving more paper work and time than charging.

Another area which points to a problem with the manner in which some police deal with young offenders is in the wide use of charging instead of issuing Court Attendance Notices and Summonses. The Committee has heard that once a person is charged he or she is then subjected to a bail determination, fingerprinting and possibly an identification photograph, which are kept on file unless a specific order is made by a court for their destruction.

Section 8 of the Children (Criminal Proceedings) Act 1987, specifically provides that criminal proceedings should not be commenced against a child other than by way of Summons or attendance notice. Exceptions to this rule include where the matter is a serious indictable offence, or indictable offence under Division 2 of Part 2 of the Drug Misuse and Trafficking Act, 1985. Moreover, if in the opinion of the person by whom proceedings are commenced, there are reasonable grounds to believe that the child will not appear at court or the offence and/or the child is of a violent nature then, that child can be subject to a bail determination.

Clearly in isolated communities, there is generally little need to charge alleged young offenders who are likely to be well known and easily found if necessary. For the majority of young people, arrest is equivalent to a penalty in itself.

The procedure of charging can unnecessarily expose many young people to, rather than divert them from, the criminal justice system. In this way the spirit of the Children (Criminal Proceedings) Act can be undermined.

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<sup>34</sup> International Commission of Jurists. 1991 p.35



**Recommendation No. 21:**

That police officers are given training in the use of Section 8 of the Children (Criminal Proceedings) Act, 1987 and that Section be utilised more effectively in respect of proceedings, unless specifically exempt by the legislation.

**3.4 BAIL DECISIONS AND CONDITIONS**

As previously indicated, once a person is charged he or she is subject to a bail determination. Bail determinations are initially made by the Police. Should that determination result in a refusal of bail, the charged person must be brought before a court, as soon as practicable, for a re-assessment of the police decision. The Bail Act (NSW) 1978, establishes a presumption of favouring bail for most offences. Criteria applied by police and courts in making bail determinations relate to the likelihood that a person will appear at court, the interests of the person and the protection and welfare of the community. Other relevant factors to bail determinations are the age, gender of the child, and family or community ties. Evidence heard by the Committee suggested that some magistrates used refusal of bail, in relation to children, for behaviour modification rather than the purpose in the Act, to make sure the person appeared.<sup>35</sup>

A number of police, magistrates and Clerks of the Court appear reluctant to grant bail in the absence of parents.<sup>36</sup> The Committee heard that should a child not be living with his or her parents that child can often be refused bail. The Committee does not consider it to be a desirable practice for young people to be remanded in custody and thereby denied their liberty "for their own good".

Conditions placed on bail were considered by the Committee. These included curfews, residing with parents or residing with a particular relative. Evidence relating to conditions imposed by police and courts, particularly in country areas, suggested that they were "frequently elaborate, unenforceable, unreasonable and impossible to comply with".<sup>37</sup> Further, the evidence advised that in some instances young people have been bailed to live with families some hundreds of kilometres from their home. It was suggested that magistrates take on the role of parent at times to restrict the movement and modify the behaviour of young people. The Committee recognised such an approach inhibited the young person or their family taking responsibility and undermined family discipline.

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<sup>35</sup> Evidence 6.12.91 p.5

<sup>36</sup> Submission 33. p.156

<sup>37</sup> Submission 33. p.285

Evidence showed that homeless children charged with an offence may also be denied bail due to the lack of a fixed address, unstable lifestyle and a lack of alternatives to remand in custody.<sup>38</sup> Such a situation highlights the importance of practical alternative bail options. The Committee considered that lack of accommodation is not an adequate reason to refuse bail.

**Recommendation No. 22:**

**That legislation relating to bail should specifically state that lack of accommodation is not a sufficient reason to refuse bail.**

The Report of the National Inquiry into Homeless Children pointed to the need for the provision, co-ordination and funding of alternatives to custody pending trial, and the need for information on these alternatives to be readily available to police, magistrates, court officers, young people and workers with youth. Bail hostels and other suitable non-custodial community placements were recommended by the Inquiry into Homeless Children.<sup>39</sup> The Committee concurred with the need for alternatives to custody including bail hostels and the provision of information on such alternatives.

**Recommendation No. 23:**

**That custody alternatives such as bail hostels and non-custodial community placements be provided for juveniles.**

**Recommendation No. 24:**

**That information on custody alternatives be readily available to police, magistrates, court officers, young people and workers with youth.**

Evidence before the Committee showed that Aborigines are over-represented among those refused bail. This was said to be a reflection of the general over-representation by this group in the formal Juvenile Justice System.<sup>40</sup> It was considered that there is a need for bail hostels for Aboriginal youths and that they should be provided in areas as the need demands. The Committee recognises the importance of Aboriginal supervisors and staff within bail hostels. The Committee commends the Office of Juvenile Justice for the provision of the recently opened bail hostel in Redfern specifically for Aboriginal Juveniles.

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<sup>38</sup> Human Rights and Equal Opportunity Commission. 1989 p.264

<sup>39</sup> Human Rights and Equal Opportunity Commission. 1989 p.265

<sup>40</sup> Submission 33.

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The Committee also took evidence which proposed that, for Aboriginal children, selected Aboriginal families provide bail accommodation.<sup>41</sup> The Committee concurred that such an option was a desirable alternative to custody. It was considered that the Office of Juvenile Justice would need to approve certain families, particularly Aboriginal families and facilitate the process particularly in rural areas.

**Recommendation No. 25:**

**That the Office of Juvenile Justice approve families, particularly Aboriginal families, for the provision of bail accommodation.**

The Committee heard of onerous conditions attached to bail, some greater than those imposed on adults. Further evidence before the Committee indicated that bail conditions were often unrelated to the circumstances of a person's offence, or likelihood of re-offending. Such conditions were said to "set children up to fail" by making it very difficult to comply with the conditions imposed. In addition, the Committee heard that there is often a discrepancy between bail determinations given to Aboriginal young offenders and non-Aboriginal young offenders.<sup>42</sup>

An example of a bail determination difficult for an Aboriginal family to meet was heard. It concerned a person acting as surety to be able to provide evidence that they can raise \$200. The comment was made that "of course, in most cases, those people don't have bank accounts with \$200 in them...(and further)... half our mob (are) lucky to have a shirt on their back, let alone put up a house." The Committee was advised that self surety bail or a member of the family going surety without any amounts of cash involved would be more practical conditions that could be applied.<sup>43</sup> The Committee considers that the imposition of onerous monetary bail conditions should, where possible, be discontinued.

**Recommendation No. 26:**

**That training be provided to magistrates and police officers in relation to the nature and type of bail conditions with which a young person could reasonably be able to comply.**

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<sup>41</sup> Evidence 4.2.92

<sup>42</sup> Evidence 6.12.91 p.2

<sup>43</sup> Evidence 6.12.91 p.3

**Recommendation No. 27:**

That the imposition of onerous monetary bail conditions should, where possible, be discontinued.

**3.5 SUMMARY OFFENCES ACT**

The Committee has heard that many charges, such as offensive language, as provided in the Summary Offences Act 1988, are preferred against young people, particularly Aboriginal young people. Section 8 of the Bail Act 1978, provides for the release on bail where charges are laid under the Summary Offences Act or on other minor offences. The Committee has heard that whilst offences such as "assault police" and "resist arrest" do not arise under the Summary Offences Act they may commonly follow from an arrest on an offensive language charge.

The Committee considered the applicability of the Summary Offences Act 1988, to juveniles at length. Whilst it does not condone offensive language it considers that within the community in general, language deemed offensive was frequently part of the vernacular. To charge a juvenile for offensive language was considered by the Committee to blame the young person for an activity he or she may not recognise as a criminal offence.

In deliberating on this issue, the Committee was clear to distinguish offensive language from offensive behaviour. Instances where young people were behaving provocatively and using offensive language were identified as offensive behaviour and distinguished from instances where young people used offensive language as part of the vernacular.

It was considered that the incidence of young Aboriginals arrested for offensive language was compounded by the history of relations between the Aboriginal and non-Aboriginal community in New South Wales. The police who predominantly present a "white face" and represent "white authority" tend to become the focus in resistance to white culture and authority. This was particularly evident to the Committee on its visit to western New South Wales. In some rural areas, the Committee saw significant evidence of division and antagonism within the community. So much so, that in evidence to the Committee, Aborigines were referred to as "them" and the (white) community as the community.

Evidence by an Aboriginal person in relation to local police radio broadcasts, advised:

"Constantly it's "them" and we know who "them" is in the town, "them" is Aboriginal people ... it's always "them" ... (and further) ... I think people

"Constantly it's "them" and we know who "them" is in the town, "them" is Aboriginal people ... it's always "them" ... (and further) ... I think people should not look at (a juvenile) as an Aboriginal person, they should look at them as a human being."<sup>44</sup>

The Committee considers that the penalty for offensive language by juveniles should be reduced to a Police Caution in the first instance and a referral to a Children's Panel for any further offences of that nature. In line with the Committee's stated principles of court diversion on other offences, it considers that summary offences relating to juveniles should not be dealt with through the court system. The Committee considers that bail for juveniles on an offensive language charge should never be refused.

**Recommendation No. 28:**

- . That the New South Wales Attorney General's Department review the applicability of the Summary Offences Act to juveniles with a view to examining the penalties for offensive language by juveniles.
- . That, following the review, the New South Wales Attorney General's Department develop guidelines relating to the enforcement of the legislation.
- . That the maximum penalty for offensive language by juveniles, be a formal Police Caution.

**Recommendation No. 29:**

- . That bail for juveniles on an offensive language charge should not be refused, during the review of the Summary Offences Act.

In regard to these recommendations, the Committee considers that the training of police will be particularly important in achieving due regard to appropriate bail determinations and dealing with offensive behaviour of juveniles, particularly young Aboriginal people.

**See also Dissenting Opinion.**

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<sup>44</sup> Evidence 5.2.92

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### **3.6 JUVENILES AND SPECIALIST POLICE**

In Queensland, South Australia and the Australian Capital Territory there are separate arms of the police services that deal with juvenile issues only. In Queensland for example, the Juvenile Aid Bureau has been operating for about ten years now and deals exclusively with child abuse and juvenile offending matters.

Any police officer wishing to join the Juvenile Aid Bureau must apply, and if successful, undertake a training course after which he or she is then supervised in his or her duties by a more experienced officer. The Juvenile Aid Bureau functions as a separate part of the Queensland Police Service and officers can gain promotions and salary increases within the Bureau itself.

Similar systems apply in South Australia and the Australian Capital Territory. Police officers with whom Committee members and staff spoke in those jurisdictions agreed that having a separate Juvenile Bureau was a more effective way of dealing with young people. It was pointed out that those officers in the Juvenile section, particularly in the Australian Capital Territory, were able through their beat patrols to get to know and gain the trust and respect of the young people in their areas. It was felt that it allowed on the one hand, officers to gain an understanding of many of the problems and issues facing young people and on the other, young people to gain an understanding of the work the police officers must undertake.

#### **3.6.1 New Zealand Police**

The nature of the specialist police force in New Zealand is outlined in the following paragraphs. The overall system of juvenile justice currently operating in New Zealand is described later in this Chapter.

The police play a crucial role in court diversion in New Zealand. The Police Service has developed a special section called the Youth Aid Section staffed with police skilled in youth related matters. In less serious offences, the police may deal with a young person, without effecting an arrest. Should an arrest take place the process is similar to that of New South Wales, and most common law jurisdictions. That is, the suspect is usually charged, subject to a bail determination, fingerprinted and photographed.

The New Zealand Children, Young Persons and their Families Act 1989, specifies the criteria by which Police may issue a warning rather arrest. Factors considered include the seriousness of the offence, whether there is a victim and the probability of rehabilitation through the family. Checks and balances to an officer's decision lie in the scrutiny by senior officers in a police station who review decisions of officers within a specialist Youth Aid Section of the Police.

A study of the New Zealand system noted that non-arrest cases include:

- " cases where the police simply issue a warning and take the matter no further;
- . cases where, after investigation by the Police's Youth Aid Section, a written formal warning is issued;
- . cases diverted by the police after, for example, an apology, reparation, or other actions that expiate the offence;
- . cases where there is a referral to the Youth Justice Coordinator in the Department ... to arrange a formal Family Group Conference."<sup>45</sup> <sup>46</sup>

Available statistics show that for the period 1 November 1989 to 30 April 1990, 79% of juveniles brought to the notice of the police for non-arrest matters, were dealt with by the Police.<sup>47</sup>

Arrest cases normally involve indictable offences and unlike the examples noted above for dealing with a young offender, require a court appearance. Statistics reveal that during the period 1 November 1990 to 30 June 1991, 961 juveniles were arrested, which represents 6% of all juvenile offenders.<sup>48</sup>

### **3.6.2 New South Wales Police**

In an attempt to redress the widening problem between young people and the police, and also the dissatisfaction among members of the community with responses to juvenile crime, the General Duties Youth Officer program was introduced in the Police Service in 1988. The program replaced the Police In Schools Program. The program objectives are to:

- " analyse what creates police work with young people in Patrols and recommend and implement strategies to reduce the work,

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<sup>45</sup> Maxwell. 1990 p.17

<sup>46</sup> The role of Family Group Conferences is outlined later in this Chapter.

<sup>47</sup> Maxwell. 1990 p.17

<sup>48</sup> Maxwell. 1990 p.15

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- advocate on young people's issues in the patrol, and
- liaise with schools and other community agencies in the patrol to develop a multi-agency approach to crime prevention."<sup>49</sup>

In particular, the duties of a General Duties Youth Officer are determined in consultation with his or her Patrol Commander and the local community. Such duties generally include maintaining contact with young people on the streets and in youth clubs and liaising between youth agencies, the police and young people.

Training to assist an officer in performing the work involved in being a General Duties Youth Officer, is initially a four day residential workshop with ongoing training scheduled for approximately every six months. Following the establishment of the Program, organisation of training has become the responsibility of individual Patrol Commanders.

The Committee recognises the need for adequate and appropriate training for police, particularly in relation to young people. At this point in the Report, the Committee states that training in relation to working with young people, the socio-economic and cultural factors likely to contribute to youth offending and the importance of their role in court diversion should be part of any police training program. In acknowledgment of the specific needs of young people and skills required by police, the Committee has outlined in Chapter Five its recommendations concerning an intensive and specialist training program for police.

The Committee endorses the recognition of the particular needs of youth in creating specialist positions in the police service to work with young people. Following consideration of the nature and extent of interface between the police, the community and young offenders, the Committee determined that the role of Police Youth Officers would need to include the provision of specialist advice on youth issues within each patrol area. In recognition of the need for specialist rather than generalist police to work with juveniles, the Committee considers that a position of Police Youth Officer should be developed from the existing General Duties Youth Officer positions.

Appointees to positions of Police Youth Officer should be selected in relation to specific criteria. Such criteria would include the officer's interest and knowledge in youth. The position would also require:

- ability to demonstrate effective and sensitive contact with people from diverse cultural backgrounds, especially Aboriginal,

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<sup>49</sup> Submission 30.



- ability to promote co-operation between individuals, groups and organisations providing services to young people and their families,
- ability to facilitate culturally relevant decision making processes, and
- competence and flexibility in working with children, young persons and their families.

**Recommendation No. 30:**

- **That the position of Police Youth Officer be developed within the New South Wales Police Service.**

Patrol Commanders within the New South Wales Police Service, have been encouraged to select one or more officers within their patrol to hold the position of General Duties Youth Officer. Information received by the Committee indicated that a General Duties Youth Officer has been appointed within 100 of the 170 patrols across New South Wales. The Committee considers that at least one position of Youth Officer should be a requirement for each patrol area. In some patrol areas where there has been a history of juvenile offending or which currently has a high proportion of young offenders compared to other patrol areas, the Committee determined that more than one position of Police Youth Officer would be necessary.

**Recommendation No. 31:**

- **That at least one position of Police Youth Officer be a requirement for each police patrol area. The number of such officers would be related to the population, proportion of young offenders and the history of juvenile offending in a particular area.**

The Committee considers that Police Youth Officers would require some autonomy in terms of the day to day activities within their patrol area and in relation to policy and its application. It was determined that an appropriate means to achieve the Committee's option would involve the development of an administrative unit within the Head Office of the New South Wales Police Service. Such a Unit would require direct administrative access to the Police Commissioner and would be responsible for the coordination and development of policies and programs relating to the policing of young people. Determining the nature of training and development required in relation to juveniles, for

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all police officers, should also be undertaken by that Unit. In addition, the Unit will also need to ensure the monitoring and evaluation of procedures and practices relating to juveniles throughout the state.

It was also recognised by the Committee that a career structure would need to be developed for Police Youth Officers. The Committee considers that Police Service would need to give consideration to the development and establishment of a separate career structure for Police Youth Officers. In developing a separate career structure, the Committee considers that a creative approach could enable officers to move between career streams, particularly within lower ranks. At all times, the Committee considers that the integrity of the positions of Police Youth Officers should be maintained through recognition of the skills and abilities required for these specialised positions and creative management to ensure the officers become an integral part of policing within New South Wales.

**Recommendation No. 32:**

- **That a specialist police policy unit be established within the Head Office of the New South Wales Police Service with responsibility:**
  - **to oversight the work of Police Youth Officers in relation to practices and procedures for the policing of young people,**
  - **for the co-ordination and development of policies and programs relating to the policing of young people,**
  - **to determine the nature of training and development required for all police officers in relation to policing young people, and**
  - **to monitor and evaluate procedures and practices relating to policing juveniles throughout the state.**

**Recommendation No. 33:**

- **That the New South Wales Police Service develop and establish a separate career structure for Police Youth Officers which:**
  - **recognises the skills and abilities required,**
  - **would enable officers to move between career streams,**

- **maintain the integrity of the position, and**
- **ensure the positions become an integral part of a policing career within New South Wales.**

In other jurisdictions, the Committee witnessed that the status of specialist youth police officers was an important factor in effective policing. In acknowledgment of the usefulness of recognition of the specific skills required, the Committee supports the view that Police Youth Officers should be appointed to the rank of at least Senior Constable.

**Recommendation No. 34:**

- **That Police Youth Officers be appointed to the rank of at least Senior Constable.**

### **3.7 COURT DIVERSION SCHEMES IN OTHER JURISDICTIONS**

#### **3.7.1 South Australia**

Since 1972, South Australia has implemented a system of diversion in the form of Children's Aid Panels. Modifications were made in 1979 with the introduction of the Children's Protection and Young Offenders Act, to enable the panel system to deal with any youth irrespective of age or method of apprehension and to facilitate the filtering of cases through Screening Panels.

The Screening Panels have sole responsibility for determining which cases are referred to the Children's Court, which to Children's Aid Panels and which cases require no further action. In some instances the Screening Panel may determine that a formal Police Caution be administered.

Children's Aid Panels are non-judicial bodies established in 1972 and primarily designed to channel first offenders or those charged with relatively minor offences away from formal processing through the Children's Court. Each Children's Aid Panel consists of a police officer and a representative of the Department for Family and Community Services, which is responsible for juvenile justice in South Australia.

A juvenile must admit the allegation against them prior to consideration before a Children's Aid Panel but not before attending a Screening Panel. Each Screening Panel consists of a police officer and a social worker who decide what action should be taken.

Should there be unresolvable disagreement between the two, there is legislative provision for that specific case to be referred for adjudication by a magistrate or judge. The "gatekeeping" role to the court system in South Australia is therefore shared between the Police Department and the Department for Family and Community Services.

Comments concerning the Screening Panels have been both positive and negative. On one hand the Screening Panels have been criticised:

"Screening Panels are not independent of police influence (and this) has been criticised on the grounds that this is in breach of the natural justice principle of *nemo index in causa sua* (no one should judge in his own case). It is not unusual, especially in small rural communities, for a police officer to both apprehend and then screen the same youth."<sup>50</sup>

However, some commentators have stressed the positive aspects of the panel's composition. In particular, the presence of a representative of the Department for Family and Community Services has been said to be useful in enabling a social work perspective to the decision making process.

The Screening Panel does not allow for legal representation or public observation. Guidelines by which the Screening Panels operated stipulate that allegations of rape, arson, serious offences against the person or property and serious offences against good order should be referred to the Children's Courts as well as cases where a child has had at least two prior appearances before a Children's Aid Panel.

Information before the Committee also showed that a disproportionate number of Aboriginal youths have been directed to the Children's Court from Screening Panels. The research indicated that the clear difference in the outcomes for Aborigines related to the method of apprehension rather than racial bias in the process of the panels. Offences which Aboriginal people were more likely to have committed such as street offences of disorderly and offensive behaviour attracted a high court appearance rate compared to cases involving shoplifting of which no cases in the study proceed to court. Further appearances before the panel brought about by way of arrest had a high probability of being referred to the Children's Court compared to appearances based on a police report which were far less likely to be so directed.

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<sup>50</sup> Gale. 1989 p.4

### **3.7.2 Australian Capital Territory**

In the Australian Capital Territory cautioning is used comparatively frequently. However where a young person is charged with a criminal offence, the matter must be referred to the legal branch of the Police Department which then determines what further action should be taken, such as no action, the administration of a caution or referral to court.

Where the determination is that the matter proceed to court, the matter must then go to the Director of Public Prosecutions who after considering a number of factors, such as the nature of the offence, the age of the young offender, the background of the young person and the public interest, makes the final determination as to whether court proceedings should be instituted. The aim of this procedure is to try to divert young offenders from the court system as much as possible.

### **3.7.3 The New Zealand Juvenile Justice System**

#### **3.7.3.1 Outline of the New Zealand Legislation**

One of the most innovative court diversion schemes currently in place is that operating in New Zealand. The system is based on a number of principles contained in the New Zealand, Children, Young Persons and Their Families Act, 1989, including the principle that diversion be promoted by the encouragement of the use of informal methods for dealing with young offenders and minimising the imposition of coercive formal sanctions.

Diversion is enhanced at all levels of the New Zealand juvenile justice process. Such diversion has resulted in less than 10% of all interventions now entering the Youth Court.

Features of the system include:

- . dispensing with, for a large proportion of cases, the formal court structure,
- . considering the needs of victims in the reparation of wrongs,
- . increasing the participation of families in juvenile offending matters, and
- . increasing the accountability of the offender.

The New Zealand system acts to empower families to take responsibility for offending by their children, increase family responsibility and significantly reduce the number of young people in the criminal justice system including detention centres. The most significant feature is the enhancement of community based responses to young offenders through

what are known as Family Group Conferences. This system embodies the notion of "shaming" in which disapproval is extended to an alleged offender whilst respect for them is sustained. Fundamental to the operation of the legislation is appropriate funding to enact the agreed outcomes of Family Group Conferences.

The Children, Young Persons and Their Families Act, emphasises diversion, accountability, protection of young people's rights, the involvement of families, offenders and victims in the determinations, a responsiveness to indigenous cultural traditions and the use of informal methods and minimum judicial intervention when dealing with young offenders.

Included in the legislation is the provision that a police officer must consider whether it is appropriate to warn, i.e. caution, a child or young person for an offence. A warning is to be considered, "unless it is clearly inappropriate because of either the seriousness of the offence or the nature and number of previous offences committed by that child or young person."<sup>51</sup> There is no similar provision in the New South Wales legislation.

The Children, Young Persons and Their Families Act was developed by the New Zealand Department of Social Welfare which has the responsibility for its administration and provides for the Youth Justice Co-ordinator who facilitates the meetings and determinations, or outcomes, of a Family Group Conference. Further, the Department "acts as a brake on precipitate action by police and other charging agencies."<sup>52</sup>

The police play a crucial role in the operation of the legislation, particularly in relation to its diversion objects. In less serious offences, the police may deal with a young person, without effecting an arrest. The New Zealand Act, as previously outlined, specifies the criteria by which police may issue a warning rather than an arrest.

Arrest cases normally involve the more serious offences and unlike the non-arrest cases, require a court appearance. The 1989 legislation has brought about a decrease in the number and proportion of juveniles arrested with 961 or 6% of juveniles arrested in the period 1 November 1990 to 30 June 1991.<sup>53</sup>

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<sup>51</sup> New Zealand Police. 1989 p.61

<sup>52</sup> NSW Police Service. 1990 p.26

<sup>53</sup> NSW Police Service. 1990 p.15

### 3.7.3.2 Family Group Conferences

Family Group Conferences were set up under the Act as a means of bringing together all parties relevant to the commission of an offence and to discuss the most appropriate determination or outcome concerning the juvenile offender. The Family Group Conferences are convened by a Youth Justice Coordinator following a referral from the Police or the Youth Court. Every offence including rape, vicious assault and repetitive robbery but not murder and manslaughter is dealt with through a Family Group Conference.

Normally present at a Conference are the Youth Justice Coordinator, the victim (should he or she be willing to discuss the outcome of the matter), any support people the young offender may wish to bring, the offender, the offender's family group, the Youth Advocate and a Youth Aid Police officer.

Generally, the Conference forces the young offender to focus on the consequences of his or her actions and then to confront the feelings of his or her victim, the victim's family and his or her own family. The Conference then looks towards what action might be taken by the offender to make amends for his or her actions. Options include a warning, an apology, community work, financial compensation, education, training and work plans.

It was observed that offending mostly occurs in a familial, economic, social or environmental context that has an impact on the child or young person. One of the areas of emphasis of the Act is the provision which enables families to face their contribution to the offending behaviour, and funds are available to provide relevant support to both the family and the young person to prevent offending in the future.

Agreement on the proposed outcome of a Family Group Conference must be made between the victim, the family, the Youth Justice Co-ordinator and the police representative from the Youth Aid Section. In the period April-June 1990, most Family Group Conferences were agreed upon. Disagreements have been relatively rare with 7% nationally in the same period.<sup>54</sup>

In a Family Group Conference every effort is made to devise an outcome which is related to the offence. Custodial sentences are not common now. Secure accommodation in New Zealand before the Children, Young, Persons and Their Families Act was more than 200 beds. When the Committee delegation visited New Zealand in November 1991, secure accommodation was held at 50 beds for the whole of New Zealand. However, the

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<sup>54</sup> Maxwell. 1990 p.1

penalties currently put into place by the family may be more severe or restrictive than former non custodial penalties.

### **3.7.3.3 Custody of Juvenile Offenders**

With a focus on community work, supervised activities and a move away from detention centres or custody places, the Department of Social Welfare has closed many of its former detention centres. Following apprehension, juveniles are usually released within 24 hours into community custody placements.

In Auckland, for example, the Department of Social Welfare only provides one institution for housing juveniles and has closed 25 other places. Of the 40 beds available, only 5 were for custody with the rest reserved for care and protection placements. In some instances, the lack of custodial facilities has resulted in, some judges remanding juveniles to police custody and thus to police cells. The Committee delegation was advised that detention of juveniles in police cells is not a common occurrence and in New Zealand, as in New South Wales, it is not considered appropriate. It was recognised by the Department of Social Welfare and the Committee delegation that there remains a need for secure holding places other than police cells.

The Committee heard that the cost to keep a juvenile in secure custody in New Zealand was \$10,000 for three months. Depending on the number of beds, the Department of Social Welfare indicated that the cost of secure custody may amount to \$120,000 per year. This cost is high compared to the cost of supervised activity given as an order of the Youth Court.

Family Group Conferences convened other than by the Youth Court were said to have an average cost of \$750. This figure has been reached after including numerous conferences for which the cost outcome was zero to some which ranged in costs up to \$7,000. The sub-Committee was advised that the cost to the community of sentencing outcomes in New Zealand has fallen through the implementation of the 1989 legislation.<sup>55</sup>

### **3.7.3.4 Dysfunctional families and homeless young people**

Where there is a dysfunctional family or an immigrant family with cultural or language problems and where there are few family members, the Committee delegation heard that the Department of Social Welfare may bring additional people to a Family Group Conference with a view to reconstruct an extended family. Additional people who may be included are likely to be community representatives.

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<sup>55</sup> Discussion. 8.11.91



Should there be difficulties resolving a Family Group Conference, the Youth Justice Co-ordinator can decide to ask for the case to go back to the Court. A Family Group Conference may have to reconvene on a number of occasions should there be insufficient family members in attendance. This may occur when a juvenile is new to an area, is a migrant or a member of a dysfunctional family. Evidence showed that a conference may be reconvened up to five times. The Committee delegation was advised that Conferences could take approximately three hours each. In a few instances, some Conferences reconvened for a number of sessions.

### **3.7.3.5 Victims and Attendance**

A feature of the New Zealand system includes consideration of the needs of victims in the reparation of wrongs. The legislation provides that Family Group Conferences are held at the victim's convenience. Victims are encouraged to attend Family Group Conferences where they are able to express their anger and also participate in reaching a satisfactory outcome for all the parties concerned.

In practice, the Committee delegation was advised that the victim was often given short notice of the conference and less than 50% of victims attended conferences. No provision is made for the victim to bring anyone with them as support to the Family Group Conference. On occasions, Family Group Conferences have been held in the home of the offender which was considered, particularly where a large number of the offender's family was in attendance, to be oppressive.

The Principal Judge of the Youth Court, Judge Brown, considers that the involvement of the victim in the operation of a Family Group Conference is similar to the traditional Polynesian way of dealing with wrongs and assisting in the repair of the emotional damage incurred by the victim. Judge Brown considers that the need of the victim to express emotion and indicate to the offender and the offender's family how they feel and the need to receive reparation is an essential element of the process.

The Committee delegation heard that victim support groups have developed. It was important to inform the public on victims' rights and the Committee was told that officers needed to be trained how to explain to victims their rights within the conference proceedings and the Juvenile Justice System.

### **3.7.3.6 Agencies providing Services**

Underlying the success of the legislation is a recognition of the need for effective communication and co-operation between the government and non-government sectors in relation to service provision, program funding and performance contracts.

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The non-government sector in New Zealand receives some \$1.3 million to provide services such as accommodation and to conduct programs for abused and out of control juveniles.

**3.7.3.7 Committee Observations Concerning the Implementation of the New Zealand Children, Young Persons and Their Families Act.**

Following the sub-Committees visit to New Zealand and the Committee's examination of the legislation and how it is operating in New Zealand, the following observations were made:

- . The Act was considered to be effective, particularly in shaming the young offender and because the young offender has to confront the victim.
- . The legislation has not been in place long enough for a reliable evaluation of its effectiveness in terms of recidivism, community acceptance and involvement, family responsibility and cost to the community and government. Departmental reviews and restructuring have affected the evaluation process.
- . Commitment to the legislation by members of the police force and other workers involved in its implementation was high.
- . It appeared that there had not been sufficient time between when the Act had been passed and when it had come into operation for the necessary administrative practices and systems to be established.
- . Systems such as review and monitoring were not yet adequate, a database through which cases and juveniles can be monitored was not yet operational.
- . Training, whilst recognised to be important, had been neglected. Key officials, such as Youth Aid Officers and Youth Justice Co-ordinators, indicated they benefit through joint training and meetings. A co-ordinated approach to training by the Police Department and the Department of Social Welfare would assist in developing a joint approach to policies and practices, an appreciation of the issues concerning each administrative area and better use of each Department's services.

The Committee delegation heard that the New Zealand system had difficulties adequately managing repeat offenders.<sup>56</sup> If a Family Group Conference was not effective in preventing re-offending, no further penalty was possible, beyond repeated Family Group Conferences, provided offences stopped short of major crimes.

The New Zealand legislation embodies a number of the principles that the Committee affirms should be part of a Juvenile Justice System for New South Wales. There are a number of aspects of the New Zealand system, however, which limit its direct applicability for transfer to New South Wales. These aspects include the nature of population centres in New Zealand in relation to their size, population spread, social relationships and sense of community.

One of the major barriers to applying the New Zealand approach within New South Wales lies in the historical and societal differences between the Maori population in New Zealand and the Aboriginal population in New South Wales. In New Zealand, Maori culture remains cohesive because it has been recognised as an integrated culture since the onset of white settlement.

Written into the Children, Young Persons and Their Families Act 1989, are the Maori words "whanau", "hapu" and "iwi" which recognise and give legitimacy to Maori kinship groups and authorities.<sup>57</sup> The New Zealand legislation was developed and embodies the particular needs within the Maoris' cohesive and recognised culture. This is different from the Aboriginal family networks which have become fragmented due to the historical separation of children from their families. There is, too, the further difference of Aboriginal language and cultural diversity. Assumptions about a homogeneous Aboriginal society, equated with the Maori model, would then be inaccurate and simplistic. As described to the Committee by an Aboriginal Juvenile Justice Officer:

"The main reason that the N.Z. system would not work with the Koori community is the large proportion of families that are dysfunctional because of generations of dislocation. The N.Z. system is alright for first offenders or minor offenders, it does not cater (for) repeat offenders as most of our kids are. Many of the (Koori) kids come from families who are not able to compensate the victim, financially. All groups are different."<sup>58</sup>

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<sup>56</sup> Evidence 8.11.91 and 6.12.91

<sup>57</sup> Whanau is described as an extended family. Hapu is a clan or section of tribe.

The term Iwi refers to a tribe or nation. Concise Maori Dictionary. 1984, pp. 7, 13, 74

<sup>58</sup> Evidence 6.12.91

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### **3.8 CHILDREN'S PANEL: A COURT DIVERSION SCHEME FOR NEW SOUTH WALES**

#### **Introduction**

The Committee considers that a Police Caution should be the first response to first or minor offenders. However, in order to divert young people from the court system the Committee considers that a panel scheme operating at a pre-court stage should be established throughout New South Wales. It was considered that such a panel would complement rather than usurp the role of police cautioning. As a starting point, the Committee has drawn on aspects of the New South Wales Community Aid Panel which is outlined in the Chapter Four of this Report and the New Zealand Family Group Conference model, outlined earlier in this Chapter.

The principles the Committee affirmed in the first chapter of this report include, that:

- . diversion be the first response to minor offences,
- . families should participate in decisions affecting young offenders, and
- . the interests of victims of offences should be accounted for in measures taken to deal with the offending.

These principles underlie the Committee's decision to recommend that a court diversion panel scheme be introduced within New South Wales. The Committee considers that a pre-court scheme should be developed in accordance with the points outlined in this Chapter of the Report.

The Committee named the proposed pre-court scheme, Children's Panel. It is intended that young people under the age of eighteen years of age may be involved in the scheme. The Committee determined to use the word "children" with the view to being consistent with other areas of the justice system which involve juveniles. The Committee notes that all legislation relating to young offenders in New South Wales refers to them as children and the forum dealing with young offenders is the Children's Court.

#### **Recommendation No. 35:**

- . **That a pre-court diversion panel scheme, a Children's Panel, be introduced within New South Wales in the form outlined in Chapter Three of this Report.**

**Recommendation No. 36:**

- That the Children's Panel be implemented initially as a pilot pre-court diversion scheme in six police patrol areas throughout New South Wales.

**Recommendation No. 37:**

- That the six areas in which the Children's Panels are piloted be in both city and country areas, including areas with high populations of young people from Aboriginal backgrounds or non-English speaking backgrounds.

**Recommendation No. 38:**

- That the areas in which the pre-court scheme, Children's Panel, is piloted preferably have no Community Aid Panels in operation.

**Recommendation No. 39:**

- That the scheme of Children's Panels be evaluated after a start up period of six months, followed by an operational period of eighteen months.

**Recommendation No. 40:**

- That the evaluation of the operation of the Children's Panel scheme be undertaken by an independent body such as the Australian Institute of Criminology or a specialist contracted for that purpose.

**Recommendation No. 41:**

- That following the evaluation of the operation of Children's Panels, legislation be developed and necessary adjustments made to Children's Panels prior to their adoption throughout the state.

**See also Dissenting Report.**

A description of the composition, nature and other relevant operational aspects of the Children's Panel proposed by the Standing Committee on Social Issues is outlined below. The Committee considers that the Children's Panel should be used to enhance the court diversion of young offenders and not be an alternative to police cautioning.

Should guilt be denied, the juvenile would proceed through the court process. After an admission of guilt the police would proceed with either a warning or a formal Police Caution of the young person.

Following appropriate Police Cautioning, a juvenile may be referred by the police to the Children's Panel scheme for attention. Offenders who commit offences of a certain serious nature, such as murder, manslaughter, sexual assault, arson, vicious assault, and repetitive robbery, however, should be subject to a charge. Similarly, serious recidivists should be processed through the courts.

The Committee considers that the role of the police in diversion is a crucial one. In particular, police officers would need to be trained in the nature of the Children's Panels, the options available for young people and matters relating to the plea. The Committee determined that a checklist should be developed for police officers to assist them to deliver the appropriate advice.

**Recommendation No. 42:**

**That Police Officers be trained in the nature of Children's Panels, the options available for young people and matters relating to the plea.**

**Recommendation No. 43:**

**That a checklist be developed for Police Officers which will ensure that the appropriate and consistent advice on the nature and operation of the Children's Panel scheme is given to young people who are apprehended.**

The Committee considered that Children's Panels should be co-ordinated by a representative of the Office of Juvenile Justice. Initially, the Children's Panel Co-ordinator would determine the appropriate direction in which to proceed. The Co-ordinator would have the discretion to discharge the young person subject to a formal Police Caution. Bearing in mind the guidelines in this Chapter, the Co-ordinator may convene a panel of relevant people to resolve each particular case.

It is intended that the Children's Panel will not be an adjudicating body handing down a punishment or correction to a young person but rather that its outcomes will be determined through agreement between those participating in each panel.

Nothing in the proposal for a Children's Panel should be interpreted as pre-empting the rights, opportunities and obligations of police to issue cautions, formal or informal where relevant and appropriate.

### **3.8.1 Composition of the Children's Panel**

The Children's Panel shall comprise a range of people including a:

- . Juvenile Justice Officer (co-ordinator)
- . member of the Police service or police community liaison officer
- . community representative.

Consideration was given by the Committee to a lawyer participating in the Children's Panel. The Committee was divided on this matter. It was considered that a lawyer may need to be involved in the process to ensure the outcomes were fair. However, it was also considered that due to the nature of the resolution process, a lawyer would be inappropriate on a Children's Panel. Therefore the Committee determined that for the duration of the pilot scheme, Children's Panels would not formally include a lawyer. Should the evaluation of the scheme determine that a lawyer be necessary, the Committee considers that a lawyer may then be included on a Children's Panel.

Prior to the participation by a young person in a Children's Panel, the Committee considered that the young person should be advised in relation to the process. It was considered that the advice should be undertaken by a lawyer or youth advocate and should involve the process, possible outcomes and relationship of the Children's Panel to the court process.

The Committee determined that a legal officer or solicitor should be attached to each Panel on a part-time or full-time basis as required. The legal officer or solicitor may attend a Children's Panel to oversight the proceedings and as a resource to call upon if necessary but would generally not participate in the conciliation process. For the duration of the pilot scheme the Committee considers that consideration should be given to arranging, for a designated period of time, lawyers from the Law Society or those with practicing certificates currently working in government departments, to be attached to a panel.

The Committee determined that a number of people may be present and participate in achieving an agreed outcome from the Children's Panel. These people would include the young offender, his or her family and the victim and his or her support person. In this instance "the family" may be defined as immediate members of the family such as mother, father, sister, brother or more extended family members as appropriate for the young person.

In order that where appropriate, the interests of the victim of an offence, are addressed, the Committee considers that the victim should be encouraged to attend and participate in the proceedings of the Children's Panel. The Committee is mindful that a large number of people participating in the Children's Panel could make decision making difficult. However, it was considered appropriate for the victim to bring supportive persons to the Children's Panel.

**Recommendation No. 44:**

- . **That Children's Panels include a:**
  - . **Juvenile Justice Officer (co-ordinator) and**
  - . **member of the Police Service or a Police Community Liaison Officer and**
  - . **community representative.**

**Recommendation No. 45:**

- . **That the following people must attend a Children's Panel:**
  - . **the offender and**
  - . **representatives of the offender's family, however that may be defined.**

**Recommendation No. 46:**

- . **That the victim and support persons, as requested, be encouraged to attend the relevant Children's Panel.**



### **3.8.2 Operation of Children's Panels**

The Children's Panels should operate under specific and clear guidelines, in the pilot stage of their introduction. It is considered appropriate for the Office of Juvenile Justice to draft appropriate guidelines for operation of the Children's Panels. The guidelines will lay the foundation for later legislation.

Fundamental to the success of the Children's Panels is information and training. Participants in Children's Panels, particularly the Co-ordinator, should be trained in aspects such as mediation, sentencing options and the services available for juveniles and young offenders. Written information should also be provided for the young offender, the victim and members of the families involved.

Before a young person is referred to a panel he/she must be made completely aware of what this will entail. Information which must be conveyed includes that participation in the Children's Panel scheme will require an admission of guilt or a plea of "offence not denied" and that once the plea is given attendance in the scheme or at court is compulsory. Police training is an important issue in relation to informing a young person on the availability of legal advice prior to a referral to a Children's Panel.

The outcomes of the Children's Panel should be determined between participants of the Panel following discussion with the offender and in consultation with the offender's family or supporters and where involved, the victim. It is not intended that the Children's Panel operate as an adjudicating body rather the outcomes should be determined through agreement between those participating in each panel. The Committee considers that the Children's Panel, in relation to the offence, would facilitate reparation, the process of making amends. It is essential that there is consistency in the nature of Children's Panel outcomes throughout the state and that agreed outcomes are reasonable and fair. Children's Panels should be covered in terms of liability.

Reparations may take the form of the following:

- . a verbal apology to the victim,
- . a written apology to the victim, and
- . participation in a relevant program.

The Committee considers that the nature of the offence will be relevant in determining the outcome of a Children's Panel. For example, it may be appropriate that agreement is reached for the young person to participate, where relevant, in a drug and alcohol program for a specified period of time or that the young person assist in repairing a window that she or he may have broken. The process of reparation within Children's Panels will need to be flexible, particularly to produce outcomes related to the offence.

The Committee in recognising that Community Service work is one of the most serious sentencing options a court may impose, does not propose that the Panel issue "defacto" Community Service Orders.

Where appropriate, referrals to counselling services may be made. This should be decided in consultation with the members of the panel, the offender, the offender's family and if appropriate, the victim. Cautioning may be one of the available options of the Children's Panels.

Magistrates would have a discretion to refer matters to a Children's Panel. Such a situation may arise where, for instance, a young person's legal counsel makes submission to a magistrate that the particular case is one which should have been appropriately dealt with by the Children's Panel. This can be done without entering any formal plea.

**Recommendation No. 47:**

- That magistrates be given a discretion to refer a young offender, where appropriate, back to a Children's Panel. Such a procedure should be done in a magistrate's chambers on the submissions of the young person's legal counsel, thereby dispensing with the formalities of court.

**3.8.3 Consideration for Special Groups**

The Committee determined that a Children's Panel would be most effective when members reflect the community and have a connection with the background to the young offender. In practice this reflection would be evidenced in the sex, Aboriginality or cultural background of the juvenile.

The Committee determined that where a girl attends a Children's Panel, there should be at least one female member of the Children's Panel. The same consideration should apply to young offenders who are Aboriginal. Juveniles from a non-English speaking background would benefit from a member on their Children's Panel from the same cultural group.

A multitude of issues surround young Aboriginal people in the Juvenile Justice System. The Committee thus determined that in relation to Children's Panels where an Aborigine appears before a panel it is desirable that:

- panel members should be Aboriginal; and

- . before determining whether an Aboriginal young offender should proceed to the panel or be sent back for a Police Caution, the panel co-ordinator should consult with an appropriate member of the Aboriginal community.

**Recommendation No. 48:**

- . That at least one of the members of each Children's Panel be a woman.

**Recommendation No. 49:**

- . That at least one of the members of each Children's Panel be of the same cultural group as the young offender.

**Recommendation No. 50:**

- . That where an Aborigine appears before a Children's Panel, some panel members should be Aboriginal.

It was brought to the attention of the Committee that in recent initiatives, programs have developed in which police divert young Aboriginal people to a pre-court panel consisting of local Aboriginal representatives. The Taree Koori Community Justice Council is administered by the Office of Juvenile Justice. The Council includes local Aboriginal elders and was designed to reduce the number of Aboriginal juveniles entering the formal court system. Since its inception in 1991, there has not been a great need for the Council to convene, however it provides the opportunity for members of the Aboriginal community and the police "to work closely together in diverting young offenders from lifestyles that may see them re-offend."<sup>59</sup>

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<sup>59</sup> NSW Office of Juvenile Justice. 1992 p.6

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## CHAPTER FOUR

### SENTENCING AND COMMUNITY-BASED SENTENCING OPTIONS FOR THE CARE AND MANAGEMENT OF YOUNG OFFENDERS

#### 4.1 INTRODUCTION

Provision (c) of the Terms of Reference of this Inquiry requires the Committee to examine and report on:

"sentencing and community-based options for the care and management of young offenders."

The proposal that young offenders be moved into community-based sentencing options as opposed to being given custodial sentences, has been the subject of much debate and the topic of many reports for a number of years. Following the recommendations of the Pryke Report in 1983, as the Committee noted in the introduction, the numbers of young people in custody were reduced, with the idea that young offenders be diverted to more appropriate community alternatives.

When the package of legislative reforms relating to children and young offenders came into effect in early 1988, a hierarchy of sentencing options was implemented. Those sentencing options contained a number of community-based alternatives and included a provision that the option of detention be used only if it would be wholly inappropriate to deal with the offender under the other options.

Whilst the Committee acknowledges that there has been a significant reduction of the numbers of young people in custody over the last five to ten years, our research shows that more young people need to be diverted from detention.

#### 4.2 THE RESEARCH AND EVIDENCE

The Committee has heard considerable evidence relating to the sentencing of young offenders. The Committee has also examined a number of reports in its research on this issue. Among those are The Australian Law Reform Commission's Research Paper "Sentencing Young Offenders" (1988); the "National Report", of the Royal Commission into Aboriginal Deaths in Custody (1991); "Girls at Risk", the Report of the Girls in Care Project, Women's Co-Ordination Unit (1986); and the "Kids in Justice Report" (1990) which was also tendered to the Inquiry as a submission.

Common to much of the evidence and the information received, has been the emphasis that incarceration be used as a last resort and for the most serious and violent offenders only; in most other cases, alternative community-based sentencing options should be applied.

The Committee understands community-based sentencing options to mean all those alternatives that do not involve a custodial sentence. Whilst it is acknowledged that a Police Caution is one such alternative, that option has been more appropriately dealt with in the Chapter on Court Diversion Schemes. This chapter will focus more on those community-based sentences provided in the legislation as well as other alternatives suggested to the Committee.

The Committee acknowledges that serious and violent young offenders must be detained for the protection of the community and for the protection of themselves. It acknowledges also that, whilst in custody, such offenders must be provided with appropriate services to achieve a successful re-integration into the community, in order to prevent further criminal activity after the expiry of the sentence.

For other young offenders, the Committee believes that in appropriate circumstances the option of a community-based sentence, with where necessary adequate supervision and counselling, should be available. The Committee accepts that many young offenders will offend only once or at such a minor level that their sentence would not require a great deal of intervention and so supervision may not be necessary. However, in all matters where the offence is not of a violent or serious nature, community-based alternatives should be utilised, whether supervision is required or not.

In reaching this conclusion the Committee has been mindful of a number of factors. Evidence submitted to the Committee, for instance, shows that in appropriate circumstances, both the community and the young offender benefit more if he or she is given an adequately resourced and appropriately supervised community-based sentence rather than a custodial sentence.

The Committee has heard that the following benefits can be gained from the implementation of a community-based sentencing option compared with a custodial sentence:

**A more appropriate means of dealing with the problem of juvenile recidivism.** Many of our witnesses as well as young detainees themselves, have commented that Juvenile Justice Centres merely confirm a person's criminal behaviour and act as training grounds for further offending. A report by the Judicial Commission

of New South Wales found that 59.6% of detained juveniles had been committed to an institution on a prior occasion.<sup>1</sup>

**A greater opportunity for rehabilitation.** If allowed to remain in the community and maintain his or her community contacts, the young offender has a better chance of developing into a responsible member of that community without the dislocating effects of incarceration.

**A more cost effective solution to the issue of punishment and rehabilitation.** Information supplied to the Committee showed that the average cost of incarceration is \$40,510 per young offender/per control order, compared with \$318 per offender/per supervised order for sentencing a young offender to a community-based alternative.<sup>2</sup>

The Committee is very conscious of the fact that a young offender should be held accountable for his or her actions. However, it also sees as crucial the need for proper rehabilitation for those young offenders who are at risk of becoming firmly entrenched in the Juvenile Justice System and those who may graduate to the adult criminal justice system. It believes that, in appropriate circumstances, both of these issues can be addressed by community-based sentencing options. According to a submission:

"Apart from the question of efficacy, a sense of proportion must prevail in sentencing, and nowhere is this more critical than in the case of juveniles. If it is agreed that the detention of juveniles should be a disposition of last resort, or that it should be limited to crimes against the person or other situations where an offender can be seen to be a danger to the community, then an appropriate range of alternative sentencing options must be available."<sup>3</sup>

**Recommendation No. 51:**

**That consistent with the provisions of the Children (Criminal Proceedings) Act, 1987, community-based sentencing options should be a first response of magistrates when sentencing a young offender and that the use of custodial sentences be used only as a last resort.**

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<sup>1</sup> Judicial Commission of New South Wales. 1991(b) p.5

<sup>2</sup> Office of Juvenile Justice. 25.2.92 p.2 citing a costing performed by the Department of Community Services, Planning and Research Unit in May 1991

<sup>3</sup> Submission 33. p.264

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### **4.3 CURRENT SENTENCING OPTIONS PROVIDED IN THE LEGISLATION**

A range of sentencing options which can be applied by the Children's Court is set out in Section 33 of the Children (Criminal Proceeding) Act, 1987. They are listed generally in order of their severity and offer a number of community-based alternatives to custody. Sentences available to a Children's Court include:

- . dismissal of a charge or dismissal with a caution;
- . release on a recognizance (a good behaviour bond) with or without conditions;
- . imposition of a fine;
- . release on a recognizance and impose a fine;
- . release on probation;
- . imposition of a Community Service Order;
- . imposition of a custodial sentence.

Magistrates must have examined the appropriateness of all other sentencing options contained in Section 33 before making an order committing a young person to custody. (S.33(2)).

The Children's Court does not have jurisdiction to determine the final outcomes of serious indictable matters including homicide, certain categories of sexual assault and offences for which the penalty is penal servitude for life or for 25 years.<sup>4</sup> In such cases a higher court will determine the matter.

Like all the sections of the Children (Criminal Proceedings) Act, 1987, Section 33 should be read in conjunction with Section 6. That section provides that:

"A court, in exercising criminal jurisdiction with respect to children, shall have regard to the following principles:

- (a) that children have rights and freedoms before the law equal to those enjoyed by adults and, in particular, a right to be heard, and a right to participate, in the processes that lead to decisions that affect them;

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<sup>4</sup> Children (Criminal Proceedings) Act. section 28



- (b) that children who commit offences bear responsibility for their actions, but, because of their state of dependency and immaturity, require guidance and assistance;
- (c) that it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption;
- (d) that it is desirable, wherever possible to allow a child to reside in his or her home;
- (e) that the penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits an offence of the same kind."

The Children (Detention Centres) Act 1987, makes provision for children in custody to be released on leave under certain conditions including to attend a Community Youth Centre.

A submission provided by the New South Wales Police Service notes that:

"One of the truisms for juvenile justice is that the overwhelming majority of young people generally grow out of crime... while it is acknowledged that there are some very serious offences committed by juveniles, (juvenile crime) is most often minor in nature and quickly passes. Typical of the offences committed by juveniles are offences against public order, street offences and minor dishonesty offences."<sup>5</sup>

When asked a question on the nature of offences most commonly committed by young people, nearly all of our witnesses corroborated this view. A report published by the Judicial Commission of New South Wales stated:

"Around 60% of proven offences involved crimes against property, whereas offences against the person comprised only 15% of the offences. The remaining 25% of offences involved those against good order, driving and drug offences."<sup>6</sup>

The Committee notes these findings and therefore supports the extensive use of community-based sentencing options, particularly for those offenders who do not commit offences that are of a violent nature.

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<sup>5</sup> Submission 30. p.2

<sup>6</sup> Judicial Commission of New South Wales. 1991(b) pp.1-2

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#### 4.4 COMMUNITY - BASED SENTENCING OPTIONS AND ORDERS

##### 4.4.1 Dismissal of Charge or Dismissal with a Caution

A magistrate, upon finding an offence proved, may dismiss the charge or dismiss the charge with a caution should all the circumstances of the matter warrant such an outcome. These options are the most lenient sentences that a court may impose. They are generally used only in matters which are not of a serious nature, where it is the young offender's first offence and where it seems that the young offender is not likely to re-offend.

According to a submission presented to the Committee:

"far too few cautions are administered by the Children's Court..."<sup>7</sup>

Whilst supporting the concept of an extended use of police cautioning (see Chapter Three), the Committee believes that some young offenders, for a number of reasons, may escape the opportunity of a Police Caution or, as discussed by the Committee earlier, participation in a Children's Panel. Magistrates, when sentencing a young offender, should therefore consider in all appropriate matters, the use of the dismissal of the charge or dismissal with a caution option under the legislation.

The Committee recognises that "for those young offenders who appear in court, statistics have consistently indicated that approximately 60% on their first court appearance do not subsequently re-offend".<sup>8</sup> The Committee considers that those young offenders should be kept out of the system as far as possible in order to prevent them becoming entrenched within that system or "contaminated" by contact with serious offenders.

##### Recommendation No. 52:

That when a young person has committed a minor offence and had not been given the opportunity of a Police Caution or the option of attending a Children's Panel, magistrates be encouraged, in all appropriate cases, to use "court dismissals" and "dismissals with a caution" as appropriate measures.

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<sup>7</sup> Submission 52. p.4

<sup>8</sup> Submission 1. p.5

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#### 4.4.2 Release on Recognizance and Release on Probation

A recognizance order is more commonly referred to as a good behaviour bond and can be issued with or without conditions apart from the mandatory one requiring the young person to be of good behaviour for the duration of the bond. Generally speaking, it is the second penalty on the sentence scale. Fifth on that scale is a probation order, which might also be issued with or without conditions. The Committee has heard that, generally, bonds are issued without the condition that the young offender have Departmental supervision, whereas probation orders are issued with such supervision.<sup>9</sup> The maximum period of time under which a young offender is bound by each order is two years.

Should a bond or probation order be breached, such as if the young offender committed further offences whilst still bound by the order, then the Court has the power to re-sentence him or her for the original offence. Since a probation order is higher on the sentencing tariff than a bond, the likelihood of the young offender receiving a custodial sentence because of the breach of that order becomes greater.

Some of the submissions received noted that young offenders in particular, as well as the police and the general community, have some confusion in distinguishing between the significance of the two orders. It has been noted that for many, getting either sentence is like "getting off even if supervision... is ordered."<sup>10</sup>

Moreover, it has been submitted that:

"It is by no means uncommon for a third or fourth offender to advise me that he does not know the name of his supervising FACS officer. This is often the case simply because the relevant juvenile has not been supervised at all, despite a prior order of the Court."<sup>11</sup>

The Committee understands that, in appropriate circumstances, certain young offenders who receive bonds may not need supervision. The Committee has heard that young offenders who receive bonds without supervision are normally those who have committed an offence that is not deemed very serious and/or they have a relatively minor record. However due to say, a prior conviction, or a previous caution, they are not given a further opportunity for that caution. The nature of the offence, together with genuine remorse by the offender and an unlikelihood that further offending will occur, often means that supervision of the order is not required.

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<sup>9</sup> Submission 33. p.270

<sup>10</sup> Submission 52. p.5

<sup>11</sup> Submission 52. p.6

The Committee acknowledges that supervision may only serve to involve these young offenders further into the system and may inappropriately exhaust resources. The Committee considers however, that a number of young offenders require supervision, particularly those who have reached the stage where a probation order is deemed necessary. In order for such a sentence to be effective, that supervision must be applied on a consistent level.

The Committee considers that supervision should have a number of functions: firstly, to remind the offender of his or her actions and force him or her to focus on those actions and the purpose of their penalty; secondly, to attempt to ensure that the offender is not participating in any further criminal activity; and thirdly, to allow the offender the opportunity for rehabilitation, particularly within his or her community.

From the evidence received by the Committee, the Committee notes that much of the confusion surrounding supervised and unsupervised orders and the perceived ineffectiveness of the former, whether in the form of bonds or probation orders may be overcome if further resources were made available to ensure that supervised orders are successful both for the young offender and the community.

A submission received by the Committee maintains that:

"An effective probation service can assist some young offenders. However an adolescent will probably only respond to probation where the staff have the time and training to effectively supervise the probationer. An overworked or uninterested probation system will only reinforce the lack of commitment "the system" gives to young people."<sup>12</sup>

The Committee considers that for a supervised order to be effective, there must be appropriate programs available which the young offender must attend, whether this be in the form of counselling, training courses, or other relevant activities, and reviews of his or her progress must be made by the supervising officer.

The Committee is aware of numerous community and non-government sector organisations that can and often do provide suitable programs for young offenders. The Committee considers that such organisations, where properly assessed, monitored and resourced, should be utilised to assist young offenders and Departmental officers in supervised orders. As it was explained to the Committee:

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<sup>12</sup> Submission 41. p.4

"It is important that Community and Religious organisations for juveniles be adequately funded, supported, monitored and assessed by FACS, so that a comprehensive and co-ordinated support network for juveniles, residential and non-residential, is available for those needing short-term, medium-term or long-term care. There is an enormous amount of goodwill in the community. It should be utilised."<sup>13</sup>

The Committee proposes to deal further with this issue in its recommendations under the Section entitled Supervision of Community-Based Sentencing Orders, Juvenile Justice Community Services and Community Youth Centres.

#### 4.4.3 Fines

A further sentencing option available to a Magistrate is to fine a young offender. Such a fine cannot exceed 10 penalty units, currently \$1000.<sup>14</sup> Where a fine has not been paid within the period specified by the court, the young offender is required to perform community service work.

It has been noted that in recent years the use of fines for young offenders has decreased with the wider use of other community-based sentences.<sup>15</sup> Drawing on the experiences of the then Children's Solicitor, the submission by the Legal Aid Commission of New South Wales observed that:

"Fines are not always the best way of dealing with juveniles, particularly in the current economic climate. I would estimate that at least 90 per-cent of my clients were unemployed and were thus not in a position to pay a fine. This has not necessarily deterred the Magistrate from imposing a fine as such a penalty (with reasonable time to pay) is seen as inducing the juvenile to intensify his/her efforts to get a job. My perceptions are that many juveniles do not pay these fines and eventually content themselves to completing a Community Service Order."<sup>16</sup>

The Committee notes that in many cases where a young offender has a supportive family the fine tends to become, albeit unofficially, its debt. In other circumstances where neither the young offender's family nor the young offender him or herself is able to pay, the debt remains unmet until the young offender, on receipt of a writ, has the debt converted into community service work and performs that work or failing

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<sup>13</sup> Submission 34. p.2

<sup>14</sup> Statute Law (Miscellaneous Provisions) 1991

<sup>15</sup> Submission 33. p.275

<sup>16</sup> Submission 52. p.5

acknowledgment of that writ within seven days, may serve time in custody. The Committee therefore considers that fines can often represent a largely ineffective sentence for the young offender even where he or she is given some time to pay. Unless the young offender is in gainful employment which, under current economic circumstances may be unlikely, then the effect of the penalty is negligible. Indeed, for homeless young people, many of whom come before the courts, the option of a fine as a sentence would be largely ineffectual.

**Recommendation No. 53:**

**That wherever possible, magistrates utilise other community-based alternatives before imposing a fine on a young offender. Before a fine is imposed, magistrates must consider the financial circumstances of the young offender and his or her ability to pay.**

**4.4.4 Community Service Orders**

Community Service Orders are one step down from a custodial sentence on the sentencing tariff. Currently, a young offender cannot be sentenced to more than 100 hours community service. Supervision of Community Service Orders generally rests with Juvenile Justice Officers. The Committee considers that Community Service Orders are a serious sentencing option as they represent the final alternative to a custodial sentence. It notes that the Juvenile Justice Advisory Council is examining issues relating to Community Service Orders.

Evidence submitted to the Committee indicated that Community Service Orders are an effective way of dealing with young offenders. For instance, a submission notes that:

"The juvenile knows that he/she "hasn't gotten off", he/she begins to appreciate the harm caused by their offences and they do not lose contact with their community."<sup>17</sup>

A further submission provided to the Committee noted that:

"Encountering the depression and anger of young people in juvenile detention suggested to us the need for an alternative to detention. Our workplace experience of a Community Service Order was that it was a very successful alternative and mutually rewarding for Streetwise and the young

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<sup>17</sup> Submission 52. p.5

person involved...Our experience with (name) convinced us that appropriate placement of youth offenders on Community Service Orders is an alternative to detention that works."<sup>18</sup>

Moreover, interviews with young offenders by researchers of the Kids in Justice Report indicate that most of them felt that Community Service Orders were worthwhile.<sup>19</sup>

That Report notes further that:

"In January to June 1989, 320 young people were sent to detention centres without ever having been given a Community Service Order. This was 71.4% of all those committed... In the Metropolitan East region, 38.5% of young people committed received a Community Service Order, whereas in the Northern and Western regions only 13.5% and 17.5% respectively had been given this opportunity. Those regions with the least likelihood of a Community Service Order were also the regions with the highest over-representation of Aboriginal young people in detention. The Aboriginal detainees, in September 1989, comprised 50% of detainees from each of these regions."<sup>20</sup>

The Committee has heard that, in some areas the option of a Community Service Order for a young offender is limited by the resources available to Juvenile Justice Officers to adequately supervise such orders. The Committee has moreover heard that some magistrates may not be aware of this alternative as a sentencing option.

Evidence presented to the Committee by specialist Children's Magistrates revealed that the number of hours for Community Service Orders is not enough given that the next sentencing option available to Magistrates is custody. Other witnesses have echoed this view, claiming that there needs to be some option in the case of offenders whose offence and prior convictions warrant more than 100 hours community service work but who should not be given a custodial sentence.

According to a Children's Magistrate:

"They (Community Service Orders) are used as an alternative to institution, that is, the next step, before institution. Touching on that, I can only give 100 hours, which I believe is inadequate, because when they turn 18 they can get 500."<sup>21</sup>

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<sup>18</sup> Submission 55. p.1-2

<sup>19</sup> Submission 33. p.271 (Emphasis added)

<sup>20</sup> Submission 33. p.276

<sup>21</sup> Evidence 10.12.91 p.13

**Recommendation No. 54:**

- That magistrates sitting in Children's Courts utilise the option of Community Service Orders as a genuine alternative to custodial sentences, particularly in areas where incarceration rates are high.

**Recommendation No. 55:**

- That resources be made available and relevant support services able to be drawn upon, to assist Juvenile Justice Officers in all regions to adequately supervise and offer a range of community work, to those young offenders placed on Community Service Orders.

**Recommendation No. 56:**

- That a pilot scheme be introduced for a period of two years whereby the maximum number of hours that a young offender can perform under a Community Service Order is 300 hours. The purpose of the pilot scheme is to assess the feasibility of increasing the number of hours of Community Service Orders as a realistic alternative to custody for serious offenders.

**4.4.5 Supervision of Community-Based Sentencing Orders - Juvenile Justice Community Services and Community Youth Centres**

Supervision of most non-custodial sentencing options lies with Officers of the Office of Juvenile Justice, based at Juvenile Justice Community Services and counsellors from Community Youth Centres. Formerly known as Young Offender Support workers, Juvenile Justice Officers are required to manage a young offender, if so ordered by the court, under a recognizance or probation order. As discussed above, they are required also to supervise a young offender placed on a Community Service Order.

Evidence presented to the Committee revealed that the workload of many Juvenile Justice Officers is very large, which means that effective supervision is often limited. The Committee heard that much of the work of many Juvenile Justice Officers is taken up with the preparation of pre-sentence court reports, which can leave little time for effective supervision.



Discussions with some young offenders on the issue of Juvenile Justice Officers revealed that some saw their particular worker on very few occasions and for a brief time only, during their period of supervision. Other young offenders however, explained that they had regular and worthwhile contact with their Juvenile Justice Officer.

Information presented to the Committee revealed that, where available, many Juvenile Justice Officers tend to draw on the support of community or other non-government organisations to assist in their supervisory role. The purpose of this is to channel the young offender into a program that is suitable to his or her needs and even those of the family, and therefore better equip that young person to fulfil the order to which he or she was originally sentenced. Evidence presented however, shows that in many instances, the availability of appropriate services is very limited. The Committee heard that this is particularly so in relation to suitable drug and alcohol programs and appropriate residential facilities. Country areas, it would seem, are very disadvantaged in relation to the availability of services for young offenders.

According to one Children's Magistrate who indicated that the biggest drug problem in her catchment area was heroin:

"...I have few supports in relation to proper counselling and treatment for children on drugs."<sup>22</sup>

The Committee notes that:

"Work with young people themselves in helping them to adjust where appropriate, or to find alternatives when necessary is...critical. None of this can be achieved without an adequately resourced and trained diversionary and probation network."<sup>23</sup>

Community Youth Centres were set up in 1977, by the then Department of Youth and Community Services, as a means of diverting young offenders from incarceration. As a witness before the Committee, John Howard, explained:

"These were to be a direct alternative to residential training for sentenced young people, committed young people, those who are now called committed to control. The idea was that some of them might do better under very intensive supervision within the community rather than spending all of their time within a training school."<sup>24</sup>

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<sup>22</sup> Evidence 10.12.91 p.13

<sup>23</sup> Submission 33. p.291

<sup>24</sup> Evidence 4.4.91 p.9

Currently, young offenders, if assessed as being suitable, may be sentenced to a period of probation under the supervision of a Community Youth Centre, or a magistrate may order that following a period in custody they might be released under that same supervision.<sup>25</sup>

There are at present three Community Youth Centres operating fully in New South Wales, all in the Sydney metropolitan area. They are situated at Stanmore, Liverpool and Blacktown. The Committee understands that the Office of Juvenile Justice is establishing Community Youth Centres in Newcastle and Wollongong, positions for which have already been advertised. The Committee commends the Office of Juvenile Justice for the establishment of Community Youth Centres outside the Sydney area and considers that this initiative be expanded to more country areas.

Community Youth Centres are staffed primarily by psychologists and social workers. Their tasks include preparing court reports to assess the suitability of a young offender joining their program, family, personal and drug and alcohol counselling; and the supervision of a young offender referred to a Community Youth Centre during the period of his or her sentence. Inevitably, there is liaison with Juvenile Justice Officers who often refer young people under their supervision to Community Youth Centres for specific counselling.

During the course of the Inquiry the Committee visited Stanmore Community Youth Centre and spoke with the Co-ordinator there. It was clear from our discussions that Community Youth Centres often take on the most "difficult" young offenders in the system, including those whose background has included sexual abuse and a drug and/or alcohol dependency. The goal of counselling is to assist these young people to reintegrate successfully into the community.

According to a submission:

"Some offenders need to be detained for their own safety as well as the community's, but for most young offenders alternatives which will provide them with the opportunity to confront their behaviour must be more appropriate. The experience of the Community Youth Centres... shows that where young offenders are obliged to undertake counselling wherein they confront their relationships with family, peers, authority and, most importantly themselves, their likelihood of re-offending decreases."<sup>26</sup>

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<sup>25</sup> Submission 33. p.12

<sup>26</sup> Submission 41. p.4

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Consistent with evidence received, the Committee considers that Community Youth Centre supervision of a young offender is an effective community-based alternative to the care and management of particular young offenders. The Committee has noted, however, that many country areas are disadvantaged in this regard, as they do not have Community Youth Centres operating in their regions. It has been put to the Committee that this can be prejudicial to a young offender facing sentence and may even result in him or her receiving a custodial sentence because there is no other alternative for a magistrate.

**Recommendation No. 57:**

• That where supervision of a community-based sentencing option is ordered by a magistrate, that supervision should be consistent, and relevant to the circumstances and needs of the offender.

**Recommendation No. 58:**

• That resources be available to ensure that Juvenile Justice Community Services can provide consistent and relevant supervision for all young offenders throughout New South Wales, subject to a supervised order, including a recognizance and probation order.

**Recommendation No. 59:**

• That Community Youth Centres be expanded to cover further Juvenile Justice Office Regions, particularly country regions.

**Recommendation No. 60:**

• That in order for Juvenile Justice Officers and Community Youth Centres to adequately supervise a young offender, a wide range of suitable programs must be available within the community from which they can draw assistance. Those community organisations offering relevant services, should be provided with adequate government funding so that co-operative service delivery between the government and the non-government sector can be fostered.

#### 4.4.6 Compensation

The Committee notes that a court may order a young offender to pay compensation in respect of an offence, on top of any other sentence he or she may receive. The Committee recognises that compensation can, in certain instances, be an effective means of reimbursing the victim for any loss or damage that he or she may have suffered as a result of the offence. It considers however, that where a young offender cannot reasonably be expected to comply with the order, a compensation order may as it directly impacts on a victim, be inappropriate.

As indicated by the legislation, the Committee considers that in exercising their discretion to make a compensation order, courts must always consider whether or not a young offender could be reasonably expected to comply with that order.

The Committee understands also that, under the Victims Compensation Act, 1987, young offenders convicted of an offence to which a custodial sentence can attach, are liable to pay to the Crown a levy of \$20.00 should the matter be dealt with in the Children's Courts or \$50.00 if the matter is dealt with in a higher court. That levy is payable irrespective of whether the young offender is ultimately given a custodial sentence. The levy is in respect of each conviction, so that where a young offender is convicted of more than one offence, he or she is liable to pay the specified sum for each offence. The Committee notes that many of the offences for which young offenders may be convicted, including those under the Crimes Act and under the Summary Offences Act, can carry a custodial sentence as punishment.

Based on much of the evidence received in relation to young offenders, the Committee considers that for many, the ability to pay the levy would be limited. Whilst the Committee acknowledges that some young offenders may be in a position to pay the levy many other young offenders are unemployed, homeless or have no access to an income; others may not be able to rely on the financial assistance of family members. For those young offenders convicted of a number of offences, payment of a multiple levy could be particularly difficult. The Act makes provision for the imposition of Community Service Orders on persons who fail to pay compensation levies; this may be seen as a double sentence for a young person unable to pay the levy. Where the Community Service Order is not fulfilled, the young person may have to pay off the debt by way of detention. The Committee notes also, that the processing of these procedures could be costly.

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**Recommendation No. 61:**

That the Attorney-General's Department examine the applicability of the Victims Compensation Act to young offenders in regard to the payment of compensation levies. As part of that examination the Attorney-General's Department should assess the ability of most young offenders, convicted of an offence, to pay the levy.

**4.5 CONDITIONS ATTACHING TO ORDERS****4.5.1 Background**

In respect of a recognizance or a probation order a magistrate may attach conditions to which the young person must comply for the duration of the principal order. The discretion is provided for in the Regulations to the Children (Criminal Proceedings) Act. Conditions under the Regulations can include conditions:

- (a) requiring the child to attend school regularly;
- (b) relating to the child's employment;
- (c) aimed at preventing the child from committing further offences;
- (d) relating to the child's place of residence;
- (e) requiring the child to undergo counselling or medical treatment;
- (f) limiting or prohibiting the child from associating with specified persons;
- (g) limiting or prohibiting the child from frequenting specified premises;
- (h) requiring the child to comply with the directions of a specified person in relation to any matter referred to in paragraph (a)-(g); and
- (i) relating to such other matters as the court considers appropriate in relation to the child.

Often, conditions are recommended in court reports prepared by Juvenile Justice Officers or Community Youth Centre workers or they can be ordered at the initiative of the magistrate. The issue of conditions attaching to orders in relation to bail, is discussed in Chapter Three of the Report.

One rationale for giving magistrates a discretion to make alternative conditions means that they can adjust the penalty to the particular circumstances of the young offender. An example of this was presented in evidence to the Committee. A young woman who had been institutionalised over a lengthy period of time was, as a condition of her probation order, required to reside with a person who would become a kind of foster parent. The foster parent had met the young woman, in Minda. According to his evidence, prior to becoming the young woman's foster father he had had no experience in caring for young offenders, or young people with severe emotional difficulties. The decision by the Court to place her in his care represented a very creative determination by the magistrate, which in the long term has had very positive results.

Further evidence presented to the Committee however, has indicated that certain conditions which may attach to orders may serve only to set the young offender up to fail by being totally unrealistic and harsh. Whilst evidence presented to the Committee shows that unreasonable conditions more often attach to bail orders, it has heard also that in some instances, such conditions may apply to sentences.

Failure to observe the conditions set can result in a breach of the probation or the bond which can in turn lead to the young person being brought before the court and being dealt with again for the original offence as well as the breach.

Whilst supporting the notion that certain conditions need to be somewhat flexible, in order that the particular circumstances of the young offender are taken into account, the Committee believes that Magistrates should avoid any condition that is unreasonable or unrealistic.

**Recommendation No. 62:**

**That magistrates be provided with training as to appropriate conditions that they can attach to an order. When sentencing, a magistrate must demonstrate an awareness and understanding of the circumstances of the young offender, including his or her ability to comply with conditions before any conditions are applied. (See also Recommendation No. 73)**

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## 4.6 DETENTION AND SECURE CARE

### 4.6.1 Background

Available statistics provided by the Office of Juvenile Justice show that as at December 1991, of some 415 young people in Juvenile Justice Centres, including remanded and committed young people, 387 were male and 28 female. Of those young people 66 were from a non-English speaking background and 99 were Aboriginal. The Committee notes that currently in Victoria 144 young people between the ages of 10 and 17 years are held in secure care.<sup>27</sup>

Young offenders and young people on remand are detained in the following Juvenile Justice Centres:

- . Minda, at Lidcombe, Sydney
- . Yasmar, at Haberfield, Sydney
- . Reiby, at Campbelltown, Sydney
- . Cobham, at St Marys, Sydney
- . Keelong, at Unanderra
- . Riverina, at Wagga Wagga
- . Worimi, at Broadmeadow
- . Mt Penang, at Kariong
- . Kariong, at Kariong.

Young offenders may, in certain circumstances be transferred to prisons. The Committee does not support the placing of any young person in adult correctional facilities, except in the most extreme circumstances such as when that person is a real threat to the safety of other detainees, youth workers or him or herself. Should a young person be transferred from a Juvenile Justice Centre to a prison there needs to be a weekly review of the situation by both the Department of Corrective Services and the Office of Juvenile Justice, with a view to having that young person returned to a Juvenile Justice Centre as soon as practicable.

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<sup>27</sup> Discussion, Victorian Department of Community Services, 24.4.92

The Committee considers that a young offender who is transferred to a prison should not be detained with the adult inmates. It recognises however, that the issue of a young person's isolation may arise should he or she be detained alone. Therefore, should a young offender be placed alone in an adult correctional facility, staff must ensure that he or she has appropriate contacts, including regular visits, and be provided with adequate programs and counselling.

Most of the Juvenile Justice Centres detain young males; Reiby however, detains both boys and girls. The Committee has heard that, at times, girls on remand are detained in other Juvenile Justice Centres.

The Committee recommends that only in the most pressing circumstances, and when all other alternatives are exhausted should girls be detained in Centres which specifically cater for boys, and that should this ever arise that they be appropriately separated from the boys.

Historically, most of the relevant Department's budget has been spent on detention centres. Currently, the Office of Juvenile Justice's budget for Juvenile Justice Centres is approximately \$26,856,637; for community-based sentencing the budget is \$7,334,462.<sup>28</sup>

Evidence taken by the Committee, shows that incarceration is, for some offenders, the only practical option. Such evidence revealed also that those young offenders who represent a very real threat to the community and themselves, through their acts of violence, are only a comparatively small number, in relation to the juvenile offender population.

In his evidence, clinical psychologist John Howard explained that of the then 386 male juvenile detainees, (out of the 413 then in custody):

"27.5% would be regarded as being in custody for serious offences according to the Department's classification... and they are homicide, armed robbery, sexual assaults and grievous assaults. 50.8% of those young people are in custody for what would be regarded as property offences - break, enter and steal, steal motor vehicle and other property offences. 11% are in for good order offences which include traffic, driving and railway offences. That seems an expensive use of custody. So **72.5% of the young people at the moment are detained for offences that don't fit into the most serious category.**"<sup>29</sup>

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<sup>28</sup> Submission 86.

<sup>29</sup> Evidence 4.4.91 p.3 (Emphasis added)

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Throughout the course of the Inquiry, the Committee undertook visits to Mt Penang, Minda, Cobham and Reiby Juvenile Justice Centres. Members of staff also visited Yasmar Juvenile Justice Centre. A number of striking features were common to each Juvenile Justice Centre. These included the:

- . high rates of recidivism among those in custody;
- . high incidence of drug and alcohol dependency;
- . high incidence of learning difficulties;
- . limited follow-up and post release supervision;
- . over-representation of Aboriginal young people in custody;
- . particular problems faced by many girls who are placed in custody; and
- . significant number of rural young people in metropolitan custodial centres.

Some of these issues are examined in greater detail, throughout other sections of the Report, particularly in Chapter Six on the adequacy of services in the Juvenile Justice System. At this stage however, the Committee proposes to make some observations in relation to the issue of recidivism which it believes impacts also, on some of the other points raised above and that are dealt with further in other sections of the Report.

The recidivism rates among young offenders in custody is consistently high in all Juvenile Justice Centres visited. The Committee was told that in some Juvenile Justice Centres it was as high as two-thirds. Most of the young people with whom the Committee and staff spoke had been incarcerated on a previous occasion. This was confirmed by many of the workers also. From the evidence received the Committee believes that a number of factors may contribute to young offenders re-offending once released from custody.

For many young offenders, incarceration does not act as an appropriate deterrent to criminal activity. It would seem that many young offenders released from custody are not adequately equipped to successfully re-integrate into the community upon their release. Indeed, for some, custody merely confirms their criminal activity.

The Kids in Justice Report, in quoting from the (then) Department of Family and Community Services submission to the special hearing of the Royal Commission into Aboriginal Deaths in Custody, states that:

"Some of the findings of this research carried out on the effects of institutionalisation can be summarised as follows:

- . There is greater recidivism of comparable offenders after institutionalisation than after probation;
- . Institutionalised young offenders committed more car thefts and break enter and steals after release than did probationers after completion of their orders;
- . Recidivists who had been institutionalised committed more assaults, more malicious damage than those placed on probation;
- . Remand in custody increases the likelihood of recidivism (a study of comparable offenders showed that 64% of remandees in custody re-offended whilst only 30% of home remandees re-offended).<sup>30</sup>

The Committee heard that for some young offenders, custody was the only secure and safe environment that they had known for some time, a factor due mainly to abusive or disruptive family lives or a lack of appropriate accommodation. The Committee heard that a not uncommon instance was for a young person to abscond from custody or commit an offence whilst in custody but just prior to release. The Committee was told that underlying these actions was a fear of returning to the "outside", because of a lack of support or dysfunctional home environment.

It is anticipated that relevant recommendations throughout the Report, including those relating to the use of community-based sentencing options, drug and alcohol issues, education issues, and post-release follow-up and supervision, to name but a few, may go some way to address the problems of recidivism among young offenders, particularly those in Juvenile Justice Centres.

At this point, the Committee proposes to make a recommendation in relation to Juvenile Justice Centres, generally.

**Recommendation No. 63:**

- . **That all Juvenile Justice Centres, as well as providing secure care for young offenders, must be humane in their treatment of young offenders and their practices and programs must reflect a commitment to the rehabilitation of those young offenders.**

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<sup>30</sup> Submission 33. p.296 (citing a NSW Department of Family and Community Services submission to the Royal Commission into Aboriginal Deaths in Custody)

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#### 4.7 THE SENTENCING ACT

The Sentencing Act came into effect in 1989 and applies to adults and juveniles alike who are convicted of a criminal offence and given a custodial sentence. Under the Sentencing Act persons sentenced to prison or a Juvenile Justice Centre can no longer be granted remissions or be released from custody "well before the expiration of their sentences".<sup>31</sup> The aim of the legislation was to ensure that there was truth in sentencing by providing inmates and the community alike with what was felt to be, a more accurate indication of the amount of time an offender might spend in custody.

The Act makes it mandatory for Judges and Magistrates to set a minimum term which must be served by an offender. For sentences six months or over, an additional term can be set which an offender may serve as parole. That additional term must not exceed one-third of the minimum term. All sentences under six months are for fixed terms and must be served in full.

The Committee has received evidence from a number of people in relation to the applicability of the Sentencing Act to young offenders. The Committee has heard that most young offenders who are committed to an institution receive sentences that are less than six months. Consequently, they are not eligible for the additional term of parole and therefore are denied any benefit of post-release supervision. The Judicial Commission of New South Wales report, entitled "Sentencing Juvenile Offenders and the Sentencing Act, 1989 (New South Wales)" stated the following:

"Before the change in legislation, almost 64% of sentences for juvenile offenders contained a period of probation. Under the Sentencing Act only 8% of custodial sentences included an additional term, and therefore, an option for post-release supervision... In fact, as less than 17% of post-SA sentences ordered by the Children's Court are for terms of more than six months, the great majority of juvenile offenders simply do not qualify for release to probation supervision."<sup>32</sup>

The Committee has noted throughout the Report its concern in relation to the limited supervision that a young offender can receive once released from custody. The Committee believes that for young offenders especially, rehabilitation is a fundamental component to any sentence they receive. It considers that effective rehabilitation for a detained young offender can be gained through adequate supervision preferably, within the offender's community once he or she is released.

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<sup>31</sup> Judicial Commission of New South Wales. 1991(a) p.5

<sup>32</sup> Judicial Commission of New South Wales. 1991(a) pp.21-22

The Committee notes that under the Sentencing Act, "the court may legitimately take into account the youth and special needs of juvenile offenders. In turn, this provides the court with the option of specifying a period of parole in excess of the mandated one third of the minimum term."<sup>33</sup> The Committee has heard however, that Children's Courts may not be effectively utilising this option as many young people continue to be released from custody without any or appropriate and effective post-release supervision.

**Recommendation No. 64:**

**That the Attorney-General's Department, the Department of Courts Administration, and the Office of Juvenile Justice examine, as a matter of urgency, the operation of the Sentencing Act in relation to young offenders, particularly as that Act impacts upon post-release supervision and follow-up.**

**See also Dissenting Opinion.**

Further evidence received by the Committee relates to the appropriateness of remissions for young offenders. The Committee has heard that young people respond effectively to rewards and that in certain instances remissions can act as an effective form of behaviour modification for young people in custody. The Committee has heard that earning remissions can give a young offender a sense of purpose in custody. It has heard also, that enabling a young offender to earn remissions may go some way to reduce the numbers of young people in custody.

**Recommendation No. 65:**

**That as well as examining the issue of post-release supervision the relevant Departments noted in Recommendation No. 64, examine the establishment of a system that allows young offenders who are incarcerated to earn remissions for good behaviour.**

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<sup>33</sup> Cain. 1991 p.45

## **4.8 SENTENCING AIDS AND ALTERNATIVES**

### **4.8.1 Background**

Evidence has been heard by the Committee of the use of sentencing aids and alternatives not specifically covered in Section 33 of the Children (Criminal Proceedings) Act. Evidence presented to the Committee on this issue has been in relation to Community Aid Panels, Periodic Detention and the potential use of a system of Home Detention. The Committee was also briefed in relation to the Intensive Neighbourhood Care program and the Intensive Personal Supervision scheme operating in South Australia. Discussion of the Intensive Neighbourhood Care program can be found in Chapter Six.

The Committee notes that some magistrates have utilised a scheme entitled the Railway Reparation Scheme when sentencing certain young offenders. It has noted also that use can be made of "Griffith Remands or Griffith Bonds". As limited evidence has been received on these alternatives apart from the relevance of "Griffith Remands" to Community Aid Panels, the Committee feels it is inappropriate to comment on these alternatives.

The Committee's evidence has shown that Community Aid Panels are considered in relation to first offenders and offenders who have not committed a serious offence. Whilst a Magistrate determines final sentence of a young offender referred to a Community Aid Panel, the panel can aid in the sentencing decision.

It has been submitted that home and periodic detention (although currently not in use) are options that would be considered when all other community-based sentencing options have been exhausted in relation to a young offender who may be facing a full custodial sentence.

During the visit of a sub-Committee to New Zealand Members heard also of the use of Family Group Conferences which can be used as an alternative to court, and which after a process of consultation with the young offender, his or her family, the victim and a Youth Justice Coordinator, reach "outcomes" in relation to the young offender. Options can include a warning, an apology, community work, and financial compensation, as well as education, training and work plans. Sentences ordered by Judges sitting in New Zealand's Youth Courts, who deal also with defended matters are similar to those that can be given by New South Wales Children's Magistrates. The Committee has outlined the issue of Family Group Conferences in more detail in the Chapter on Court Diversion Schemes.

#### 4.8.2 Community Aid Panels

In certain areas of Sydney and rural New South Wales, magistrates are referring some young offenders to Community Aid Panels. According to a primary architect of the panel scheme, Senior Constable Paul Dixon:

"In the later part of 1987 an alternative to existing sentencing options was commenced at Wyong by local Magistrate, Mr Errol Considine, and co-ordinated by Senior Constable Paul Dixon of Wyong Police."<sup>34</sup>

Community Aid Panels later spread to other areas of New South Wales. Community Aid Panels are co-ordinated through the New South Wales Police Service. The Committee understands that Community Aid Panels are available to adult offenders also.

Members of panels can include police officers, local solicitors and members of a local community, all of whom provide their services on a voluntary basis. As a submission received by the Committee explains:

"Community Aid Panels emphasise community involvement as well as a chance for the offenders to make amends for the offence. They examine the effect of the offence on the welfare of the victim as well as attempting to determine the causes for the offender's behaviour."<sup>35</sup>

The Committee understands that, as at 25 March 1992, approximately 55 panels were operating throughout New South Wales.<sup>36</sup>

During the course of the Inquiry the Committee visited Wyong and Woolloomooloo Community Aid Panels, where Members had the opportunity to observe the panels in operation. The Committee has spoken also with people directly involved with the panels as well as seeking the views of members of the bench, solicitors, community workers and members of different communities, including members of the Aboriginal community. It has examined also some evaluations of their operation. The Committee has looked at the evaluations undertaken for the New South Wales Police Service and for the then Department of Family and Community Services, both of which have specifically examined the Wyong Community Aid Panel.

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<sup>34</sup> Submission 7. p.1

<sup>35</sup> Submission 64. p.1

<sup>36</sup> New South Wales Police Service. 1992 p.1

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Community Aid Panels are available to first or minor offenders. The young person must plead guilty to the offence and, presumably after being explained the nature of Community Aid Panels by his or her solicitor, volunteer or consent to attend a Community Aid Panel, before a magistrate can make such a referral. The matter is then adjourned for approximately three months, or a young person may be placed on a "Griffith Remand", during which time the young person attends a panel, where he or she is usually given a number of hours of community work to perform as recompense for the offence.<sup>37</sup> Matters taken into account by panel members include the nature of the offence and the personal circumstances and background of the young offender.

When the young person returns to court his or her performance at the Community Aid Panel is assessed and the magistrate then passes sentence. The Committee has been told that generally, where the community work has been assessed as being satisfactory, that sentence is often a dismissal of the charge or a dismissal with a caution as provided by Section 33(1)(a). It has been suggested that instances may arise where young offenders who go before the panel may later receive a good behaviour bond.<sup>38</sup>

The Committee was told in evidence that at Parramatta a scheme is being piloted that does not require a young offender to return to court the second time should he or she complete the community work suggested by the panel. A letter is sent to the court, to be placed on the young offender's file confirming completion of the work.<sup>39</sup>

On its visits to Community Aid Panels, Committee Members were impressed by the commitment, enthusiasm and genuine interest in the young offender of all those involved. It was noted that many of the volunteers had been participating in the panel work for some time. Discussions take place between panel members and the young offender to determine why the offence was committed and what an appropriate outcome might be. Panel members may moreover attempt to isolate any deeper problems which the young offender may be experiencing and which may have contributed to the offending behaviour. According to Panel Co-ordinator Paul Dixon, who was instrumental in establishing the Community Aid Panel at Wyong:

"... (one of the) positive factors influencing the program in the Wyong area is that ... personal difficulties experienced by offenders which may have led to the offence, are highlighted in the panel interview and appropriate support given, e.g. drug and alcohol counselling, adolescent and family counselling, homeless and potentially homeless counselling."<sup>40</sup>

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<sup>37</sup> Submission 7. p.3

<sup>38</sup> Evidence 4.2.92.

<sup>39</sup> Evidence 2.12.91 p.8

<sup>40</sup> Submission 7. pp.1-3

Information presented to the Committee notes that participation by a young offender in a panel and his or her involvement in community work may allow some offenders to become more aware of the consequences of their actions by performing work that will benefit the community. Examples from Wyong have been given to the Committee of young people who have themselves benefited from particular work undertaken as part of the decision of that Community Aid Panel, in terms of enhancing their self-esteem as well as in some instances, gaining employment.

The Committee has been told also, that as well as potentially benefiting a young offender, a panel can also be advantageous to the community from which it operates. For instance, in relation to the Wyong Community Aid Panel it has been stated that:

".... (the panel) involves the community in the justice system (and) the community is able to be served by the voluntary community involvement of the offenders." <sup>41</sup>

Some evidence presented to the Committee has indicated that an option panels may exercise in consultation with the young offenders is the payment of compensation to the victim for any damage or loss that may have been caused by the offence. A submission notes that victims themselves may also be involved in the panel program.<sup>42</sup>

Information presented to the Committee, regarding the panels that Members have visited, indicated that relationships between young offenders and police may be enhanced by the use of Community Aid Panels.

Further information obtained by the Committee indicates, that in Wyong for instance:

"Police and the legal profession are participating in a system which helps people to rehabilitate rather than seeing them as merely offenders...It gives the Local Court Magistrate another option when dealing with offenders (normally first offenders)...It is a logical extension of the Community Based Policing Concept...It provides an opportunity for the family and/or friends to give support to the offender in a positive way...It brings the police and community closer together..."<sup>43</sup>

Evidence presented to the Committee has indicated that the informal operation of Community Aid Panels and their lack of a legislative base limits a panel's accountability. As the Committee noted above, approximately 55 panels are currently operating

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<sup>41</sup> Submission 7. p.3

<sup>42</sup> Submission 7. p.3

<sup>43</sup> New South Wales Police Service. 1989 pp.7-8

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throughout New South Wales. It has been pointed out to the Committee from a number of sources, that as there is no statutory base from which to operate, the potential arises for the practices of panels to go unchecked and for possible inconsistencies to arise in the outcomes of different panels.

As noted in Chapter Three dealing with Court Diversion Schemes, the Committee strongly supports the use of police cautioning as an effective court diversion scheme for appropriate young offenders. The Committee has been given some information that suggests that Community Aid Panels may operate at the expense of cautioning and thereby have a "netwidening" effect. According to a witness before the Committee:

"The aim of diversion schemes is that the young person would have the least possible intervention provided by juvenile justice authorities. The existence of community aid panels in fact sometimes means that a young person, who by reason of their offence or previous record, would otherwise have been cautioned or dealt with in some other informal way is brought to court simply because that panel exists."<sup>44</sup>

It has been submitted to the Committee that the type and amount of work that panels may require a young person to perform are akin to a Community Service Order, which is the last penalty on the sentencing options for magistrates before a custodial sentence can be imposed. It has been suggested that this, as such, is an inappropriate outcome for a first and/or minor offender.

As noted above, the Committee understands that a panel scheme operating at Parramatta, does not require an offender to reappear in court, having completed an option with the Community Aid Panel. The Committee has been told that the requirement of other schemes throughout New South Wales, that an offender return to court after participation in the panel, may only serve to enmesh the young offender further in the system. According to a witness who gave evidence before the Committee:

"I have concerns about children having to appear before court, plead guilty, go to a panel, abide by guidelines set by the panel for them, and then return to court and then face the penalty of the court....(I) think that it is involving the young person far too much into the system and I think it could be seen by young people as being a double penalty, to volunteer to go to a Community Aid Panel, then to have to reappear back in court to justify their actions taken as a result of what the Community Aid Panel has directed them to do."<sup>45</sup>

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<sup>44</sup> Evidence 29.1.92 p.13

<sup>45</sup> Evidence 7.2.92 pp.20-21

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Another witness commented in evidence:

"I have reservations. Some work better than others. I think it is the structure of the panel that you have to be wary of. I don't have them in my area, not from any choice of my own, they just haven't occurred. We find that quite often when the matter comes back before the magistrate the panels have been more severe than the magistrate would have been. I don't know if that is a good thing or a bad thing, but you have to watch the structure of your panel."<sup>46</sup>

Many witnesses who gave evidence before the Committee commented on the need for guidelines to be established as to what options a panel might reasonably apply, especially in relation to community work, where discrepancies in the number of hours given arise.

As well as listing the positive factors of the panel at Wyong, the report prepared for the New South Wales Police Service notes that there are some negative factors also, that were seen to exist by "some police officers and officers of the (then) Department of Family and Community Services."<sup>47</sup>

Some of those are consistent with the evidence noted above. Others include that:

"... the program usurps the authority of the Magistrate... The referral of a consenting juvenile volunteer to the panel together with the relevant facts of the offence appears to constitute prima facie an offence under Section 11 (3) of the Children (Criminal Proceedings) Act, 1987, which prohibits the publication or broadcasting of the name of any child involved in criminal proceedings (Section 11(1)(b) and (c)). The added expense to the Police Department of having police officers process each juvenile offender, that is, fingerprinting etc, when a caution would have sufficed... Some offenders may be using the panel as a vehicle for overcoming his or her (sic) immediate problem and has no intention of mending his or her (sic) ways and therefore comes away without any punishment."<sup>48</sup>

The Committee supports the idea of community involvement in the area of finding solutions to the problem of juvenile offending. However, it is mindful that with such involvement there should be a consistency among community responses to juvenile offending. In this regard, it notes that there may be a risk that some panels, without adequate guidelines may impose outcomes that are inconsistent with those that under

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<sup>46</sup> Evidence 10.12.92 p.10

<sup>47</sup> New South Wales Police Service. 1989 p.8

<sup>48</sup> New South Wales Police Service. 1989 p.9

similar circumstances may be imposed by the courts. The Committee notes also that some panels, without such guidelines, may deliver outcomes that exceed Community Service Orders given by a magistrate in sentencing a young offender or even the number of hours prescribed by the legislation.

Consistent with the Committee's recommendations made in Chapter Three dealing with Court Diversion Schemes, the Committee strongly supports the use of police cautioning as a response to first and/or minor offenders. As the Committee noted also in that Chapter, it considers that young offenders should be diverted from the system, including the court system, as much as possible.

In Chapter Three, the Committee recommended a Children's Panel to operate as a court diversion option rather than a post-court scheme. The Committee considers that whilst the alternative panel model is being piloted, operation of the current Community Aid Panels should be subject to guidelines to ensure accountability, and that further Community Aid Panels not be established to ensure that the pilot scheme may have an opportunity to run in parallel, rather than overlap the Community Aid Panels. In relation to the guidelines, the Committee considers further that there be a requirement included that insurance policies be taken out by Community Aid Panels in case a young offender injure him or herself whilst participating in the panel program.

It is anticipated that Community Aid Panels, as they operate in relation to juveniles will subsequently evolve into Children's Panels. Whilst maintaining the involvement of community representatives, the co-ordination of options for young offenders at this level would then shift to the Office of Juvenile Justice. Active police participation will be a crucial element of the Children's Panel as their role as the major referring agent to that Panel is fundamental to its successful operation.

**Recommendation No. 66:**

- **That during the period of operation of the pilot scheme of the Children's Panel, there should be no further Community Aid Panels established.**

**Recommendation No. 67:**

- **That during the period of the operation of the pilot scheme of the Children's Panel, Community Aid Panels should be subject to guidelines to ensure accountability. Such guidelines should include:**

- . That a ceiling be placed on the number of hours of community work that the young offender should perform; where a young offender wishes to continue such work or continue participation in a program, this should not affect any final sentencing outcome;
- . That any option imposed should be in proportion with the offence committed;
- . That any community organisation to which the young person is referred by the Community Aid Panel consents to that person participating in work or activities there;
- . That a monitoring scheme be established to ensure that there is a consistency among the options being issued from different Community Aid Panels;
- . That Community Aid Panels are covered by insurance in the event of a young offender being injured in the course of his or her participation in a Community Aid Panel program;
- . That Community Aid Panels must not be used as an alternative to police cautioning.

**See also Dissenting Opinion.**

#### **4.8.3 Home Detention and Periodic Detention**

Some evidence was presented to the Committee in relation to a system of Home Detention and Periodic Detention being established as an alternative sentencing option. It has been suggested that some young offenders, whilst not requiring a full custodial sentence need some restrictions on their liberty. It has further been proposed that other young offenders, such as those released from a Juvenile Justice Centre to a Community Youth Centre, may need further restrictions, such as not being allowed out at night, but being allowed to attend school, employment or any counselling.

The Committee notes that home detention may assist some young offenders to remain with their families or other support networks. However, as the Committee's research has shown, many young offenders come from backgrounds of abuse or disadvantage and many also have no permanent place of abode. For such young people, the option of home detention would be inappropriate.

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A further alternative sentencing option put forth to the Committee is periodic detention or weekend detention. Currently, provision is made for such detention under the Children (Detention Centres) Act. However, it applies only to young offenders who have been sentenced to a custodial sentence but may later be released to undertake periodic detention. The Committee has been told by the Office of Juvenile Justice that it is rarely if at all used because of limited appropriate facilities available to detain young offenders.

Suggestions put to the Committee in relation to periodic detention see them as a complete alternative to full-time custody. According to some proponents of periodic or weekend detention, that option is a better deterrent than say a 12 month custodial sentence.

Whilst the Committee accepts that periodic or weekend detention may offer an alternative to the full-time detainment of a young offender, it believes that a number of factors would have to be considered before such an alternative is implemented. These include:

- . introducing appropriate programs to ensure that the periodic detention has a proper rehabilitative component;
- . establishing appropriate facilities for detainees. Currently, there are no facilities other than the main Juvenile Justice Centres to accommodate periodic detainees and the Committee strongly opposes mixing such detainees with more "hardened" or "sophisticated" young offenders. Although in some Juvenile Justice Centres where the design permits, separate sections could be used for periodic detention;
- . ensuring that young offenders from rural areas are not disadvantaged by the distance of the periodic detention facilities from their communities; and
- . ensuring that young people from disadvantaged areas or backgrounds are not disadvantaged by the use of periodic detention. In this regard, the Committee is mindful that young people themselves would no doubt have to be responsible for turning up to the facility to serve their sentence. This may pose difficulties for young people without a stable income or family support, and especially for young homeless people.

#### **4.8.4 Intensive Personal Supervision**

While in South Australia the Committee learnt of the Intensive Personalised Supervision program. Under that program, a young offender can request a member of the community to act as a mentor for a specified time. Alternatively, the Department might appoint a mentor for that young offender. The Committee heard that the program is a "court option". The mentor, who is paid a sum of money for his or her time, acts as a kind of

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role model for the young offender, assists him or her with homework, plays sport with the young person and takes him or her on outings. Information given by representatives of the Department for Family and Community Services in South Australia showed that the Intensive Personal Supervision program can be a successful service for some young offenders. From the information received, the Committee was very impressed with the Intensive Personal Supervision program.

The Committee has heard that many young offenders have never had a positive role model in their lives. It therefore considers that such a program may indeed be beneficial to some young offenders. It also sees merit in the program being developed for young people at risk.

The Committee notes that in some cases, programs operating in one jurisdiction may not necessarily be effective in another jurisdiction. It therefore considers that any such program should first be subject to a trial and then evaluated to determine its effectiveness.

**Recommendation No. 68:**

- **That a trial of a program of Intensive Personal Supervision be implemented for a 12 month period and then be subject to an evaluation.**

**Recommendation No. 69:**

- **That the Intensive Personal Supervision program be co-ordinated by the Office of Juvenile Justice which would draw on the support of members of the community as appropriate and who would properly monitor the progress of the young offender with his or her "mentor".**

**Recommendation No. 70:**

- **That adequate guidelines be drawn to ensure the proper accountability of all those involved in the Intensive Personal Supervision program.**

**Recommendation No. 71:**

- **That any reasonable costs the "mentor" might incur in his or her role with the young offender under the Intensive Personal Supervision program should be met by the Office of Juvenile Justice.**

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#### 4.9 PATTERNS OF SENTENCING

The issue of the sentencing patterns of magistrates presiding over Children's Courts has been raised a number of times throughout the Inquiry. This issue has been highlighted, in particular, in relation to young Aboriginal offenders. It is proposed at this stage to deal only with the matter generally; the Committee will deal with this issue as it relates specifically to young Aboriginal people in that part of the Report dealing with such young people and the Juvenile Justice System.

Common to the evidence presented to the Committee in relation to sentencing patterns, is that differences can arise between orders of specialist Children's Magistrates and those given by general or non-specialist magistrates. Since most specialist Children's Magistrates are based in the metropolitan region, the risk of discrepancies in sentences between country and city courts is very real and actual discrepancies in sentencing patterns support the Committee's concern.

From discussions between Committee Members and Children's Magistrates from two Children's Courts in Sydney, the Committee learnt that some non-specialist magistrates treat young people as "an insignificant part of their day", whereas others treat them as adults and therefore issue very harsh penalties. Where a Children's Magistrate is absent from his or her court for a period of time, a relieving magistrate is normally sent to that court to preside over the proceedings; such a magistrate is usually a "generalist" with little if any consistent experience in Children's Court matters.

In acknowledging the research of Luke (1988) and Cunneen (1989), the Kids in Justice Report found that:

"... young people from particular country regions are more likely to be committed at earlier stages in their "careers" than are those appearing in specialist children's courts. This is particularly noticeable in those regions sending the highest proportion of Aboriginal young people to detention centres as Cunneen (1989) demonstrated in his evaluation of the juvenile cautionary system. Young people, FACS workers and others expressed concern at the sentencing variations between different courts. Lawyers expressed particular concern at sentencing patterns in particular courts in western New South Wales, which they identified as being out of all proportion to the sentences that would be expected under comparable circumstances in a Sydney court."<sup>49</sup>

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<sup>49</sup> Submission 33. pp.277-278

The Committee has heard from a number of sources that various factors may contribute to the discrepancies in sentencing patterns between specialist and non-specialist Children's Magistrates and country and city courts. These include:

- a lack of knowledge among some members of the Magistracy of matters relating to young offenders and the range of sentencing options that are available;
- a lack of comprehensive or on-going training among all members of the magistracy, in relation to children's matters and the sentences which might reasonably be imposed; and
- a lack of a range of services in certain areas which magistrates might reasonably rely on when sentencing young offenders.

According to a Children's Magistrate:

"They (country magistrates) have a very difficult job... for many reasons, when it comes to their juveniles. They don't have the support systems that I have or we have down here... I think that it is unfair to ask general magistrates to in the morning, deal with adults, change their cap and switch in an afternoon into juvenile, and I see that in my own court when I go on holidays."<sup>50</sup>

**Recommendation No. 72:**

· That a circuit for Children's Court Magistrates be established, in order that specialist magistrates may travel to country areas and preside over all children's matters there. This would require the appointment of at least a further two specialist Children's Magistrates.

**Recommendation No. 73:**

· That a program of training be established for all magistrates, including those who may from time to time relieve at Children's Courts, to assist them to understand fully issues affecting young offenders, including sentencing options and available services. (See also Recommendation No. 62)

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<sup>50</sup> Evidence 10.12.91 pp.12-13



**Recommendation No. 74:**

- That magistrates presiding in courts sitting as Children's Courts, should have available to them, relevant services upon which they can draw, in order that reasonable, appropriate and consistent sentences might be given.

**Recommendation No. 75:**

- That the Office of Juvenile Justice establish a position in Head Office, of Information Officer, to advise members of the Magistracy of services available to young offenders in the Department and the community.

**4.10 GIRLS**

As the Committee has recognised throughout its Inquiry, girls in the Juvenile Justice System have specific needs that often require attention separate from those of young male offenders. The Committee has received a number of submissions and taken evidence that has related specifically to girls in the Juvenile Justice System.

Girls represent a small, albeit significant percentage of young people that become involved in the Juvenile Justice System. The Committee has identified earlier in the Report that the vast majority of girls who enter that system have been victims of abuse; a factor that can later precipitate substance abuse and force a girl to leave home, where problems of the availability of safe and suitable accommodation can arise. According to evidence presented to the Committee:

"We know that one in four girls is likely to be sexually abused before she turns 18. I think you can expect that 90% of the girls, at least 90% of the girls who come into detention centres have been abused."<sup>51</sup>

During the course of the Inquiry the Committee visited Reiby Juvenile Justice Centre, situated at Campbelltown, which provides secure care for young female as well as young male offenders. Most girls remanded or committed to a Juvenile Justice Centre, are sent to Reiby. At Reiby, the Committee spoke with staff and some young female detainees. Staff at Reiby confirmed that a number of girls there had been victims of dysfunctional or abusive families. Members were told also that up to 80-90% of girls there had drug dependencies and low self esteem a result of their difficult backgrounds. Discussions with the Drug and Alcohol Counsellor at Reiby indicated that most of the young people

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<sup>51</sup> Evidence 1991 p.109

he meets with at Reiby would have been under the influence of drugs or alcohol at the time they committed the offence for which they are currently detained.

The Committee heard also, that like the Juvenile Justice System generally, there is an over-representation of Aboriginal girls in the system, relative to their population in the wider community. The Committee understands that a multitude of factors, discussed in relation to Aborigines generally throughout the Report, can contribute to this situation.

Whilst at Reiby, Members heard that a number of the female detainees were Aboriginal, most of them from rural areas. Committee Members heard that young Aboriginal women can become involved in the Juvenile Justice System as a result of poverty, difficulties at school, drug or alcohol dependency, systemic discrimination, over-policing of certain areas and prior contact with the welfare system. These factors are highlighted in the Chapter on Crime Prevention Programs.

The Committee's concern with the particular problems that face girls in the Juvenile Justice System has been all the more highlighted by evidence received about a number of young women who had contact with the Juvenile Justice System and who later died of drug overdoses, or in one instance, who hanged herself in a police cell.

The Committee heard that the recidivism rate among many of the girls at Reiby was high. Among the reasons for this was the drug dependencies of many of the girls, their inability to overcome their habit once released, and the problems many of them face in relation to returning to dysfunctional families or to life on the streets.

Evidence presented to the Committee has indicated that to date, responses to young female offenders have not been effective. We have heard that one reason for this is that their relatively small numbers in the system compared with boys has meant that their specific needs have tended to be overlooked. As noted in one submission:

"Women and girls are simply not reported or convicted for criminal acts with the same frequency as men. As a consequence there is a marked poverty in correctional planning, policy and programmes for women and girls."<sup>52</sup>

Much of the evidence received in relation to girls indicates that for many of them, their entry into the Juvenile Justice System is preceded by contact with the welfare system. The Committee has acknowledged this issue in the Chapter of the Report entitled Crime Prevention Programs. At Reiby, the Committee heard that most of the detainees there had a Departmental file on them, indicating that they had been "at risk". The relationship

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<sup>52</sup> Submission 29. p.2

between the welfare and Juvenile Justice Systems for young women is well documented in the Girls at Risk Report (1986).

Evidence presented to the Committee indicated that whilst girls can no longer be detained for welfare matters with those detained for criminal matters (a legislative change that brought the numbers of girls in custody down dramatically) there is risk that:

" they will come into custody under different offence labels such as good-order offences...because girls more frequently come into the Juvenile Justice System as the result of behaviours that people just don't think are morally acceptable or they want to protect a young person from themselves... these things frequently happen to girls because people see them on the streets. If their behaviour attracts people's attention and they can't or won't demonstrate where their place of residence is then they want to protect them". Examples given were offensive behaviour or minor theft (in this case a flower) usually precipitated by drunkenness. Often the girls in question could not demonstrate that they had a suitable place to go home to and so were vulnerable to being held either in a detention centre or a police cell.<sup>53</sup>

The Committee considers that in order to prevent young female offenders entering into a cycle of recidivism and to prevent the tragedy of further deaths occurring in the young female offender population, any sentencing program which they are ordered to enter must not only ensure that they are accountable for their offending behaviour but must also be responsive to their particular needs.

Among the particular needs of young female offenders which have been drawn to the attention of the Committee, are counselling for sexual and/or other abuse, counselling for a drug and/or alcohol dependency, assistance with suitable, safe accommodation where the option of returning home is limited or impossible, and assistance with seeking suitable employment, given that employment options for girls can be more limited than for boys.

Further evidence presented to the Committee has shown that suitable sentencing programs for girls in the Juvenile Justice System should be gender specific. Such programs should be staffed by workers who are experienced and interested in dealing with issues that can affect young women. Such workers should be predominantly women. According to a submission presented to the Committee:

"Research has repeatedly shown that girls do not participate fully, or benefit from programmes in which they are less than half the numbers. This is due to the tendency of boys to be dominant and to occupy most of

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<sup>53</sup> Evidence 4.4.91 pp.97-98

the adult supervisor's attention. It is also true that girls are very likely to be sexually harassed by male peers and staff."<sup>54</sup>

It was further submitted that many girls, particularly those who have a history of sexual abuse, find it easier to respond to female staff and that such staff can act as appropriate role models for the girls.

Members noted at Reiby the commitment and dedication of staff members, many of whom demonstrated a very genuine compassion for the young women detained there. Members have been pleased to note that, since an incident at Reiby in 1990 involving a young female detainee and youth workers, which was subsequently investigated by the Ombudsman, the staff involved have since left and the Minister for Justice has indicated a commitment to preventing further managerial problems.

Discussions with some of the girls indicated that whilst the denial of liberty at Reiby was difficult, they generally found the Centre to be reasonable. Separation and a lack of contact with particular family members or friends was given as a major reason for distress by those to whom we spoke. It was also recognised that the range of programs offered to the boys, including those at other institutions, was more extensive.

Without limiting the recommendations made earlier in this Chapter, the Committee makes the following further recommendations in relation specifically to girls and sentencing:

**Recommendation No. 76:**

- **That wherever possible, community-based sentencing options must be the first response to young female offenders convicted of a criminal offence.**

**Recommendation No. 77:**

- **That girls should only ever be detained in a Juvenile Justice Centre where the offence is of such a serious nature that it would be inappropriate to release them into the community.**

**Recommendation No. 78:**

- **That any facility that detains girls must ensure that the girls are kept in sex-segregated accommodation.**

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<sup>54</sup> Submission 65. p.5

**Recommendation No. 79:**

- That the development of policies and the co-ordination of programs that relate specifically to young female offenders be undertaken by a special Policy Officer (Girls) appointed by the Office of Juvenile Justice who looks specifically at issues affecting girls. (See also Recommendation No. 12)

**Recommendation No. 80:**

- That education and training programs offered to girls in custody and secure care should be of a range that is equal to those provided for boys and be particular to the needs of girls.

**Recommendation No. 81:**

- That the Office of Juvenile Justice sponsors or develops specialist programs for those young female offenders, both in custody and on community-based sentences, who require sexual assault and drug and alcohol counselling as well as guidance in issues such as self-esteem and living skills.

**Recommendation No. 82:**

- That the supervision of community-based sentences for young female offenders should be undertaken by a female Juvenile Justice, Community Services Officer.

**Recommendation No. 83:**

- That the majority of staff at Juvenile Justice Centres that detain girls must be female and have appropriate training and expertise in issues affecting girls.

**Recommendation No. 84:**

- That the supervisors of staff of girls in Juvenile Justice Centres, should be predominantly female.

**Recommendation No. 85:**

**That post-release residential facilities include facilities that are girl-only and include in their program, options that relate specifically to girls.**

**4.11 ABORIGINES**

Throughout the Report it has been noted that Aborigines are over-represented at each stage of the Juvenile Justice System. The Committee has heard consistent evidence throughout the Inquiry that Aboriginal young people comprise up to 25% of the Juvenile Justice Centre population. A number of reasons have been put to the Committee for this over-representation and these have been discussed throughout the Report including Chapter Two of the Report dealing with Crime Prevention Programs.

The Committee has taken evidence from a number of Aboriginal people, in Sydney, Dubbo, Bourke and Moree including those working with Aboriginal young people and members of Aboriginal communities. It has also heard testimony from Police Officers, Aboriginal Liaison Officers and Officers with the Office of Juvenile Justice.

The Committee has also drawn information from a number of relevant reports, particularly, the Report of the Royal Commission into Aboriginal Deaths in Custody. That Report found that a major factor contributing to the high level of Aboriginal people in custody, whether adult or juvenile, is the existence of inequality and disadvantage in many aspects of social life. It argues that fundamental to reducing the number of Aboriginal people in custody, is eliminating the inequality and disadvantage through empowering Aboriginal people.<sup>55</sup>

Throughout the Inquiry the Committee has heard of the very real distress that still pervades Aboriginal communities regarding the early policy of Aboriginal children being taken from their families. Information presented to the Committee indicates that for many Aboriginal communities the incarceration of their children is an extension of this policy.

The Committee therefore acknowledges that any initiative that is to impact positively upon the treatment of Aboriginal children must be done through negotiation and consultation with the Aboriginal communities. The Committee is aware of a number of initiatives that are operating throughout New South Wales to assist Aboriginal young offenders. Some of these initiatives are being implemented by departmental Juvenile Justice Officers and

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<sup>55</sup> Royal Commission into Aboriginal Deaths in Custody. 1991(a) p.15

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others by Aboriginal community organisations and representatives, whose services the Office of Juvenile Justice often utilise in their supervision programs for young offenders. Among the range of programs of which the Committee has been informed are education, cultural, employment, training and sporting programs. The Committee understands that in certain areas of New South Wales, live-in programs for young Aboriginal offenders are being established by local Aboriginal communities the purpose of which is to provide an alternative to incarceration.

The Committee notes that fostering, as an option for young Aboriginal offenders, has commenced through the Office of Juvenile Justice. In a briefing by the Minister for Justice, the Committee heard that such foster placements are Aboriginal and cater for Aboriginal youth who commit "less serious offences".<sup>56</sup> The Committee commends that initiative and encourages its use by magistrates and Officers of the Office of Juvenile Justice. Further discussion on fostering, including recommendations appears in Chapter Six.

Further information submitted by the Office of Juvenile Justice indicates that there is to be established a live-in rural training program at Bourke for Aboriginal young offenders as an alternative to detention, to be administered by a number of Koori members of that community. Information provided to the Committee by the Office of Juvenile Justice states that:

"The project is aimed, where appropriate, at providing 10-12 local juvenile offenders and street kids with an alternative to detention or other action which may be detrimental to their natural development on a long term basis, and ultimately provide a chance to better themselves...A wide range of programmes will be provided including personal development and living, social and vocational skills. TAFE Outreach will provide specialist teachers who will focus on Aboriginal culture, history and art; basic literacy and numeracy; rural trade skills such as fencing, shearing and all facets of stock control (rearing, breeding and selling etc)...It is envisaged the project will be operational by the end of 1992."<sup>57</sup>

The Committee considers that the establishment of the Bourke Rural Training Program may operate as an effective alternative to incarceration. It especially supports the consultation with and the utilisation of the services of members of the Bourke Koori community in setting up the program. The Committee considers that if, after a trial period, the program appears effective, consideration should be given to expanding its

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<sup>56</sup> NSW Minister for Justice. 25.11.91

<sup>57</sup> Submission 86. p.10

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concept to other areas of New South Wales, from where significant numbers of young Aboriginal offenders are coming. The Committee, however, considers that care must be taken if the program is to include young people at risk or those in need of care, to ensure that there is no inappropriate mixing of those young people and young offenders.

The Committee considers also, that any such program, including that at Bourke, should be mindful of the needs of Aboriginal girls and incorporate programs that may assist in providing alternatives to incarceration for them.

The Committee notes that many of the problems that can affect offenders from rural areas can affect Aboriginal young offenders also, who come from non-metropolitan areas. Among those are the limited number of Community Youth Centres in rural areas. Evidence presented to the Committee also indicated that Community Youth Centres often do not take young offenders from country areas.<sup>58</sup> As magistrates in rural areas do not have the sentencing option of a Community Youth Centre, young people, including Aboriginal young offenders, from rural areas can be disadvantaged. One witness from north-western New South Wales indicated that Community Youth Centres in non-metropolitan areas were "sadly lacking".<sup>59</sup>

The Committee has noted earlier that some magistrates can deliver sentences to young people, including Aboriginal young people and particularly those from rural areas, that are inconsistent to those who deal primarily with juveniles. Reasons given to the Committee for this are examined earlier in this Chapter and include limited training of magistrates in appropriate options and available services for young offenders and a lack of relevant services in certain areas of New South Wales that can assist young offenders (e.g. Community Youth Centres). Evidence presented to the Committee by a Children's Court Magistrate suggested that the following option be put in place to assist a magistrate sentencing an Aboriginal young offender:

"I would welcome to have some Aboriginal elders sit with me when I sentence an Aboriginal child or before I sentence an Aboriginal child to give me advice on what I should do. I need leads into the Aboriginal society."<sup>60</sup>

The Committee understands that some Juvenile Justice Centres provide programs that examine Aboriginal culture for young offenders in custody. On its visits to some Centres the Committee observed the impressive art works that many detained young people, both Aboriginal and non-Aboriginal are producing. The Committee notes that the Department

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<sup>58</sup> Evidence 4.2.92

<sup>59</sup> Evidence 4.2.92

<sup>60</sup> Evidence 10.12.92 p.10



of School Education has a policy that for schools in Juvenile Justice Centres, relevant courses, such as the social sciences are to be taught with a multi-cultural and Aboriginal component.

In its Chapter on the Selection and Training of Staff in Relevant Youth Services, the Committee considers the issue of the need to appoint in those services Aboriginal staff and people with an understanding of Aboriginal culture. In this regard also, **the Committee strongly supports the appointment in the Office of Juvenile Justice of a Projects Manager (Aboriginal) who is "responsible for co-ordinating the Aboriginal programmes for juveniles, liaising with the Aboriginal communities, and providing advice on policy direction and development."**<sup>61</sup> The Committee supports also, the recruitment of Aboriginal Juvenile Justice officers throughout New South Wales.

In the light of the findings of the Royal Commission into Aboriginal Deaths in Custody, the Committee believes that provision should be made for a family member or nominee to share a cell with an Aboriginal juvenile offender when they are arrested that Aboriginal juveniles be offered shared accommodation when detained in secure care.

Without limiting the recommendations made earlier in this Chapter, the Committee makes the following recommendations in relation to young Aboriginal offenders:

**Recommendation No. 86:**

**That community-based sentencing options be utilised at all times when a young Aboriginal person is sentenced unless the severity of the offence or the protection of the young person warrants otherwise.**

**Recommendation No. 87:**

**That the Office of Juvenile Justice in consultation with members of Aboriginal communities examine the option of establishing a system whereby an Aboriginal elder or a member of the Aboriginal community is available to provide assistance to magistrates sentencing Aboriginal young offenders.**

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<sup>61</sup> Submission 86. p.4

**Recommendation No. 88:**

- That where Aboriginal young offenders are sentenced to a community-based option that requires supervision, appropriate support services are made available and utilised from local Aboriginal communities.

**Recommendation No. 89:**

- That where an Aboriginal young offender is sentenced to a period in custody, adequate contact from Aboriginal organisations is made available and that such young offenders have available to them programs that are relevant to their culture.

#### **4.12 YOUNG PEOPLE FROM NON-ENGLISH SPEAKING BACKGROUNDS**

The Committee is aware that a number of young people from non-English speaking backgrounds are detained in Juvenile Justice Centres. As the Committee has noted earlier in the Report some young offenders from non-English speaking backgrounds, including those in custody, have backgrounds of war, family separation and cultural dislocation. It has been submitted that accessible support networks that might assist such young people settle into their new country, whilst at the same time help them to maintain their cultural identity, may go some way to divert involvement in the Juvenile Justice System.

The Committee has heard that where possible, sentences that require supervision of young people from non-English speaking backgrounds, should draw on the assistance of the communities of those young people. In this regard it has been put to the Committee that members of particular ethnic communities be available to magistrates to assist them in sentencing. One magistrate commented:

"(for example) I would welcome Vietnamese help, I would welcome Lebanese help, I would welcome Turkish help. I have had to learn by trial and error...I think that every magistrate would tell you that that sort advice, even if it came in book form, or whatever, or a meeting with those people between cases, we would welcome, because we have to learn as magistrates."<sup>62</sup>

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<sup>62</sup> Evidence 10.12.91 p.11

Information presented to the Committee has indicated that where a young person from a non-English speaking background is given a custodial sentence, programs within the institution should be culturally sensitive. The Committee has been told also that there should be appropriate levels of skilled staff from non-English speaking backgrounds to supervise young offenders from such backgrounds on supervised community-based orders and those in Juvenile Justice Centres. This issue has been referred to in Chapter Five on Selection and Training of Staff in Relevant Youth Services.

Without limiting the recommendations made earlier in this Chapter, the Committee makes the following recommendations in relation to young offenders from non-English speaking backgrounds and sentencing:

**Recommendation No. 90:**

- That community-based sentencing options be utilised at all times when a young person from a non-English speaking background is sentenced unless the severity of the offence or the protection of the young person warrants otherwise.

**Recommendation No. 91:**

- That the Office of Juvenile Justice, in consultation with members of relevant ethnic communities, examine the option of establishing a system, to provide assistance to magistrates when sentencing young offenders from such communities.

**Recommendation No. 92:**

- That where young offenders from non-English speaking backgrounds are sentenced to a community-based option that requires supervision, appropriate support services are made available and utilised from local ethnic communities.

**Recommendation No. 93:**

- That where young offenders from non-English speaking backgrounds are sentenced to a period in custody, adequate contact from ethnic organisations is made available and such young offenders have available to them programs that are culturally appropriate.

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## CHAPTER FIVE

### SELECTION AND TRAINING OF STAFF IN RELEVANT YOUTH SERVICES

#### 5.1 INTRODUCTION

In its Terms of Reference the Committee was asked to consider:

the selection and training of staff in relevant youth services.

The Committee collected evidence during the Inquiry on the criteria for selection and training of staff in a range of youth services which impact on youth at risk and those in the Juvenile Justice System. Youth become involved in the Juvenile Justice System through contact with the police, courts, Juvenile Justice Centres or Juvenile Justice Officers. In addition the Committee took evidence relating to the skills required for workers in youth services for "youth at risk" who were identified as those most likely to, without preventative measures or adequate crime prevention programs, become involved in the New South Wales Juvenile Justice System.

With the Committee's broad perspective on the Juvenile Justice System, "relevant youth services" has been determined to be those relating to the formal Juvenile Justice System, such as the police, the courts, and Juvenile Justice Centres, and services to youth at risk.

Services to youth at risk are provided in New South Wales by both government and non-government agencies. The participation of non-government agencies in the Juvenile Justice System raises issues about the nature of the partnership between such agencies and the government in matters such as funding, standards and licensing. The Committee has commented on these issues throughout the Report and particularly in Chapter Six. All of these matters have implications concerning the selection and training of staff in youth services.

The Committee received a number of submissions and heard evidence in relation to the selection and training of staff working with youth services. Most of the evidence given in submissions to the Committee, however, concentrated on youth workers in Juvenile Justice Centres and in the formal court process.

## 5.2 YOUTH WORKERS

The role and involvement of youth workers, particularly in institutions, has changed over the years. "Youth Worker", developed as a position title in recognition of the special role of workers directly involved with adolescents. The Committee heard that the complexity and difficulty of the work involved and the extent of the support and attention required has not been understood and has been undervalued:

"Youth workers over the decades have received no recognition of the skilled and professional role they execute...While youth workers were undervalued prior to the beginning of the reform process, they have been de-valued ever since."<sup>1</sup>

The complex and different needs of adolescents, the Committee heard, were overlooked as there is no particular interest group or public body which really takes up the cause of adolescents as a significant group within society.<sup>2</sup>

### 5.2.1 Working Environment

Evidence before the Committee indicated that there can be a high burn-out rate among youth workers in Juvenile Justice Centres, which was said to vary from institution to institution. In the early part of the Inquiry the Committee heard that this resulted in a significant turnover rate of staff in some Centres. The stressful nature of the work together with relatively low salaries and limited career path or employment opportunities were cited as factors contributing to this situation.

Evidence in one submission showed greater stability and lower staff vacancies in country Juvenile Justice Centres than those centres located in Sydney. This was seen to be related not only to local labour market dynamics but also to the better profile of the Centres in the community within country areas.<sup>3</sup>

The Committee heard that the high attrition rate of staff was met by management through the recruitment of temporary and casual employees. Many staff in Juvenile Justice Centres were reported to be employed on a casual basis. One submission indicated that at one stage 50% of the staff at Yasmar Juvenile Justice Centre were casual workers. Evidence also showed that off duty prison officers had been working weekend shifts at

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<sup>1</sup> Submission 11. p.6

<sup>2</sup> Evidence 19.12.91

<sup>3</sup> Submission 33. p.308

Minda Juvenile Justice Centre.<sup>4</sup> The Committee considers that such an approach is inappropriate given the different demands of adults and children within secure accommodation.

The nature of the work to be undertaken by youth workers appears to have become confused. The Committee heard that youth workers had some difficulty with what seemed to be a conflict between their role of rehabilitation and of being a behaviour modifier and guard:

"Many youth workers also felt the difficulties of the lack of a clearly defined role for them with their duties crossing over between developing relationships with detainees and helping to support them and their role as "key turners" who are responsible for enforcing the increasingly restrictive levels of discipline demanded at Minda."<sup>5</sup>

It was also explained to the Committee that there are few, if any, promotional opportunities available to a youth worker. Generally, the highest position they can attain is that of Chief Youth Worker:

"One of the key problems encountered at Minda was in providing adequate levels of trained, qualified staff. Vacancies existed at all levels including youth workers, social workers, teachers, administrators and service staff. A major part of this is the poor salaries, training and career paths offered to the FACS employees... There was ...little chance of career progression ..."<sup>6</sup>

The Committee determined that a key factor in the rehabilitative process is effective youth workers and that the staffing of Juvenile Justice Centres was a matter which should be addressed. Within the formal area of juvenile justice, the Committee considers that positions relevant to a career path for youth workers would include Juvenile Justice Officers, which are community based juvenile justice personnel within the Office of Juvenile Justice, and Co-ordinators of the proposed Children's Panels.

**Recommendation No. 94:**

**That urgent attention be given to developing a career structure for workers in Juvenile Justice Centres including positions of Juvenile Justice Officers and Co-ordinators of the proposed Children's Panels.**

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<sup>4</sup> Ibid

<sup>5</sup> Submission 61. p.3

<sup>6</sup> Submission 61. p.5

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### 5.2.2 Salaries and Conditions

The Committee heard on numerous occasions that the salaries available to youth workers on all levels from Senior Youth Worker to Chief Youth Worker were inadequate. The Committee considered that the poor salary and lack of career path formed a barrier to the selection and retention of good quality staff and as such should be addressed.

"(the) Staffing... area... needs urgent attention. Youth workers' pay, conditions, career paths and training need urgent examination. Similarly the government will need to address the problem of attracting and retaining suitably qualified and committed professionals to work in the system."<sup>7</sup>

"They (youth workers) are poorly paid, they are poorly prepared and they are poorly regarded by their employers."<sup>8</sup>

The salary for a Senior Youth Worker commences at \$23,457 with yearly increments for four years, depending on the number of years the person has been in a particular position. At March 1992, the grade of Chief Youth Worker had a commencing salary of \$26,628.<sup>9</sup>

"Difficulty in attracting professional staff can be put down to a number of key factors including poor salary and career structures ..."<sup>10</sup>

The Committee was advised that penalty rates apply for youth workers who work overtime. When some Committee Members attended Mt Penang Juvenile Justice Centre, youth workers with whom they spoke explained that those with families worked weekends and public holidays to "make ends meet". The Committee condemned this practice as they considered it was not conducive to effective work practices and may lower the quality of the work of youth workers within Juvenile Justice Centres.

The Committee considered that attention should be given to the salaries paid to youth workers.

#### **Recommendation No. 95:**

**That the salaries of workers in Juvenile Justice Centres be reviewed in order that they are commensurate with the skills required and responsibilities undertaken in such positions.**

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<sup>7</sup> Submission 61. p.5

<sup>8</sup> Submission 11. p.6

<sup>9</sup> Discussion, Health and Research Employees Association, March 1992

<sup>10</sup> Submission 61. p.3

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### 5.2.3 Recruitment and Morale of Youth Workers

Usually, people who seek to work with children and adolescents have a commitment to young people and a desire to effect positive outcomes on their behalf. The work, like other service professions of teaching and nursing, requires hard work, dedication and a personal commitment. Working with youth can be satisfying in terms of the sense of achievement that can be gained. There is a need to develop and maintain the morale of youth workers in order to encourage them in their work and promote an appropriate level of self esteem.

The Committee heard of an increasing need for professional and trained people to work with youth, particularly young offenders and juveniles at risk:

"the management of juvenile offenders both in the community and in institutions requires teams of professionally qualified staff. Young offenders in the 1980s are emerging from more and more complex and dysfunctional family and wider societal situations. Knowledge, attitude and skills training in equipping all levels of staff to demonstrate high degrees of competency are mandatory."<sup>11</sup>

On a number of occasions it was put to the Committee that both the pre-requisites for a position of youth worker in a Juvenile Justice Centre and the on-the-job training were inadequate.

The Committee learnt that many of the youth workers in Juvenile Justice Centres have come into the job with no experience at all in dealing with young people, particularly delinquent young people:

"Youth workers were expected to come to the job untrained and accept poor wages and conditions. There was little or no on-the-job training provided..."<sup>12</sup>

"staff dealing with young offenders ...lack basic principles of knowledge in dealing with young offenders and their families"<sup>13</sup>

Both initial and on-going staff training were said to be a fundamental pre-requisite to the success of the juvenile justice program. The particularly demanding role of youth workers in institutions was seen to require high levels of skill in the areas of individual

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<sup>11</sup> Submission 11. p.5

<sup>12</sup> Submission 61. p.3

<sup>13</sup> Submission 21. p.1

and group interaction, communication, motivation, counselling, control and supervision. These skills, it was heard are exercised with involuntary adolescent detainees whose disrupted lives demand considerable understanding and insight.<sup>14</sup>

#### 5.2.4 Pre-Employment Training

Evidence to the Committee suggested that it was an anomaly that youth workers in the area of juvenile justice did not require tertiary qualifications, unlike teachers, health workers and welfare workers. It was suggested that the most appropriate basic training mix is a combination of tertiary study and local practice, particularly to assist in developing career portability.<sup>15</sup>

However, the Committee also heard evidence which indicated that tertiary or other qualifications do not necessarily make a "good" youth worker. Rather, qualities such as appropriate supervisory skills and compassion were seen to be equally important features that a youth worker must demonstrate in his or her role:

"staff need not be "graduates" of anything as the best workers come from "experience" not the classroom."<sup>16</sup>

The Committee was impressed with information collected in New Zealand concerning the work of one particular Youth Justice Co-ordinator. Without any formal training but with extensive work in Community activities, the person in question had become well known throughout the Country as the most effective and knowledgable Family Group Conference Co-ordinator.<sup>17</sup>

The Committee also took evidence that there should be pre-selection criteria for formal training courses which would not necessarily need academic requirements, and that training should be conducted through tertiary institutions and form part of a general course in "youth work". Evidence also suggested that formal training in youth work would be most beneficial when completed in conjunction with employment and where time to study was considered an essential aspect and part of employment.<sup>18</sup>

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<sup>14</sup> Submission 11. p.7

<sup>15</sup> Submission 11. p.5

<sup>16</sup> Submission 40. p.2

<sup>17</sup> Discussions 4-7 November 1991. Family Group Conferences are outlined in Chapter Three, Section 3.7.2

<sup>18</sup> Submission 24. p.2

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Evidence before the Committee suggested that a pre-employment training course would need to be comprehensive and give particular emphasis to child development, counselling, personal development, non-violent strategies to deal with difficult children, Aboriginal history and culture and multi-cultural issues.<sup>19</sup> The Committee concurred that formal training for youth workers would need to encompass such issues.

**Recommendation No. 96:**

- That prerequisites for employment as a youth worker in Juvenile Justice Centres include criteria such as community experience, ethnic or culturally specific knowledge and personal skills in relating to young people.

**Recommendation No. 97:**

- That, as with all new employees, youth workers in Juvenile Justice Centres generally be employed initially on a trial basis, to enable assessment of their capabilities.

**Recommendation No. 98:**

- That formal training for youth workers in Juvenile Justice Centres give due heed to the issues of child development, counselling, personal development, non-violent strategies to deal with difficult children, Aboriginal history and culture and multi-cultural issues.

### **5.2.5 In-Service Training**

It was recommended to the Committee that in-service or on-going training was also an essential ingredient in developing the most appropriately trained and effective staff. The Committee heard of the large need for in-service training for staff in Juvenile Justice Centres and of the nature of the training required. In particular it was said that youth and Juvenile Justice Centre workers "must be trained thoroughly in the needs and care of young people."<sup>20</sup>

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<sup>19</sup> Submission 33.

<sup>20</sup> Submission 40. p.2

One submission indicated that this may best be achieved through the placement of trainers within the working unit rather than removing workers to a separate staff training centre. Training near or in the workplace was said to be particularly useful for youth workers in country areas.<sup>21</sup>

Evidence showed that in the mid-1970s a pre-employment program was established by the then Department of Youth and Community Services, for youth workers. With the changing role of youth workers, that is from working closely with young offenders to what was described as being a "minder", youth workers were increasingly seen by some superintendents not to require such training and the program lapsed.

Youth workers were then provided with an induction program said to range in duration from several hours to several weeks.<sup>22</sup> Other evidence indicated that specific worker orientation training was available between about 1983 and 1989 until a generic mode of training was introduced for youth workers, District Officers and young offender service workers.<sup>23</sup>

The Committee heard that formal or in-service training would need to be complemented by appropriate and adequate supervision in the workplace. It was suggested that the supervision required would need to involve not only administrative matters but also professional assistance to help youth workers manage their personal responses, which were said to directly result from their work. One submission proposed that such supervision would be best provided by professionals trained in psychology and not line managers.<sup>24</sup>

The Committee is supportive of the view that a continuing education and staff training program be developed and implemented.

**Recommendation No. 99:**

**That courses be developed and provision made for acquiring skills through workplace and in-service training for youth workers in Juvenile Justice Centres.**

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<sup>21</sup> Submissions 11, pp.3, 5, 27

<sup>22</sup> Submission 11. p.6

<sup>23</sup> Submission 27. p.1

<sup>24</sup> Submission 24. p.2

**Recommendation No. 100:**

- **That induction and in-service training must be provided to:**
  - **assist youth workers to develop an understanding of their role within Juvenile Justice Centres, and**
  - **to provide information on the relevant mechanisms through which conflicts within their work can be resolved.**

**5.2.6 Specialist Youth Workers**

The Committee visited a Community Youth Centre in the Sydney suburb of Stanmore and heard of the nature of the counselling work involved. It took evidence also, from one of the primary architects of the Community Youth Centre Program, Mr John Howard. Workers in Community Youth Centres, are required to have a professional qualification in either social work or psychology. The Committee appreciates the need for and commends the use of specialist youth workers such as professional counsellors in these Centres and in Recommendation 59 recommends that Community Youth Centres be extended to cover further regions where there are Juvenile Justice Offices. The Committee considers that counsellors providing such specialist services be professionally qualified in either social work or psychology.<sup>25</sup>

**Recommendation No. 101:**

- **That counsellors providing specialist services to young offenders be professionally qualified in either social work or psychology.**

**5.2.7 Skills and Abilities Required by Youth Workers**

The Committee took evidence concerning the range of skills and abilities required for youth workers. Through its visits, hearings, and the submissions received, the Committee appreciated that skills development in the following areas was considered essential for the training of youth workers:

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<sup>25</sup> Evidence 4.4.91 p. 43 and Discussion 28.1.92

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- . dealing with conflict and violence;
- . working effectively within the welfare system;
- . working as part of a team with other professionals; and
- . developing and maintaining personal relationships, including how to deal with confrontation.<sup>26</sup>

It was also shown to the Committee that in-service training should provide up to date information on the:

- . principles in the handling of young offenders;
- . behavioural issues likely to be confronted in the workplace and dealing positively with such issues;
- . effects of incarceration over long or frequent periods, and the short term effects during the first incarceration period;
- . ways to identify and follow through an offender's needs in the areas of literacy, drug and alcohol issues, homelessness and family problems;
- . nature and availability of back-up services within the Office of Juvenile Justice, the Department of Community Services and the community;
- . ways to identify stress related factors at work, and attitudinal issues that may affect a youth worker's method of relating to clients; and
- . strategies for dealing with these issues in a positive manner for the benefit of the youth worker and the young offender.<sup>27</sup>

#### **5.2.8 Particular Requirements and Needs**

The categories of skills above are broad and do not specifically address the different needs of groups such as girls, adolescents in rural areas, Aborigines and people from a non-English speaking background.

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<sup>26</sup> Submission 24. p.2

<sup>27</sup> Submission 11. p.1, Submission 21. p.1

The Committee heard evidence that the particular needs of different groups were not necessarily adequately accommodated in the daily management of an institution. In the course of the Inquiry the Committee took evidence relating to special groups that it considers is relevant for the selection and training of youth workers. Whilst the Committee is aware that a significant minority group within the Juvenile Justice System could be described as developmentally delayed, no submissions were forthcoming to provide the Committee with insights into these needs.

The Committee heard of staff management practices which had the effect of exacerbating the difficulties faced by Aborigines in Juvenile Justice System and encouraging racism. It was heard that in one Juvenile Justice Centre a special wing had been set up as an "Aboriginal" wing in which the administration of the Centre disciplined non-Aboriginal detainees by placing them in that particular wing. Detainees in that wing, it was said, were more likely to be subjected to "abuse and assaults".

Evidence also indicated that behaviour of some Aborigines, which followed from difficulties in coping with the rigidity and isolation of Juvenile Justice Centres, resulted in penalties such as placement in maximum security areas. Such severe penalties were said to occur regardless of the offence for which the juvenile had been detained.<sup>28</sup> Thus some young Aboriginal detainees have been exposed to an increasingly tough and isolated detention.

The Committee noted the particular isolation felt by young Aborigines in detention. During the Inquiry, the Committee was reminded that many young Aborigines in detention were from country and isolated areas. Thus it is difficult for members of their families to visit, particularly as many Aboriginal families do not have the financial resources to travel from remote areas to Juvenile Justice Centres. In addition, the Committee heard that many Aboriginal families in western New South Wales did not have a telephone to receive calls from their young children.

The isolation experienced was said to be particularly acute for young Aboriginal people more familiar with living with a number of families in one house than occupying a single cell. The Committee acknowledges that restriction of movement, the feature of Juvenile Justice Centres, is particularly traumatic for Aboriginal young people from country areas who would generally have far greater geographical movement than non-Aborigines.<sup>29</sup>

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<sup>28</sup> Submission 61. p.2

<sup>29</sup> Evidence 4-6 February 1992

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Sport was seen to be the main recreational activity for boys in Juvenile Justice Centres, although the Committee commends the Reiby Juvenile Justice Centre for the art program it provides. Activities for girls, other than sport, were limited. The Committee heard that Aboriginal boys and girls had a need to express and learn about their culture.<sup>30</sup>

Evidence taken relating to girls in the Juvenile Justice System indicated that the needs of girls were not being adequately addressed in Juvenile Justice Centres. Many young female offenders were seen to be:

"either substance dependent, intensive substance users, victims of sexual assault, children of substance dependent parents, prostitutes, self-mutilators or severely emotionally distraught."<sup>31</sup>

Evidence to the Committee suggested that girls in Juvenile Justice Centres needed their safety and counselling needs addressed. In particular reference was made to the needs of female offenders on bail who are placed in Juvenile Justice Centres.

The Committee took evidence that there was a lack of appreciation on the part of youth workers in Juvenile Justice Centres of the differing perspectives of young offenders relating to their family or cultural background:

"Young offenders and parents on initial interviews...are not necessarily going to display co-operation with a bureaucrat in a position of authority, particularly people from a non-English speaking background family with suspicions of authority based on previous home country experiences."<sup>32</sup>

As noted earlier in this Report, some young offenders in custody from a non-English speaking background may have a background of war or unrest, family separation and cultural dislocation. Some of these young people may have lost members of their families and be without appropriate support or assistance. Further they may have had difficulty adjusting to a predominately Anglo-Celtic culture and they may have had difficulty learning both written and spoken English. Some are affected by the discrimination still existing in many areas of Australian life. These various difficulties may have alienated certain young people from non-English speaking backgrounds and underlie their anti-social behaviour.

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<sup>30</sup> Submission 33. p.313

<sup>31</sup> Submission 24. p.3

<sup>32</sup> Submission 21. p.2



**Recommendation No. 102:**

- . That any training or pre-employment programs for youth workers, particularly those working in Juvenile Justice Centres address matters relating to:
  - . Aboriginal history and culture,
  - . Multicultural issues,
  - . Girls in custody,
  - . Disabilities, and
  - . Age and stages of development.

**Recommendation No. 103:**

- . That where girls are detained, there be adequate numbers of female staff on each shift, especially in management positions.

**Recommendation No. 104:**

- . That the staff composition of Juvenile Justice Centres, especially in management positions, be representative of the racial and ethnic profile of detainees particularly in relation to those who are Aboriginal or Torres Strait Islanders.

### **5.3 POLICE OFFICERS**

The Committee recognises the influential role of the police in the Juvenile Justice System. "In their interactions with young people, it is the police who have the most influence over a whole series of decisions which will later influence the outcome of the contact with the broader Juvenile Justice System."<sup>33</sup> A major part of police work is concerned with policing young people and in the majority of cases, the police are responsible for the initial contact which young people have with the Juvenile Justice System.

Evidence before the Committee revealed a number of issues which had implications for the training of all police officers. This evidence included the following assertions:

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<sup>33</sup> Submission 33. p.212

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- . children see the police as powerful figures and as representatives of an authority system hostile to their class and or race;<sup>34</sup>
- . young people are threatened and subjected to actual violence by the police;
- . intimidatory behaviour toward juveniles who tried to enforce their legal rights;<sup>35</sup>
- . harassment of young people from a non-English speaking background sitting and talking in public places;<sup>36</sup>
- . girls being seen as more of a problem because they behave and respond differently;
- . the imposing of bail provisions which set the young person up to fail;<sup>37</sup>
- . the issuing of written warnings to illiterate adolescents;<sup>38</sup>
- . little knowledge or understanding among police of Aboriginal culture or of what it means to be an Aborigine in our society;
- . inadequate use of cautions; and
- . inflaming racial prejudice and tension through references in local media to "them" (Aborigines).<sup>39</sup>

Following careful consideration of the evidence before the Committee it was determined that the New South Wales Police Service should expand its training program both at the Police Academy and "on-the-job" or other professional development courses to adequately equip officers to appreciate and develop the skills required in relation to a wide range of matters. Specific training for police officers has been recommended earlier in this Report particularly in relation to the use and philosophy of cautioning and in relation to the nature of Children's Panels.

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<sup>34</sup> Submission 33. p.214

<sup>35</sup> Submission 33. p. 214 and Evidence 29.2.92

<sup>36</sup> Evidence 29.1.92

<sup>37</sup> Evidence 6.12.91

<sup>38</sup> Evidence 29.1.92

<sup>39</sup> Evidence 5.2.92

The Committee considered that police training would benefit from the assistance of members of the Aboriginal community as trainers. In particular, the Aboriginal Community Liaison Officers within the Police Service are considered to have valuable experience and knowledge which would assist in the development of all police officers.

The Committee considers that the type of training required for all police officers and relating to adolescents would be of a similar nature to the Initial Response Officers Course on Domestic Violence conducted by the Police Service. The course would then involve pre-residential reading material, a two week residential skills training component followed by six months field work, prior to an appearance before a review panel before graduation.

**Recommendation No. 105:**

- . That the New South Wales Police Service establish a training program specifically relating to policing children and young people which, similar to the Initial Response Officers Course on Domestic Violence, involves pre-residential reading material, a two week residential skills training component followed by six months field work, prior to an appearance before a review panel before graduation, and
- . That the New South Wales Police Service include in its training program at the Police Academy and "on-the-job" or other professional development courses, programs to adequately equip officers with the skills to liaise with and manage juveniles.

The skills required include a knowledge of:

- . the circumstances and characteristics of young people. Such training would need to include differences and difficulties relating to sex, physical or intellectual ability, racial and cultural and ethnic background. The effects of poverty, unemployment, sexual abuse, drug dependence and different views toward the police and authority figures held by Aborigines and some migrants would need to be understood;
- . the techniques and skills needed in dealing and interacting with young people;
- . the specific laws, rules and policies for the policing of young people;

- . an understanding and respect of the needs and rights of young people especially the right to use public spaces;
- . the nature of the dynamics of the policing of young people;
- . the legal and human rights of young people;
- . an understanding and respect for the legal and human rights of young people as well as their need for advice and advocacy;
- . an understanding of why racial and other prejudices and discriminatory actions are not appropriate to the professional policing of young people;
- . an understanding of the culture and social relationships of Aboriginal Australians;
- . an appreciation of the effectiveness of cautioning young people, and the preference of a Caution or a Court Attendance Notice rather than a charge;
- . improved awareness of and compliance with the provisions of the Bail Act regarding the presumption in favour of bail and reasonable bail conditions; and
- . an awareness of the role of other agencies in the Juvenile Justice System, and other reasons for their powers, policies and programs.

### **5.3.1 Police Youth Officers**

Recommendations 30 and 31 provide for the position of Police Youth Officer to be developed and established within each patrol area of New South Wales. It was also recommended that a Unit be established within the Police Service to determine the nature of training and development required for all police officers in relation to policing young people.

Consideration was given in Chapter Three to the selection criteria for a Police Youth Officer. It was considered by the Committee that the position of Police Youth Officer would develop from the existing position of General Duties Youth Officers. Thus the current work undertaken by General Duties Youth Officers such as their educative role

and the development of programs in the area of juvenile crime prevention would continue.

The selection criteria considered relevant for the selection of Police Youth Officers would include the officer's particular understanding of adolescents and interest in working with youth. The position would require the ability to contact people from diverse cultural backgrounds especially Aborigines, effectively and sensitively; promote co-operation between individuals, groups and organisations providing services to young people and their families; facilitate culturally relevant decision making processes; and be competent and flexible in working with children, young persons and their families.

**Recommendation No. 106:**

- . **That the selection criteria for Police Youth Officers include the:**
  - . **officer's understanding of and interest in working with youth;**
  - . **ability to demonstrate effective and sensitive contact with people from diverse cultural backgrounds, especially Aborigines;**
  - . **ability to promote co-operation between individuals, groups and organisations providing services to young people and their families;**
  - . **ability to facilitate culturally relevant decision making processes; and**
  - . **competence and flexibility in working with children, young persons and their families.**

The Committee gave consideration to a separate career structure for Police Youth Officers which would recognise the skills and abilities of the positions, enable officers to move into other career streams, maintain the integrity of the position and ensure the positions become an integral part of a policing career within the New South Wales Police Service.

**5.3.2 Aboriginal Community Liaison Officer**

The Committee took evidence from a number of Aboriginal Community Liaison Officers in Sydney and in country areas. It is considered that this specialist group of liaison officers is undertaking a valuable role, particularly in western New South Wales. The issues faced in the different areas in which the Aboriginal Community Liaison Officers operate have many similarities. At present, there is no formal mechanism where ideas and effective strategies to deal with these issues are considered by the Aboriginal Community Liaison Officers.

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The Committee endorsed the suggestion that Aboriginal Community Liaison Officers would benefit from an opportunity to share their strategies and experiences. The Aboriginal Community Liaison Officers currently travel to the Police Academy for skills training. However it was considered that the meeting of Aboriginal Community Liaison Officers would be most effective in a different environment, outside of the Academy. The Committee also endorsed the suggestion that Aboriginal Community Liaison Officers should participate in training of police officer at the Academy.

The Committee heard that there are thirty-one Aboriginal Community Liaison Officers in New South Wales. Evidence before the Committee showed that one of the three officers in Redfern may need to travel to Mt Druitt or as far as Newcastle to assist police officers dealing with young Aboriginal people.<sup>40</sup> The Committee considers that additional Aboriginal Community Liaison Officers are required, particularly female Aboriginal Community Liaison Officers. Further, the Committee heard that access to reliable transport sometimes prevented Aboriginal Community Liaison Officers from attending a police station or other meetings particularly when long distances were involved. It was considered by the Committee that reliable transport was essential for Aboriginal Community Liaison Officers to fulfil their role.

**Recommendation No. 107:**

That, in addition to their ongoing training at the Police Academy, the opportunity be created whereby Aboriginal Community Liaison Officers throughout the state could, meet once per year, at a venue to be determined by the Aboriginal Community Liaison Officers.

**Recommendation No. 108:**

That the Police Service review the adequacy of Aboriginal Community Liaison Officers with the view to increasing the number of positions throughout New South Wales.

In particular, consideration should be given to facilitating the recruitment of female Aboriginal Community Liaison Officers. Where female Aboriginal Community Liaison Officers are difficult to attract and retain in positions, consideration should be given to identifying women in the Aboriginal community who would be willing and appropriate to call upon to assist as required.

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<sup>40</sup> Evidence 28.1.92

That access be made available to reliable transport for Aboriginal Community Liaison Officers in order that they may adequately fulfil their role.

#### 5.4 COURTS

The Committee heard on numerous occasions that magistrates, at least those who were not specialist Children's Magistrates did not demonstrate fully an understanding of the issues and difficulties facing juveniles. Decisions such magistrates made in relation to juveniles were said not to recognise the role of support services and the options available within the child's community.

It was said to the Committee that some solicitors do not have much of an idea of the differences between representing a child and representing an adult. It was suggested that there is a need for specialised training for lawyers who might want to be involved in children's work. The participation of people from a background similar to that of the juvenile before the Court, such as a person from a non-English speaking background was considered to be valuable.<sup>41</sup>

Evidence to the Committee also indicated that:

"all court personnel including magistrates, solicitors, prosecutors and probation officers (guidance officers), would be specially qualified by a Diploma in Juvenile Justice."<sup>42</sup>

"(there are) very few youth services with the capacity to assist the courts, far too few..there are too few trained youth workers with the same capacity."<sup>43</sup>

The Committee heard on a number of occasions that it is quite common for young people before the court, not to understand court proceedings. It was considered that it would be beneficial for children and young people if language used within court proceedings was simple and able to be understood by them, their families and other support people in attendance.

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<sup>41</sup> Evidence 4.4.91, pp.175-6

<sup>42</sup> Submission 25. p.16

<sup>43</sup> Submission 40. p.2

It was proposed to the Committee that there is a need for information days or in-service training for magistrates on a regular basis. Such a program may include a discussion session with relevant workers involved in the formal Juvenile Justice System such as Juvenile Justice Officers, community based workers and police officers.

The issues which might be canvassed in such training might range from dealing with people from non-English speaking background families in court, the behaviour of young persons in court, appropriate language to use and the lack of information exchange between the young person, the Duty Solicitor, Juvenile Justice Officers and relevant support people.<sup>44</sup>

**Recommendation No. 109:**

That a training program be established for all magistrates, particularly those who may from time to time relieve at Children's Courts, to assist them to understand fully issues affecting young offenders, including sentencing options and available services.

**5.5 GENERAL YOUTH WORKERS IN JUVENILE JUSTICE SERVICES**

Throughout this Report, particularly in Chapter Two which deals with Crime Prevention Programs and Chapter Six which refers to the adequacy of services to young people in the Juvenile Justice System, comments have been made regarding the particular nature of and staff recommended for specific services. In the first Chapter of the Report the Committee has indicated that an underlying principle to the Inquiry is that selection and training of all persons involved with juveniles should be of the highest order. In particular, specific recommendations in Section 6.6 have been made relating to the selection of workers to staff accommodation services.

Considerations that the Committee determined particularly relevant to the selection and training for staff in the wide range of services to youth at risk have been outlined throughout the Report. In particular the Committee considers that the needs of groups which are either disproportionately represented or have needs which set them apart from the bulk of juvenile justice population, that is Aborigines, Girls, People from non-English speaking backgrounds and rural young people should be a major factor underlying the selection and training of staff.

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<sup>44</sup> Submission 21. p.2



Considering the particular needs of Aborigines, girls and people from non-English speaking backgrounds, which have been described throughout the Report, has led the Committee to make a particular recommendations in relation to the staff and training required for those working with these youth. The Committee determined that it is desirable that wherever juveniles from these groups are or have the potential to be involved in programs, participate in schemes or use services, that the staff of those services be chosen who are able to demonstrate a sensitivity to and knowledge of the specific backgrounds and needs of those groups. Further, it was considered that training may be necessary to develop the knowledge of such workers in relation to the often complex and specific difficulties of youth at risk from these groups.

**Recommendation No. 110:**

- . **That wherever juveniles who are Aboriginal, female or from a non-English speaking background, are or have the potential to be involved in programs, participate in schemes or use services, that the staff of those services be chosen who are able to demonstrate a sensitivity to and knowledge of the specific backgrounds and needs of those young people.**
  
- . **That the Office of Juvenile Justice organise training to develop the knowledge of such workers in relation to the often complex and specific difficulties of youth at risk who are Aboriginal, female or from a non-English speaking background.**

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## CHAPTER SIX

### THE ADEQUACY OF SERVICES TO YOUNG PEOPLE IN THE JUVENILE JUSTICE SYSTEM

#### 6.1 INTRODUCTION

In its Terms of Reference the Committee was asked to consider:

"the adequacy of services to young people in the juvenile justice system."

The Committee received a number of submissions and heard evidence on a range of services available to young people in the Juvenile Justice System. Evidence was taken also regarding the range of, and the need for, services for young people at risk of entering the Juvenile Justice System. Chapter Two on Crime Prevention Programs, explores this issue. Given the nature of this Chapter, there may be some overlap between the discussion on services in Chapter Two and the discussion on services here.

Some services have been discussed also in Chapter Four on Sentencing and Community-Based Options for the Care and Management of Young Offenders. In that Chapter the Committee examined and made recommendations in relation to the delivery of services for young people who are sentenced to a community-based option. The Committee noted that for there to be effective supervision of young offenders in the community there needs to be adequately resourced and appropriately staffed Juvenile Justice Offices as well as a range of relevant and adequately resourced programs available in the community. The Committee noted also in that Chapter that Community Youth Centres, a valuable supervisory alternative for young offenders, should be expanded to further regions throughout New South Wales, particularly to rural areas.

In Chapter Four, the Committee considered the issue of young people in custody. In that context it examined the issue of recidivism. The Committee has been told that a number of factors could be seen as contributing to recidivism and continued incarceration of some young offenders. These factors and means of addressing them have been discussed generally throughout the report and some will be highlighted in this Chapter.

#### 6.2 HEALTH

In January 1990 the Director of the Prison Medical Service, Dr J.F. McLeod and the Director of Nursing Mr J. Carmody reviewed the health services available to detainees in Juvenile Justice Centres and made recommendations relating to general health services, drug and alcohol services, psychiatric/psychological services, nursing services and dental services.

A formal and detailed response to this report is currently being prepared by the Department of Health (the Wilton Report), but information provided by the Office of Juvenile Justice indicated that as of mid-April, the report was as yet not available.

The Committee is reluctant to examine closely and make recommendations in the area of general health, psychiatric, nursing and dental services without any specific evidence or expertise and while these services are currently under the investigation of the Department. However, as noted above, evidence from a number of sources has been received in relation to drug and alcohol services, particularly in relation to those available in Juvenile Justice Centres. Discussion and recommendations on this issue are examined below.

Some information has been received in relation to the role and responsibilities of the psychologists at Juvenile Justice Centres. The Committee has heard for instance, that much of the work of those psychologists involves the preparation of court reports. The Committee has been told because of this, case work can be ad hoc. The Committee hopes that the Wilton Report may address this issue.

The Committee wishes to endorse however, the establishment of the position of Senior Psychologist within the Office of Juvenile Justice. The Committee understands that:

"In line with Office of Public Management recommendations, a position of Senior Psychologist has also been established to provide leadership, advice and support to juvenile justice psychologists and field staff."<sup>1</sup>

This position also involves the training and supervision of juvenile justice psychologists as well as assessing and providing court reports on complex cases.

The Committee received some information in relation to the health needs of girls in custody. The Committee notes adolescent girls have specific health needs. It was indicated to the Committee that for girls in custody, their needs can be all the more pressing, as many present with gynaecological problems that may require treatment. The Committee has not been able to look closely at this issue but acknowledges that it is a concern that should be monitored by the Office of Juvenile Justice and the Department of Health. While noting that Reiby provides a female nurse for girls to consult, the Committee is concerned that the health, medical and gynaecological needs of girls held in police cells are met.

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<sup>1</sup> Submission 86. p.8

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### 6.3 DRUG AND ALCOHOL

The Committee heard that a large proportion of young offenders, especially those in custody, had a drug and/or alcohol dependency. Discussions between Committee Members and workers in the Juvenile Justice Centres, indicated that approximately 50% of boys in custody are detained for drug related offences, including offences committed to fund drug habits.<sup>2</sup> At Mt Penang, the Committee was told that some 70% of the boys there are institutionalised for drug-related offences.<sup>3</sup> At Reiby, the Committee heard that among the female residents 80-90% have a drug problem which is also reflected in the offences for which they are detained.<sup>4</sup>

In a study for the Department of Family and Community Services, entitled "Curious, Bored and Wanting to Feel Good", Ernie Zibert, the then Drug and Alcohol Counsellor at Stanmore Community Centre and John Howard, Senior Lecturer of the Clinical Drug Dependence course at Macquarie University's School of Behavioural Sciences interviewed 293 young detainees.<sup>5</sup>

The results of that survey were quite frightening, and there is little reason to imagine that much has changed. Those results included:

- . The average age at which drug use began was 11, while the average age for beginning illicit drug use was 13;
- . 94 per cent of detainees had experimented with alcohol;
- . 90 per cent had tried analgesics, nicotine and cough medicines;
- . 86 per cent had smoked cannabis; and
- . 25 per cent had tried narcotics such as heroin.

The Committee notes that glue and petrol sniffing is also a problem for many young offenders. It has heard that the abuse of prescription drugs such as Rohypnol, particularly by girls, can be common among young offenders.

Information gathered from other sources confirmed the extensive history of drug use by young offenders, especially those in custody.

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<sup>2</sup> Visit, Minda Juvenile Justice Centre, 8.10.91. Visit, Cobham Juvenile Justice Centre, 10.10.91

<sup>3</sup> Visits, Mt Penang Juvenile Justice Centre, 5.2.91, 26.3.91, 27.3.91

<sup>4</sup> Visit, Reiby Juvenile Justice Centre, 3.10.91

<sup>5</sup> NSW Department of Family and Community Services. 1990(a) pp.3-5

The following exchange occurred during an interview between a journalist and a young female detainee at Reiby Juvenile Justice Centre:

"So most of the girls here are on drug-related charges?

There are about four girls who ain't heroin addicts in this place. There's twenty one girls - the rest of them are heroin addicts. ... So that's pretty much a problem with the girls, is the heroin and the pills. That's the worst drug I've noticed in here you know, is heroin. Most of them are on that.

And how old are most of them when they start to use it?

Oh, fifteen, sixteen. That's about the age when they start. Like some of them in here, I couldn't believe (they) started when they (were) twelve, thirteen. I thought, wow I was only smoking marijuana then and drink(ing) and (taking) pills but not heroin."<sup>6</sup>

The relevant point for this Inquiry is that by the time many of these young people arrive in Juvenile Justice Centres a drug habit is well established and there are limits to how far their problems can be addressed.

A subject of particular interest to Committee members is the provision of methadone services for young people. While the Committee is aware that it is only in rare circumstances that methadone is considered an appropriate response to drug dependence in people below the age of 18, the Report to the Director-General of the (then) Department of Family and Community Services on Health Services to Juvenile Institutions did mention a couple of cases of methadone treatment in institutions and the Committee would support this form of treatment being available in conjunction with counselling and post-release services.<sup>7</sup>

In supporting the provision of health education in schools it is to be hoped that some of these problems can be overcome before they start.

Whilst there is one Drug and Alcohol Counsellor now currently placed in most Juvenile Justice Centres, many of whom seem to offer intensive and appropriate programs for those young offenders whom they see, it seems that once outside, the young person on the whole finds it difficult to maintain a drug-free lifestyle. One young boy with whom Committee Members spoke at Minda, whilst acknowledging the good work of the Drug and Alcohol Counsellor there, commented that:

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<sup>6</sup> Australian Broadcasting Corporation. 1990 pp.6-7

<sup>7</sup> McLeod. 1990

"Every time I get released I score some heroin and end up back at Minda. I really need some help."<sup>8</sup>

Evidence presented to the Committee from a number of sources revealed that there are few drug and alcohol services available to young people, including young offenders, in the community. It was suggested that this often presented a problem for a magistrate who, when sentencing a young offender with a drug and/or alcohol problem often could not make an appropriate referral. Evidence heard by the Committee indicated that there was a lack of services available, in relation to long term rehabilitation of adolescent substance abusers.<sup>9</sup> The Committee considers vital, the availability of appropriate drug and alcohol services to young people and young offenders, in the community.

**Recommendation No. 111:**

That the Office of Juvenile Justice undertake evaluations on whether more than one Drug and Alcohol Counsellor needs to be placed in those Juvenile Justice Centres with high rates of detainees with drug and/or alcohol dependencies.

**Recommendation No. 112:**

That appropriate and consistent follow-up be organised by the Office of Juvenile Justice for those young offenders, released from Juvenile Justice Centres who require on-going treatment for their drug and/or alcohol dependency. (See also Recommendation No. 118).

**Recommendation No. 113:**

That the Department of Health supervise the development of further specialised drug and alcohol services in the community to assist young people, including young offenders with drug and/or alcohol dependencies.

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<sup>8</sup> Visit, Minda Juvenile Justice Centre, 8.10.91

<sup>9</sup> Evidence 19.12.91 p.23

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## 6.4 EDUCATION AND TRAINING

Evidence before the Committee highlighted the important relationship between a child and the school. In particular, behaviour at school and lack of attendance were seen to be indicative for future societal behaviour:

"...an important predictor of serious offending behaviour is (the) relationship between the child and the school. How a young person is able to deal with the relationship in the school setting is a mirror for the child's ability to cope in society generally.

Relationships with peers and authority, and complying with rules which set out the consequences of behaviour, make demands on the child which can reflect how well the child will deal with the wider community as an adolescent and adult. If a child is not coping in this environment, then there should be serious alarm bells for intervention."<sup>10</sup>

The Committee noted the significant role of the Home School Liaison Officers in identification and management of children who have difficulty relating to the school environment. The Home School Liaison Program was piloted in 1986 and extended to a statewide service in 1987-88. The program of the Department of School Education, complements the role of the school in maintaining the regular attendance of all students. In particular the program aims:

"to provide support to schools, parents and the community in order to ensure that all children between the ages of 6 and 15 years attend school regularly in accordance with the provisions for compulsory education as set out in the Education Reform Act of 1990."<sup>11</sup>

Some 120 Home School Liaison Officers work throughout the ten Departmental regions of the state to identify at risk youth and work with their families and schools to facilitate regular attendance and reduce the risk of participation in anti-social behaviour or activities which may lead to involvement with police and the justice system. The Committee noted that specialist positions of Home School Liaison Officers have been created to meet the specific needs of children from non-English speaking backgrounds and their communities.

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<sup>10</sup> Submission 41. p.3

<sup>11</sup> Submission 89.

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In addition, Education Officers (Aboriginal) are employed by the Department in areas of high Aboriginal populations throughout New South Wales. Occupants of these positions need to have demonstrated a commitment to their community and to the resolution of school-based problems contributing to the non-attendance of Aboriginal students.

Evidence taken by the Committee suggested that due to the scattered population groups within isolated areas of New South Wales, it was difficult for these education officers to adequately address the need of Aboriginal children in those areas.<sup>12</sup> The Committee supports the work undertaken under the Home School Liaison Officer Program, encourages the work of the Department in this area and considers that funding should be made available to increase the provision of services under this program to Aboriginal children in rural areas of New South Wales. The Committee heard that whilst additional personnel would be welcome, budget restrictions do not currently allow for additional personnel under the Program.<sup>13</sup>

**Recommendation No. 114:**

**That funding be made available to increase the provision of services, particularly to Aboriginal children in rural areas of New South Wales, under the Home School Liaison Officer Program.**

The Committee heard evidence on numerous occasions that many young offenders particularly those in custody have learning difficulties. Indeed, the Committee found a low level of literacy and numeracy skills among many young detained offenders alarming. The Committee has been told also that this factor, with its ramifications of low self-esteem and an inability to succeed in both the school system and the work force, may contribute to a young person embarking on anti-social and offending behaviour.

Discussions with teaching staff at various Juvenile Justice Centres revealed that despite their learning difficulties many young people wanted to attend school whilst in custody. The Committee notes that the Department of School Education offers in each Juvenile Justice Centre educational courses at different levels, including at a remedial level. Such classes are naturally smaller than those in schools within the general community and there is greater opportunity for more individual attention.

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<sup>12</sup> Evidence 5.2.92

<sup>13</sup> Submission 89.

However, the Committee has heard that many young offenders have difficulty following on with school education courses after they are released. Evidence presented to the Committee has indicated that liaison between schools within Juvenile Justice Centres and those in the community is ad hoc. For some young people released from custody, particularly those who have been detained for many months, this can mean a difficult transition back into "mainstream" schools and failure to return to school.

Apart from school education programs, the Committee has heard a number of other courses and training programs for detainees are offered at some Juvenile Justice Centres. The Committee on its visits to Mt Penang, for instance, noted that that Centre offers such courses as fibreglassing, upholstery, car maintenance and animal husbandry through TAFE, and some students may undertake apprenticeships. Information provided by the Office of Juvenile Justice, indicates that "juveniles participating in TAFE programmes receive a Certificate of Attainment from a College of TAFE".<sup>14</sup>

At the time of its visits the Committee noted that not all Juvenile Justice Centres offered the range of courses available at Mt Penang. The Committee acknowledges that Mt Penang is a committal facility, as opposed to a remand facility, and therefore is in a position to provide courses that may continue for some months. However, many young people are detained for lengthy periods of time in remand centres and would therefore benefit from an on-going course that may be specific to their interests.

The Committee noted that the courses offered to girls in Juvenile Justice Centres were more limited in their range. The Committee noted also that at the time of the visit by Members of the Secretariat to Yasmar Juvenile Justice Centre that Centre was resourced only for school education courses.

Whilst the Committee commends the commitment and dedication of members of Juvenile Justice Centre staff who administer and teach the programs, courses and training offered to young offenders in those centres, it acknowledges that most young offenders have difficulty continuing similar activities in the community or finding relevant employment, following their release. This view was expressed to Members by young people on their visits to Juvenile Justice Centres. The Committee has heard that the problem can be more pronounced for young offenders returning to rural areas, where courses, programs and employment opportunities are more limited than in the metropolitan region and for young people with little access to relevant information.

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<sup>14</sup> Submission 86. p.8

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The Committee understands that an inter-departmental review on educational programs for young people in custody was agreed to by the Ministers responsible for School education, Community Services and Technical and Further Education.<sup>15</sup> The Terms of Reference of the review are:

1. To conduct a review of current educational, vocational and living skills provision for young people in custody.
2. To produce a report and make recommendations for policy changes that will facilitate:
  - (a) local management;
  - (b) the most effective delivery of services at the local level;
  - (c) co-ordinated delivery of services at the local level;
  - (d) co-ordinated delivery of educational, vocational and living skills provisions;
  - (d) provision and planning for appropriate physical environments for the delivery of services.<sup>16</sup>

The Committee understands that "the review report will recommend the publication of a set of principles for the delivery of educational programs to young people in custody. The recommendations arising from the review process will allow those three departments with responsibility for the education of young offenders to make more informed decisions regarding the delivery of services. It is expected that the report will identify service delivery gaps and program duplications allowing the three departments to ensure a coordinated exemplary service to the young people in juvenile justice settings."<sup>17</sup>

The Committee considers that it is not appropriate to make recommendations on these issues given that the joint Departmental review is, as yet, unavailable. It is hoped that the issues and concerns raised above, relating to education and training of young offenders in Juvenile Justice Centres, will be addressed by the recommendations of that review. It is also hoped that the recommendations of that review will be responsive to the needs of specialist groups in custody, including Aborigines, young people from non-English speaking backgrounds, young people with a disability and girls.

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<sup>15</sup> Submission 89.

<sup>16</sup> Submission 89.

<sup>17</sup> Submission 89. p.2

### **6.5 SUPERVISION AND FOLLOW-UP**

One of the most common issues raised throughout the Inquiry, was that there is limited follow-up of a young offender once he or she is released from custody. The Committee understands that provision for parole is made under the Sentencing Act, 1989 for those young offenders sentenced to more than six months in custody. No such supervision is expressly provided for those given sentences of six months or less. The implications of the Sentencing Act and its application by magistrates, particularly in relation to the supervision and follow-up of young offenders has been discussed in Chapter Four. Recommendations regarding that Act which impact upon the area of supervision and follow-up have been made also.

Considerable evidence submitted to the Committee noted that a lack of appropriate follow-up or post-release supervision, can be a significant contributing factor to a young offender re-offending once released from custody. The Committee believes that such re-offending is a considerable community cost.

As noted above, factors contributing to offending behaviour, particularly by young offenders who have been in custody, can include drug and/or alcohol dependencies, unemployment and poverty, failure within the school system, a dysfunctional family life and inadequate accommodation. The Committee has noted that some of these factors are addressed whilst the young person is in custody. However, for many young offenders they are not consistently followed up once that person is released. The Committee has heard that when a young offender is released, he or she may quickly return to a lifestyle that involves anti-social behaviour, unless appropriate supports are available. Evidence indicates also that further criminal activity may be learnt whilst the young offender is in custody.

The Committee has made a number of recommendations relating to the establishment of residential facilities for young offenders, particularly those released from Juvenile Justice Centres, which it believes will assist in the rehabilitation process of young offenders and in their transition back into the community. These Recommendations are contained in Section 6.6 of this Chapter that refers to Accommodation Services.

#### **Recommendation No. 115:**

**That once a detainee is released from a Juvenile Justice Centre, appropriate post-release follow-up, suitable to the needs and circumstances of the young offender must be co-ordinated by the Office of Juvenile Justice.**

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## 6.6 ACCOMMODATION SERVICES

The Committee has noted throughout the Inquiry that the availability of appropriate accommodation services to young people at risk and to those directly involved in the Juvenile Justice System can be crucial to whether that person will commence or continue to engage in anti-social behaviour. In Chapter Two, the issue of accommodation was examined and recommendations made as to the provision of services to young people. It is proposed at this point to look at the issue of accommodation in relation to fostering and the alternative, the establishment of residential facilities that may assist young offenders, particularly those released from detention.

### 6.6.1 Fostering

The fostering of young offenders who have inappropriate family circumstances or inadequate accommodation has emerged as an issue throughout the Inquiry. Much of the evidence has revealed that young people who come from a stable and safe family background are less likely to have police contact and become involved in the Juvenile Justice System than those from dysfunctional environments. Fostering, as an alternative for some young offenders is one option that the Committee considers might be utilised by the courts and the Office of Juvenile Justice, as a means of giving a young offender an opportunity to have a safe and secure environment and hence, a chance of avoiding future offending behaviour.

On its visits to Queensland and South Australia, the Committee learnt of successful fostering programs operating in those states that cater for minor, habitual and serious offenders as well as young people at risk. Information learnt on those visits was that prospective "families" are screened thoroughly and monitored to ensure that there are no problems or difficulties for either the young person or the carers.

Both fostering schemes are specialist schemes and provide financial assistance for the care giver; in the case of South Australia, which operates the Intensive Neighbourhood Care Scheme (INC), the Committee heard that the amount then was approximately \$45.00 per day.<sup>18</sup> According to information gained in South Australia, one of the major reasons for the success of the INC program is that the police and the courts are fully aware of the operation of the program.

Whilst fostering in New South Wales is an option which magistrates may utilise in relation to a young offender, it is not formalised as a program as in other jurisdictions.

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<sup>18</sup> Discussion, 22.4.91

According to a former foster parent of a young offender who gave evidence before the Committee:

"Ultimately and ideally what's required is that there be people (located) in the community who are prepared to take on that sort of role and be prepared to be a dad or a mum to the kids that are released into their care."<sup>19</sup>

Another witness before the Committee, who was a former senior officer with the then Young Offenders Support Team and who has had extensive experience with young offenders, made the following comments in relation to a fostering scheme that might be appropriately utilised by magistrates:

"...I think that fostering is a very important program in terms of giving us the flexibility to actually provide an option for young people in their regions of origin. I think we need flexibility in the system, and I think all too often we look at programs and services, in particular professional models, that don't have the ability to tap into community resources and to use people who have an actual personal motivation for becoming involved. I think that fostering is an option but I think that we have to look at professional fostering. I think that we have to look at paying people a real salary to do a full-time job."<sup>20</sup>

Further information received by the Committee endorsed the idea of implementing a professional and paid fostering scheme, that would have appropriate accountability mechanisms.

From the evidence received, the Committee considers that there are a number advantages in a specialised fostering program being established in relation to young offenders including:

- it provides a young offender with an opportunity to develop in a secure environment;
- it allows a young offender to remain within a community, preferably one with which he or she is familiar; and

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<sup>19</sup> Evidence 4.4.91 p.61

<sup>20</sup> Evidence 4.4.91 p.103

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it can assist in the rehabilitation process of the young offender and provide greater opportunities for that offender to successfully re-integrate into the community.

The Committee is mindful however that unless appropriate safeguards are put in place fostering may have the potential for abuse or exploitation in relation to both the young person or the foster parent. The Committee considers also that unless an appropriate wage is paid to the care giver and adequate support and assistance are available to him or her, the scheme could be limited. In acknowledging this, the Committee is mindful that many young offenders who would be fostered would inevitably be some of the most "difficult" adolescents and would therefore require intensive attention.

The Committee considers that consistent with current policy of the Office of Juvenile Justice measures should be taken to ensure that fostered Aboriginal young people are placed with Aboriginal families.

**Recommendation No. 116:**

That a fostering scheme be established for a period of 12 months, to be available to Children's Courts Magistrates in relation to both remanded and sentenced young people. That scheme should operate in the following way:

- the scheme be evaluated 12 months from the date it is established;
- the scheme be co-ordinated by the Office of Juvenile Justice in conjunction with the specialised foster care program of the Department of Community Services;
- the prospective care-givers be thoroughly screened as to their suitability in providing a safe, secure and supportive environment for the young person;
- a mechanism for regular assessments of the progress of the young person and the suitability of the placement be established;
- the care-giver be paid and be provided with any reasonable expense he or she may incur during the course of the placement;
- appropriate support systems be established within the relevant Departments, which can be utilised whenever the care-giver or the young offender requires assistance in relation to the placement; and

where a young Aboriginal person is fostered under this scheme, placements should be made with Aboriginal families.

### **6.6.2 Post-Release Residential Facilities**

At Section 6.5 of this Chapter, the Committee examined the issue of supervision and follow-up of young offenders, particularly those discharged from a committal. Evidence received in relation to this issue noted that once a young offender is released from custody he or she may quickly return to offending behaviour if there are few relevant supports available. The Committee heard that without proper supervision or follow-up some young offenders are likely to re-offend. The Committee noted its concern in Chapter Four with aspects of the Sentencing Act and its implementation by magistrates, regarding the limited opportunities that some young offenders released from custody, may have in relation to post-release supervision or follow-up. In that Chapter the Committee recommended that a review be undertaken, as a matter of urgency, by the Attorney General's Department, the Department of Courts Administration and the Office of Juvenile Justice regarding the operation of the Sentencing Act in relation to young offenders, particularly as that Act impacts upon post release supervision and follow-up. The Committee recognises that the availability of proper follow-up is essential to the implementation of the following Recommendations.

The Committee considers that some young offenders who have served a committal require the use of special accommodation facilities that provide a number of services to assist them in their re-integration into the community. The Committee considers that such facilities should be situated throughout New South Wales. This can only be effective if it is a compulsory aspect of the continuum of a rehabilitation program for those young offenders who are deemed (because of their assessment) to be in need of such a period of supervision. Hence the urgency of the Sentencing Act reform for juveniles.

#### **Recommendation No. 117:**

That there be established throughout New South Wales small residential facilities, adequately resourced and suitably staffed to assist young offenders, released from their committal, in their transition back into the community.

#### **Recommendation No. 118:**

That whilst at a residential facility, the young person should have follow up on his or her drug and alcohol counselling, sexual assault counselling, schooling and any other programs or courses that may have been undertaken in the



Juvenile Justice Centre. Appropriate liaison with community drug and alcohol workers, schools, job training services, accommodation services and families should be undertaken so that the young offender has appropriate contacts when leaving the facility, or can be placed in a school, a job or obtain further job training, or safe accommodation if the family home is not appropriate upon his or her departure. (See also Recommendation No. 112)

**Recommendation No. 119:**

That psychologists and other counsellors from the Community Youth Centres be available for consultation with the young people at the residential facilities.

**Recommendation No. 120:**

That the length of the young person's stay at a residential facility, be determined according to the young person's need.

**Recommendation No. 121:**

That:

- (a) following a young person's departure from the residential facility, resources be made available to Juvenile Justice Community Services to continue, where necessary, the supervision of a young offender.
- (b) there be a wide range of services, training and counselling programs available to assist with such supervision. In this regard, services provided by community organisations should be utilised, and where appropriate, adequately resourced and accredited to fulfil this function.

**Recommendation No. 122:**

That the establishment of residential facilities be co-ordinated by the Office of Juvenile Justice with the co-operation of the Department of Community Services, the Department of Health, the Department of School Education and the Department of Housing.

## 6.7 YOUNG OFFENDERS FROM RURAL AREAS

One of the most striking factors brought to the attention of the Committee on its visits to Juvenile Justice Centres and in the evidence it received, is the significant proportion of country young people in custody. Despite this, the major committal centre for boys is at Kariong, near Gosford, and for girls, at Campbelltown; girls on remand are detained also in the facility at Campbelltown.

Moreover, the Committee found that a large proportion of those young people detained from country areas are Aboriginal, many of whom are serving quite lengthy committals or have been on remand for a long period of time.

From the evidence the Committee received, as well as from its discussions with staff and detainees at Juvenile Justice Centres, it is apparent that the geographical distance between centres and detainees' communities, poses significant problems in relation to family contacts and visits and can instil deep feelings of alienation and isolation within the detainees and feelings of loss among families. The Committee has received evidence, that for many parents of Aboriginal young offenders who are held in institutions away from their communities, the feelings of loss can be heightened by the memories of the early policy of taking Aboriginal children away from their families and placing them with white families or in institutions. The Committee has heard also that sometimes many rural families cannot afford the cost of visits to a Juvenile Justice Centre, for the entire period of the sentence.

The Committee has heard that one means of addressing this issue is to establish Juvenile Justice Centres nearer to the regions from where most of the rural detainees come. Whilst the Committee sees merit in such a concept it does not recommend the expansion of detention facilities.

The Committee has heard that the establishment of facilities in Juvenile Justice Centres, where families of detainees might stay, is one means of addressing the problems many families have in visiting their children. The Committee considers appropriate the establishment of such facilities, particularly for parents of detainees from rural areas. The Committee notes that at Minda and Reiby Juvenile Justice Centres some accommodation facilities exist but there is no formal policy for rural families specifically to access those facilities. The Committee notes further that an accommodation facility for families does operate at Riverina Juvenile Justice Centre.<sup>21</sup>

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<sup>21</sup> Discussion, Office of Juvenile Justice, 28.04.92

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The Committee considers also, that there should be established a family assistance scheme to assist families from rural areas who cannot meet the cost of visiting children in Juvenile Justice Centres.

**Recommendation No. 123:**

- That magistrates in rural areas, make every effort to find local solutions to issues of sentencing young offenders, to avoid the option of incarceration and the removal of young offenders from their communities.

**Recommendation No. 124:**

- That a family assistance scheme be established to assist those families from rural areas who cannot meet the cost of visiting children in Juvenile Justice Centres.

**Recommendation No. 125:**

- That facilities be established in Juvenile Justice Centres to assist families, particularly families from rural areas, to be close to the children during visits.

## **6.9 LEGAL SERVICES**

The Committee has received a number of submissions and taken specific evidence in relation to the issue of legal services to young people. Among those from whom the Committee took evidence were solicitors specialising in the Children's Court jurisdiction, solicitors from the Aboriginal Legal Service and Western Aboriginal Legal Service, Children's Court Magistrates and young people who have been through the court process. From the evidence received the Committee acknowledges that young people are entitled to access to quality legal advice and representation that should be no less than an adult would expect.

The Committee understands that in New South Wales there are very few solicitors specialising in Children's Courts matters. The Legal Aid Commission employs one Children's solicitor who services exclusively Cobham Children's Court, at Werrington. That solicitor works in conjunction with a social worker who is employed also by the Commission. The Committee understands that the primary function of the Legal Aid Commission solicitor is the provision of advice to and representation of children in

criminal and care matters that are determined at Cobham Children's Court. The Committee has been informed that a reason for the establishment of a scheme such as that at Cobham was the need for children appearing in that Children's Court to be provided with a continuity of legal representation.

Both Marrickville Legal Centre and Macquarie Legal Centre (at Harris Park) employ a specialist Children's solicitor and Burnside established an Adolescent Legal Service last year. The children's solicitors of these three organisations provide representation to young people charged with a criminal offence as well as providing legal education to young people and to those who work with young people on juvenile justice issues and other matters relevant to adolescents. The Committee notes that there is no specialised Children's Legal Service in rural areas.

Much of the evidence presented to the Committee has related specifically to the availability and provision of legal services to young people charged with a criminal offence. The Committee understands however that the delivery of legal services to young people may include assistance in regard to accommodation, social security, employment and matters affecting children as victims. The Committee notes that the Legal Centres mentioned above and Burnside can often take up these matters for young people. **The Committee commends and encourages the provision of such assistance.** The Committee understands also that the Bicentennial Youth Foundation is currently examining the feasibility of establishing a specialised National Children and Youth Law Centre that will assist young people on a range of legal issues, undertake test cases and initiate policy work in regard to matters impacting on children and young people.

At this stage the Committee will consider in the main, the delivery of legal services to those young people charged with a criminal offence. The Committee is however mindful of the range of legal needs that young people may from time to time have. In this regard it considers appropriate the establishment of a **Youth Information Service to be co-ordinated by the Office of Youth Affairs**, that could provide information to young people on a number of issues, including legal issues that might go beyond criminal matters, and act as a referral agent.

The Committee understands that many young people charged with a criminal offence utilise the duty solicitor service provided by the Legal Aid Commission at each Children's Court. Apart from Cobham which has a full-time specialist solicitor, under this scheme the other Children's Courts are serviced by private solicitors who are remunerated by the Legal Aid Commission. Those solicitors work on a rostered basis and can work at the courts, anywhere from once a week to once a month. Young clients are seen on the morning of court, where instructions are taken in relation to the matter, a plea or where appropriate, bail and the matter is either dealt with then (if it is a guilty plea and relatively straightforward) or adjourned for particular reports or for a hearing.

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The Committee has heard that on many days, the list of young people appearing at court can be particularly long. Evidence given to the Committee indicates that duty solicitors can generally see clients for approximately five to ten minutes only. Should the matter be adjourned duty solicitors may not see the young person again until the next court appearance. Where the next court appearance is a sentencing matter, the young person is often represented by a different duty solicitor.

All evidence presented to the Committee on the issue of legal services supported strongly the practice of the availability of representation to all children at Children's Courts charged with a criminal offence. However, some evidence indicated that the current duty solicitor scheme of drawing solicitors from the private profession with only some or very little expertise in children's law may not often serve the best interests of the clients that are being represented. The Committee has also been told that the current system does not adequately make the duty solicitors accountable. One solicitor commented in evidence:

"A solicitor working in a practice at Sutherland who comes in once a month to do the Friday morning roster at Minda and that's it, I would submit is not assisting the system with juveniles as much as we should be looking to. There are obviously a lot of solicitors who work in the scheme who are very committed to children... and who perform an enormously important function. But overall solicitors are too removed from the system and not properly accountable or involved with the welfare and interest of their clients as they should be."<sup>22</sup>

The Committee understands that the duty solicitor scheme does not extend to advice for a young person at a police station if questioned by the police or to Juvenile Justice Centres. With regard to police stations it has been indicated that many young people are arrested at times when most solicitors would not be available (i.e. late at night or weekends) and so their access to any legal advice can be limited. The Committee understands that for young people, and even the responsible adult who must be present with them when questioned by the police, knowledge of their legal rights is essential.<sup>23</sup> The Committee notes that an alternative system to having a solicitor present, is to have access to a 24 hour telephone advice service.

The Committee acknowledges that an accused person may not be given the option of a telephone call at a police station. It therefore sees as crucial to the success of any 24 hour telephone advice service, the co-operation of members of the Police Service. In this regard, consideration should be given to providing relevant training to police.

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<sup>22</sup> Evidence 4.4.91 p.167

<sup>23</sup> Children (Criminal Proceedings) Act. Section 13

The Committee notes that under the Children (Criminal Proceedings) Act, a young person cannot be questioned by a police officer unless a responsible adult is present. Any information received without such an adult being present may later result in that information not being received in evidence. The Committee considers that strict compliance by police officers with this provision is essential in order to prevent actual cases of "verballing", intimidation, or inducement regarding a confession or to prevent allegations of such practices.

The Committee has been told that young people in Juvenile Justice Centres, whether on remand or serving a committal, have particular legal needs. Since there is no solicitor scheme that services those centres specifically, those needs can often go unmet. One witness before the Committee noted that:

"(there needs to be) a solicitor involved in servicing the detention centre because there is no doubt that the children, particularly the children in the remand section...have considerable and varied legal needs, not the least being complaints to the Ombudsman about their treatment, problems they have with staff, a Prisoners Legal Service type where they are advised on their appeals to the District Court or their trials. A major problem - picking up on the despair that children feel when they get into institutions - is they just don't feel like they are going anywhere... Part of it is the fact that they never feel like anyone visits, particularly solicitors."<sup>24</sup>

The Committee has taken evidence from the Aboriginal Legal Service and the Western Aboriginal Legal Service, in relation to the services they provide to young Aboriginal people charged with a criminal offence. The Committee understands that although neither organisation has a specialist Children's section, most Aboriginal children throughout New South Wales appearing in the Children's Courts on a criminal charge, utilise the services of the Aboriginal Legal Service or Western Aboriginal Legal Service. The Committee has heard that in many instances, both the Aboriginal Legal Service and Western Aboriginal Legal Service are required to service a vast area and solicitors can often be required to appear in more than one court on the same day. The Committee has been told also, that such services operate on limited resources and the solicitors can have very large case loads.

The Committee notes that the Federal Government has announced recently a funding increase of \$50 million for Aboriginal Legal Services which will assist in the expansion of those Services' role as recommended in the Report of the Royal Commission into Aboriginal Deaths in Custody. The Committee commends this initiative and hopes that it

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<sup>24</sup> Evidence 4.4.91 p.169

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may go some way to address some of the issues noted above. The Committee encourages the Minister for Aboriginal Affairs to allocate some of that funding to legal services for Aboriginal children.

Evidence has been presented to the Committee in relation to legal services for young people in rural areas. The Committee understands that in those parts of New South Wales there is no specialist children's legal service, despite the fact that significant numbers of young offenders come from those regions. Young people from the country, charged with a criminal offence generally rely on the Legal Aid Commission or the Aboriginal Legal Service or Western Aboriginal Legal Service. According to one witness before the Committee:

"The larger towns in rural New South Wales, Dubbo, Lismore, Tamworth, Wagga, all have Legal Aid offices or Aboriginal Legal Services, but certainly find it very difficult to cater for the young people who are in more distant areas. There are certainly no specialised children's legal services in any of those parts of rural New South Wales and it is very difficult for solicitors who are there and the magistrates as well to actually gain expertise in those sort of areas because they simply don't deal with the type of matters frequently enough."<sup>25</sup>

The Committee notes that a special Bail Court has been operating at Minda Children's Court on weekends and public holidays. At the time of writing, Minda Court was still operating and had not yet moved to the Burwood Court complex. **Some Committee members expressed concerns that the Burwood Court complex, dealing with both adult offenders and juveniles is unacceptable and alternative sites for conduct of criminal (and care) proceedings should be actively pursued by the Department of Courts Administration.**

It is understood that when Burwood Court becomes operative for children, it will have a similar Bail Court. The Committee supports the operation of a Bail Court that services children who are remanded by police over weekends and public holidays, including public holidays.

The Committee has been informed that in country areas there is no specialist bail court for young people, but should a young person be denied bail by the police over a weekend or a public holiday, a country court may open to determine the bail application. Little evidence has been received on this issue. However, the Committee believes it appropriate that the Juvenile Justice Advisory Council, as part of its brief, look at the question of bail services for young people in country areas.

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<sup>25</sup> Evidence 9.1.92 p.18

Further evidence presented to the Committee has indicated that proceedings in Children's Courts are often conducted in technical legal jargon that may be beyond the understanding of many young people. Moreover, it has been submitted that contrary to the spirit of the legislation such proceedings do not always involve young people. According to one submission:

"Despite the positive endeavours of some magistrates to involve children in proceedings, there is still very little participation beyond a few words of remorse at the point of sentencing - and it seems likely that many children are baffled by proceedings ... The speed with which guilty pleas are given (by lawyers, not the defendants) and the "facts" of the police tendered (without being read out in court) would not help general comprehension. Much of the hearing proceeds by way of legal shorthand..."<sup>26</sup>

Information received from young offenders indicates that many had little idea of what was going on throughout their proceedings and that their solicitors often failed to explain fully to them the outcome of the matter.

The Committee notes also that families of young offenders, whilst permitted to accompany the young offender into the court room, are often excluded from participation.

**Recommendation No. 126:**

That the Attorney General's Department, the Department of Courts Administration, the Legal Aid Commission and the Law Society review the option of the expansion of the children's duty solicitor scheme and provision of a social worker, to other Children's Courts, using the scheme at Cobham Children's Court as a model. As part of the review, consideration be given as to whether more than one salaried solicitor would be required to service Children's Courts.

**Recommendation No. 127:**

That the duty solicitor scheme be expanded to include a legal service for young people in Juvenile Justice Centres that could assist detainees with bail applications, appeals, complaints and any other relevant legal matter.

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<sup>26</sup> Submission 47. pp.1-2



**Recommendation No. 128:**

- That a special Children's Section be established in Head Office of the Legal Aid Commission that would be responsible for the co-ordination and monitoring of the duty solicitor scheme, including an expanded duty solicitor scheme.

**Recommendation No. 129:**

- That a scheme be established by the Legal Aid Commission whereby a children's solicitor travel on circuit to country areas where there is no specialist Children's Court or specialist children's solicitor to assist in children's criminal proceedings.

**Recommendation No. 130:**

- That all solicitors participating in the Children's Court duty solicitor scheme be provided with training and education on issues relevant to the needs of the clients that they are to represent and that such training and education be ongoing throughout their time on the roster.

**Recommendation No. 131:**

- That the Attorney General's Department, the Department of Courts Administration, the Legal Aid Commission and the Law Society examine the option of setting up a 24 hour telephone advice line for young people at police stations, who are charged with a criminal offence.

**Recommendation No. 132:**

- That Children's Court proceedings be conducted in language that is simple and able to be understood by young people appearing at court and that young people and their families or other support people, be encouraged to participate in the proceedings.

Recommendation No. 133:

That a Youth Information Service be established and co-ordinated through the Office of Youth Affairs, to provide assistance to young people with inquiries on a number of issues, including housing, income assistance, employment and any other relevant matter, and to act as a referral agency.

**6.10 OFFICE OF THE OMBUDSMAN**

From its evidence the Committee understands that the Office of the Ombudsman can play a significant role in the juvenile justice process. The Committee has heard that young offenders may make complaints to the Ombudsman on a range of issues relevant to juvenile justice, including allegations of police misconduct and treatment in Juvenile Justice Centres, transfer applications, specific policies in centres and allegations of misconduct or mismanagement by staff.

In relation to these issues the Committee has taken evidence from the Ombudsman, a Senior Investigation Officer from the Ombudsman's Office, as well as young people, solicitors and youth workers. Relevant evidence has been taken also from members of Aboriginal communities. The Committee has examined a document detailing the findings by the Office of the Ombudsman in relation to a complaint by a young offender in a Juvenile Justice Centre, against a staff member.

The Committee heard that often where legitimate grounds may exist for a complaint young people may not utilise the service of the Ombudsman because of a lack of knowledge of its existence or because of fear of retaliation by the person against whom the complaint is made. The Committee has heard also that young people are often deterred from lodging a complaint because of the lengthy time that it can take for the findings to be delivered. In his evidence the Ombudsman stated to the Committee, in relation to providing young people with knowledge of the role of the Ombudsman:

"Children less than any other group would have much less knowledge, I am sure...I wouldn't assume that they know anything about the Ombudsman frankly."<sup>27</sup>

Moreover, according to a Senior Investigation Officer with the Ombudsman's Office commenting on the implications of the length of time of some complaints:

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<sup>27</sup> Evidence 4.4.91 p.214

"One of the difficulties ...is (that) from time to time we lose the complainant and that tends to happen very often in relation to police complaints where the Police Service has 180 days to carry out their investigation at the first stage and as you can appreciate, 180 days down the line you've very often lost the kid, and if you haven't lost the kid, you've very often lost their interest."<sup>28</sup>

In response to a question on how better to acquaint young people with the service provided by the Ombudsman's office, the Ombudsman answered:

"it's totally a resource issue... the approach that I would have with the resources would be - education (that) is where the resources would go, education and into an appropriate youth officer."<sup>29</sup>

Evidence presented to the Committee, from a number of sources has indicated that there should be established in the Ombudsman's Office a position to deal exclusively with and oversee all complaints that affect children and young people and to also provide an educational role for young people about the service provided by the Office. A majority of Committee Members see merit in this proposal. The Committee considers that the position would require co-ordinating investigations relating to all complaints lodged by children, including those in the Juvenile Justice System and establishing a system of education for young people about the role of the Ombudsman. The Committee considers that it would be appropriate for the officer responsible for this position to have the status of Deputy Ombudsman.

**Recommendation No. 134:**

**That a position be created in the Office of the Ombudsman, with the status of Deputy Ombudsman, that would be responsible for the co-ordination of complaints made by children, including those in the Juvenile Justice System, and for the establishment of a system of education and information for children about the role of the Ombudsman. Adequate resources should be made available to assist in the creation of this position.**

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<sup>28</sup> Evidence 04.04.91 p.222

<sup>29</sup> Evidence 4.4.91 p.217

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### **6.11 RELATIONSHIP BETWEEN GOVERNMENT AND NON-GOVERNMENT AGENCIES**

Relevant services to youth at risk or youth in the juvenile justice area are provided by both the government and non-government sector. The role of non-government agencies in the provision of services for young people is most important. Both Federal and State governments assist non-government agencies through funding grants. The relationship between them has been structured by the requirements of accountability to the government as the supervising authority.

In any funding arrangement between the government and non-government agencies, the Committee considers that agencies should be accountable and that the nature of services provided with government funding be of the type specified by the government. In particular, the Committee considers that it is desirable that an agreement be made between a service provider and the funding body to achieve specified outcomes.

Two key elements in the relationship between the government and non-government agencies affecting the quality of programs are funding and standards of service delivery. Standards of care in service delivery can be encouraged through the mechanism of licensing agencies which maintain a specified standard. Monitoring and evaluating the performance of organisations also ensures that quality care is maintained.

The Committee considers that accountability measures for service providers be relevant to the outcomes specified in funding contracts. Monitoring standards and evaluating of outcomes should remain the role of the funding agency, with continuation of funding based on an agency's level of success in achieving determined outcomes.

## DISSENTING OPINION

In this Section of the Report dissenting opinions relating to Community Aid Panels, the Sentencing Act, the Summary Offences Act and Children's Panels are reported.

### A. COMMUNITY AID PANELS

During the course of this Inquiry the Committee visited a number of Community Aid Panels, spoke both with people instrumental in the setting up of the scheme, currently participating in it, and those supporting and opposed to such a scheme. The Committee identified the following problems:

1. Community Aid Panels inevitably "compete" with police cautioning as a first option. This unfortunately results in a broader group of children being subjected to court-style sentences (e.g. Community Service Orders).
2. Members of Community-Aid Panels, while well-intentioned, are simply inadequately trained in mediation or in dealing with the complex causes of juvenile offending.
3. Insufficient guidelines, let alone a legislative base, exist in the operation of Community Aid Panels throughout the state. This results in considerable differences in the experience and suitability of panel members and wildly differing de facto "sentences".

The Committee has already decided that Children's Panels should eventually replace Community Aid Panels. We therefore fail to see why the two systems should operate in tandem. The dual system implies lack of conviction in the Children's Panel. Indeed if guidelines are introduced into Community Aid Panels, it will only help entrench a system which the Committee has decided is "fundamentally flawed". The proliferation of a number of different panels will be confusing for police, children and those working with young offenders. Surely this can only undermine the Committee's recommendations in support of the new system. We therefore recommend the following:

**Recommendations:**

1. That Community Aid Panels cease to operate in relation to young offenders.
2. That Children's Panels be progressively introduced, without the requirement of a pilot period. Independent evaluation should nevertheless occur after 12 months to assess the impact of the Children's Panels.

**B. SENTENCING ACT**

Throughout this Inquiry the Committee has been reminded on numerous occasions about the need to differentiate between adults and children in the community's response to criminal behaviour. The reasons for this are stated clearly in the early Chapters of the Report and include the fact that most juveniles do not re-offend and that for some children it is solely in response to peer group pressure before they have the maturity to say no. During the debate which surrounded the introduction of the Sentencing Act these factors were largely overlooked.

The overwhelming policy of the criminal courts in sentencing young offenders is to facilitate rehabilitation and to put to one side the principle of retribution and deterrence. The application of the Sentencing Act to children has led to young offenders spending 34% more time in custody according to a 1992 NSW Judicial Commission Report. In order to break the cycle whereby young offenders grow up to be adult offenders it is vital to concentrate on rehabilitation and addressing individual children's needs. This does not mean that children should go unpunished but rather that such punishment is structured in a way which will do the most to assist the offending juvenile. It is time that children were placed back in the position they were immediately before the Sentencing Act commenced.

Programs designed to deter children from patterns of anti-social behaviour must be given priority. Observations throughout the Inquiry confirm that effective means of encouraging positive behaviour changes for young offenders in custody is through a system of earned remissions. Participation in education, drug and alcohol programs and training schemes, as well as good behaviour, should attract remissions of sentences. Therefore the use of remissions for good behaviour and the desirability of supervision in the community are essential elements of effective management for juvenile offenders. The Committee unanimously supports the view that supervision and follow-up after young offenders leave an institution is critical in assisting the rehabilitation process of such offenders and minimising the chances of recidivism. It is vital that young people

emerging from detention are assisted to re-integrate into their communities. Programs designed to achieve this can only be available to all young offenders released from custody, if the appropriate legislative adjustments are made and funds are provided. It is important to note that the Sentencing Act has parole provisions where sentences are six months or more. As children invariably are sentenced to less than six months they are consequently not eligible for supervision orders. (See Section 6.5 p.182).

The situation whereby children and adults are covered by this same legislation is therefore anomalous. We believe that an immediate review of the legislation should occur and young offenders should have access to remissions for good behaviour and should be dealt with under new legislation permitting remissions, and not under the Sentencing Act, which does not.

Deletions to the Sentencing Act to ensure this, and amendments to the Children (Criminal Proceedings) Act are required so that all sentences for children are governed by the Children (Criminal Proceedings) Act.

**Recommendations:**

3. That young offenders be granted access to remission for good behaviour while in custody. This should be achieved either through amendments to the Sentencing Act and/or by new legislation.
4. That the Children (Criminal Proceedings) Act be amended to grant young offenders access to remissions and so that all sentences for Children are governed by that Act.

**C. SUMMARY OFFENCES ACT**

There has been much community debate recently in relation to the charges of "offensive language" and "offensive conduct" which are found in the Summary Offences Act.

It is clear that the use by police of their powers under this act targets, intentionally or not, some groups in the community, such as children, more than others.

It is instructive to note that in excess of 8,500 convictions for these two offences alone were dealt with by NSW courts in 1990. Surely an inappropriate use of court time when one considers that what may be considered offensive in certain communities or in certain situations would not even be noticed in other areas and amongst other groups of people.

This unfairness is compounded by the availability of imprisonment as a penalty under Section 4 of the Act. In 1990, 20 people were imprisoned for the charge of "offensive language" and a further four were sentenced to periodic detention. Potential imprisonment for relatively trivial offences against public standards, where those standards vary greatly from group to group in the community, is insupportable.

It is a matter of concern that young Aboriginal people are also more at risk than young white people.

The Committee was persuaded during the course of this Inquiry to recommend that the maximum penalty for offensive language by juveniles be a formal caution. It is clear that the use by police of their powers under the current legislation targets, wittingly or unwittingly, some groups in the community more than others. These arguments are so strong to convince us that amendments to the Summary Offences Act are needed. We therefore propose that:

**Recommendations:**

5. S4 (1) of the Summary Offences Act be amended so that the offence be redefined as "a seriously offensive manner" and
6. S4 (1) (b) of the Summary Offences Act be deleted so that the simple use of offensive language no longer attracts a criminal sanction. Furthermore, that the option of a prison sentence for offensive conduct be abolished.

**D. CHILDREN'S PANELS**

Every inquiry into Juvenile Justice completed in the last 10 years has concluded that early and repeated contact with the judicial system and subsequent institutionalisation of children has been disadvantageous to the individual, their family, the victim and subsequently the community at large.

The Committee's research has indicated that court procedures and incarceration are intimidating, misunderstood and ineffective for many children. In fact far from being successful in deterring young people from offending behaviour, institutionalisation is directly linked with recidivism rates in the juvenile population.



It is clear that the most important aspect of this inquiry's recommendations are those which relate to the establishment of Children's Panels. They are a radical attempt at diverting children from the court system and confronting and dealing with the causes of the anti-social behaviour of offending juveniles.

The panel's composition reflects this attempt. Convened by a Juvenile Justice Officer, the police and community will be represented as well as the juvenile and his or her family. The victim (and if desired a person to accompany the victim) will also be invited to participate in the proceedings. The panel will seek to reflect the sex, Aboriginality and cultural background of the offender. This unanimous recommendation emerged from the sub-Committee's visit to New Zealand. The Maori-inspired "Family Group Conference" which operates there was not directly transferable given the differences in the two societies, but the Children's Panel reflects the same principles. In New South Wales a greater degree of flexibility will remain with the panel convenor, the Juvenile Justice Officer.

In arriving at this conclusion the Committee has decided to supersede the current operation of Community Aid Panels, at least insofar as they deal with children. We support this proposal. Therefore, we cannot support the recommendation that the Children's Panels commence on a trial basis, simultaneously with Community Aid Panels. The Children's Panels need to be implemented immediately and unconditionally as part of the three-tiered approach recommended by the Committee; that is, increased use of Police Cautions, court diversion through the use of Children's Panels and an increased range of sentencing options available to the Children's courts. Such a policy will prevent confusion within the Juvenile Justice System, reverse the inevitable spiral towards institutionalisation and return the focus of responsibility to the community and the family.

The whole aim of the proposed Children's Panel scheme is to allow and encourage participation by the relevant people and halt the increasing isolation and alienation of young people.

This scheme will force children to acknowledge their own responsibility and link the child more directly to their community. The clear failure of the present system is a persuasive argument in support of the new approach. This important initiative should not be undermined by the continuation of Community Aid Panels, before it has had a chance to succeed. (See recommendations 1 & 2 of this Dissenting Report).

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**WITNESSES AT FORMAL HEARINGS**

Mrs F. Ali	Office of Juvenile Justice, Eastern Sydney Region
Ms E. Alvarez	Solicitor, Bourke
Ms L. Ballangarri	Aboriginal Medical Service, Bourke
Chief Inspector K. Beacroft	New South Wales Police Service
Mr A. Binge	Aboriginal Community Liaison Officer, New South Wales Police Service
Mr R. Blackmore	Senior Children's Court Magistrate
Mr G. Bullock	Youth Centre, Bourke
Ms H. Campbell	Blue Mountains Legal Centre
Dr K. Carrington	Faculty of Professional Studies, University of New South Wales
Superintendent P. Clemson	New South Wales Police Service
Ms L. Cohen	Rosemount Family and Youth Service Inc.
Mr P. Connie	Dunsmore House Adolescent Detoxification
Mr J. Coomber	The Factory Youth Centre
Mr C. Coorey	Bankstown Multicultural Youth Centre
Mr C. Cunneen	Criminologist and Lecturer in Law, University of Sydney
Mr Q. Dao	Cabramatta Community Centre
Mr V. Doan	Cabramatta Community Centre
Mr C. Dorrington	Shire Clerk, Bourke Shire

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Witnesses

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Ms M. Duncan	Office of Juvenile Justice, Northern Region
Chief Inspector C. Evans	New South Wales Police Service
Mrs T. Findlay-Barnes	Family and Youth Support Services of Wyong Shire
Mr P. Gibbs	New South Wales Department of School Education
Mr M. Gordon	Aboriginal Community Liaison Officer, New South Wales Police Service
Mr P. Hams	Shire Councillor, Bourke Shire
Ms M. Hausia	Western Aboriginal Legal Service, Dubbo
Ms S. Hennessy	New South Wales Department of School Education, Western Region
Mr M. Hogan	Public Interest Advocacy Centre
Mrs B. Holborow	Magistrate of the Children's Court
Mr C. Holley	Formerly Minda Detention Centre
Mr J. Howard	School of Behavioural Sciences, Macquarie University
Mrs Y. Howarth	Shire Councillor, Bourke
Mrs L. Howie	Elder of the Dubbo Aboriginal Community
Professor B. Innes	School of Communities and Welfare Services, University of Western Sydney
Mr G. Jauncey	Aboriginal Legal Service, Redfern
Ms J. Kang	Migrant Resource Centre, Liverpool
Mr D. Kershaw	Office of Juvenile Justice, Kempsey

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Mr S. Kinmond	Office of the Ombudsman
Mr R. Kirby	Office of Juvenile Justice, Western Region
Mr T. Krone	Western Aboriginal Legal Service, Bourke
Mr D. Landa	New South Wales Ombudsman
Mr G. Lane	Legal Aid Commission
Mr W. Madden	The Factory Youth Centre
Mr D. McKenzie	Western Aboriginal Legal Service, Dubbo
Ms L. Miller	Solicitor, Sydney
Mr W. Mitchell	Shire President, Bourke Shire
Mr G. Mooney	The Settlement, Redfern
Ms E. Moore	Churchill Fellow
Mr B. Munro	Aboriginal Legal Service, Moree
Mr D. Nicholls	Aboriginal Community Liaison Officer, New South Wales Police Service
Mr R. Oerlemans	The Factory Youth Centre
Ms T. O'Sullivan	Marrickville Legal Centre, Prisons Coalition, Women and Girls in Custody Sub-Committee
Mr C. Patten	Aboriginal Legal Service, Redfern
Mr S. Phillips	Redfern Aboriginal Corporation
Ms S. Pilon	Office of Juvenile Justice, Western Region
Mr L. Polzot	Youth and the Law Project, Campbelltown

**Witnesses**

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Mr R. Pryke	Formerly Department of Youth and Community Services worker
Ms D. Reed	Formerly Youth Worker, Macquarie Legal Centre
Mr A. Restuccia	Ethnic Communities Council
Mr J. Ricketson	Foster parent
Mr B. Riley	Aboriginal Community Liaison Officer, New South Wales Police Service
Associate Professor D. Robertson	School of Community and Welfare Studies, University of Western Sydney
Mr G. Rogers	New South Wales Child Protection Council
Mr S. Savill	Youth Worker, Walgett
Mr B. Shipp	Burnside, Adolescent Legal Service
Ms S. Smith	Mygunya Aboriginal Corporation, Dubbo
Ms T. Smith	Barnardos Waverley Centre
Mr W. Smith	Office of Juvenile Justice, Northern Area
Mr G. Spears	Department of Community Services
Sergeant R. Stutsel	New South Wales Police Service
Ms M. Swan	Aboriginal Children's Service, Moree
Constable R. Thomas	New South Wales Police Service
Mr D. Thompson	Aboriginal Legal Service
Mr A. Towney	Aboriginal Community Liaison Officer, New South Wales Police Service

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Mr R. Towney	Aboriginal Community Representative, Dubbo
Ms J. Tressider	Project Officer, Kids in Justice Report
Mr B. Turnbull	Aboriginal Community Liaison Officer, New South Wales Police Service
Mr D. Wadelton	Youth Accommodation Association
Pastor P. Walker	Visiting Chaplain to Minda, Cobham and Mt Penang Juvenile Justice Centres
Ms W. Waller	Green Valley Family Support Services
Mr I. Williams	Macquarie Legal Centre
Constable P. Wunsch	New South Wales Police Service
Mr M. Young	Association of Children's Welfare Agencies

The Committee also heard in-camera evidence from thirteen witnesses.

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**SUBMISSIONS RECEIVED:**

- . Anglican Youth Department, Director, T Smith
- . Association of Childrens Welfare Agencies, Executive Director, M Young
- . Attorney General's Department, Acting Secretary, P J Webb
- . Australian Community Action Network, Director, R Van Wegen
- . Australian Federation of Business and Professional Women Incorporated, Child Abuse & Neglect Committee, C Stewart
- . Australian National University, The Research School of Social Sciences, Dr N Naffine
- . Australian Social Welfare Union, NSW Branch, Acting Industrial Officer, C Medcalf
- . Australian Society of Social Workers Ltd., Honorary Secretary, A Bastoli
  
- . Barnardo's Australia, Chief Executive, L Voigt
- . Bicentennial Youth Foundation, Consultant, L Webb
- . Blackmore, R, Senior Children's Court Magistrate
- . Blacktown and Mt. Druitt Community Health Services, Unit Manager, P Connie
- . Boys' Town, Director, Fr. F Bertagnolli, SDB
- . Burnside, Solicitor, Adolescent Legal Service, B Shipp
  
- . Centacare, Catholic Family Welfare, Secretary, Fr J Usher
- . Central Coast Law Society, Courts Committee, K J Pearce (for and on behalf of the Central Coast Regional Law Society)
- . Cobham School, Principal, N R Hopper
- . Council of the Shire of Bourke, Shire Clerk, C E Dorrington
- . Cutler Richardson & Burgin, Solicitors and Conveyancers, T Steer (for and on behalf of the Community Aid Panel at Wyong)
  
- . Daily, I
- . Department of Corrective Services, Director-General, A Graham
- . Department of Health, Director-General, B J Amos
- . Department of Family and Community Services, Director-General, V J Dalton
- . Department of School Education, Deputy Director-General, Regions and Schools, N Berglund
- . Dorne, A

## Submissions

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- . The Factory Youth Centre, W Madden
  - . Family Law Reform Association, NSW, Honorary Secretary, C Slattery
  - . Fairfield Community Resource Centre, Youth Services Co-Ordinator, P Spooner
  - . Fairfield Youth Accommodation Service, B Bartlett
  
  - . Green Valley Family Support Service, Co-Ordinator, W Waller
  - . Gurney, P
  
  - . Hague, J
  - . Hames, R
  - . Hancock, G
  - . Hinchey, S
  - . Holborow, B A, Magistrate of the Children's Court
  - . Holley, C
  
  - . Incest Services Network, Psychologist/Child Sexual Assault Counsellor, L Cohen
  
  - . Lawyers's Reform Association, President, D Patch
  - . Legal Aid Commission of NSW, Acting Director, T Murphy and Solicitor, R Heazlewood
  - . Lennings, C, Clinical Psychologist
  - . Lismore Child Protection Interest Group, B Myers
  
  - . Macquarie University, School of Behavioural Sciences, Senior Lecturer in Psychology and Co-Ordinator, Clinical Drug Dependence Studies, J Howard
  - . Macquarie University, School of Behavioural Sciences, Dr J Cashmore
  - . Madden, W, Youth Worker
  - . Magistrates' Chambers, Local Court, Wyong, Magistrate, E Considine
  - . Marrickville Legal Centre & Childrens Legal Service
  - . McDermott, L
  - . Miller, L, Solicitor
  - . Minister for Corrective Services & Assistant Minister for Roads, Hon M Yabsley, MP
  - . Minister for Housing, Hon J Schipp, MP
  - . Minister for School Education and Youth Affairs, Hon V Chadwick, MLC
  - . Minister for Police and Emergency Services, Hon T Pickering, MLC
  - . Moore, E, Churchill Fellow
-

. Neo Prospects Ltd, Public Benevolent Institution, Training Consultant, S Warren  
. New South Wales Association for Mental Health Inc, President, Professor I  
Webster  
. New South Wales Child Protection Council, Executive Officer, G Rogers  
. New South Wales Council for Civil Liberties, President, K Horler, QC  
. New South Wales Council for Civil Liberties, Convenor, Legal Sub-Committee, B  
Schurr  
. New South Wales Police Department, State Co-Ordinator, Community Aid Panel,  
P Dixon  
. New South Wales Prisons Coalition, Women and Girls in Custody Sub-  
Committee, Chairperson, L Cassidy  
. Nicholls, S

. O'Connor, Dr M E  
. Office of the Ombudsman, Ombudsman, D Landa  
. Open Family Foundation, Executive Director, J Stirling

. Paul, J  
. Parker, W  
. Police Association of New South Wales, Deputy President, T O'Connell  
. Police Department, Police Headquarters, Commissioner, J K Avery  
. Premier's Department, Office of Aboriginal Affairs, Acting Director, K Kocken  
. Pryke, R  
. Public Interest Advocacy Centre, Policy Officer, M Hogan

. Redfern Legal Centre  
. Ricketson, J  
. Rosemount, Acting Director, E Thompson

. Sacred Heart School, Geeveston, Tasmania, Principal, K Humphries  
. Sanders, D  
. Savill, S M  
. South Coast Wilderness Program, Co-Ordinator, R Hadley  
. Streetwize Comics, S Miller  
. Sydney City Mission, Group General Manager, Youth, Wilderness and Regional  
Programs, W Koivu  
. Sydney City Mission, Director Wilderness Programme, R D Letts  
. Sydney City Mission, Divisional Director, Triple Care, A J Wells

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## Submissions

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- . University of New South Wales, School of Health Services Management, Dr K Carrington
- . University of Western Sydney, Macarthur, School of Community and Welfare Studies, Associate Professor D Robertson, Professor B J Innis
  
- . Womens Legal Resources Centre, Solicitor, H Campbell
  
- . Youth Advisory Council of New South Wales, Chairperson, J Skinner
- . Youth Insearch Foundation Australia Inc, Director, R Barr
- . Youth Justice Coalition (NSW), M Hogan

NEW SOUTH WALES VISITS & DISCUSSIONS

Aboriginal Legal Service, Redfern	June 1991
Bankstown Multicultural Youth Centre	May 1991
Bidura Children's Court	May 1991
Cobham Children's Court	October 1991
Cobham Juvenile Justice Centre	October 1991
Community Aid Panel, Wyong	February 1991
Community Aid Panel, Wyong	March 1991
Community Aid Panel, Woolloomooloo	January 1992
Community Youth Centre, Stanmore	January 1992
Minda Juvenile Justice Centre	May 1991
Minda Children's Court	October 1991
Minda Juvenile Justice Centre	October 1991
Mt. Penang Juvenile Justice Centre	February 1991
Mt. Penang Juvenile Justice Centre	March 1991
Reiby Juvenile Justice Centre	October 1991
South Sydney Youth Service	June 1991
The Settlement, Redfern	May 1991
The Factory Youth Centre, Waterloo	March 1991
Yasmar Juvenile Justice Centre	May 1991

**New South Wales Visits and Discussions**

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Yasmar Juvenile Justice Centre	June 1991
Young Offenders Support Team Office, Summer Hill (Juvenile Justice Community Services Office)	May 1991
Youth and the Law Project, Campbelltown	March 1991

**BRIEFINGS AND DISCUSSIONS HELD IN NEW SOUTH WALES**

Minister for Justice:	.	Hon. T. Griffiths, M.P.
Juvenile Justice Advisory Council:	.	Dr M. Bashir
	.	Ms R. Sexton
Office of Juvenile Justice:	.	Mr I. Graham
Department of Family and Community Services:	.	Mr D. Marchant
	.	Mr L. Maher
	.	Mr C. Loughman
New South Wales Police Service:	.	Inspector S. Ireland
	.	Mr J. McDonald
Adelaide Children's Court, South Australia:	.	Judge J. Kingsley Newman
Children's Court of Western Australia:	.	Judge H. Jackson
Youth Justice Coalition:	.	Mr M. Hogan
	.	Mr R. Mohr

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**INTERSTATE DISCUSSIONS AND BRIEFINGS**

**Queensland, 4-5 March 1991**

Ms H. Betts	Youth Advocacy Centre
Mr L. Carpenter	Department of Family Services, Aboriginal and Islander Affairs
Detective Inspector D. Jeffries	Central Juvenile Aid Bureau, Police Service
Mr C. Lennings	University College of Southern Queensland
Ms R. Matchett	Director-General, Department of Family Services, Aboriginal and Islander Affairs
Ms A. McMillan	The Youth Advocacy Centre
Mr L. Moynihan	Brisbane Youth Service
Dr S. Mukherjee	Criminal Justice Commission
Ms G. Murray	Youth Advocacy Centre
The Hon A. Warner, M.P	Minister for Aboriginal Services, Aboriginal and Islander Affairs

**South Australia, 22 April 1991**

Ms J. Monk	Department for Family and Community Services
Chief Superintendent J. Murray	Police Department
Dr N. Naffine	University of Adelaide
Mr K. Teo	Department for Family and Community Services

**Interstate Discussions and Briefings**

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Ms S. Vardon	Chief Executive, Department for Family and Community Services
Chief Inspector J. Whittington	Police Department
Ms J. Wundersitz	University of Adelaide

**Victoria, 24 April 1991**

Mr M. Carroll	Department of Community Services
Mr G. Connellan	Fitzroy Legal Service
Mr V. Duggan	Department of Community Services
Mr R. Inglis	Youth Advocacy Network
Mr D. Sandor	Youth Advocate

**Australian Capital Territory, 10 May 1991**

Mr L. Barrett	Australian Federal Police
Ms A. Collett	Children's Court, Canberra
Mr R. Cahill	Magistrate, Australian Capital Territory and Australian Capital Territory Law Reform Commission
Sergeant M. Home	Australian Federal Police
Mr A. Tandy	Youth Advocate

**NEW ZEALAND BRIEFINGS AND DISCUSSIONS, NOVEMBER 1991**

Mr N. Adams	Police Prosecutor
Mr J. Angus	Department of Social Welfare
Ms H. Black	Epuni Resource Centre
Ms M. Brown	Office of the Minister for Social Welfare
Judge M. Brown	Auckland District Court
Ms J. Chalmers	Youth Family Trust
Assistant Commissioner B. Davies	New Zealand Police
Sergeant B. Davey	New Zealand Police
Ms F. Denny	Department of Social Welfare
Mr D. Drummond	Youth Aid
Ms J. Frankham	Youth Family Trust
Mr T. Gossett	Auckland Council of Social Services
Ms B. Hegarty	Department of Social Welfare
Mr G. Hikaka	Police Legal Advisor
Mr L. Jeffs	Police Youth Aid Officer
Ms G. Kirby	The Children, Young Persons and Their Families Review Team
Mr A. Kirkland	Director-General, Department of Social Welfare
Judge K. Mason	The Children, Young Persons and Their Families Review Team

Overseas Discussions and Briefings

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Superintendent B. Matthews	New Zealand Police
Dr G. Maxwell	Victoria University
Mr L. McCarthy	New Zealand Police
Mr G. McFadyen	Department of Social Welfare
Mr H. Rapanea	Waipareira Trust
Ms J. Renouf	Department of Social Welfare
Mr J. Rogers	Department of Social Welfare
Mr T. Saxon	Department of Social Welfare
Ms T. Stewart	New Zealand Police
Ms B. Wark	Youth Family Trust
Mr J. Wells	Youth Advocate
Mr J. Wihongi	Kaumatua (Elder) of the Waipareira Trust
Mr R. Wilcox	Epuni Resource Centre
Mr R. Wray	The Children, Young Persons and Their Families Review Team

During July and August 1990, a delegation of the Social Issues Committee travelled overseas in relation to the Inquiry into Drug Abuse Among Youth, Report No. 2. The primary objective of the overseas study tour was to seek information for the Inquiry into Drug Abuse Among Youth however, the delegation took the opportunity to engage in discussions relating to Juvenile Justice with the following people:

Mr Sutton  
Head, Criminal Policy Division  
Home Office  
England

Mr Karlsson  
Director  
Hammargarden Juvenile Home  
Sweden

Prosecutor and Judge of the Juvenile Justice System  
Sweden

Ms Marianne Hakansson  
Crime Prevention Agency  
Sweden

Mr Arthur Solarz  
Crime Prevention Agency  
Sweden

Professor Reinhard Bottcher  
Department of Criminal Law  
Germany

Deputy Mariano Zamudio  
International Liaison Unit  
Hall of Justice  
Los Angeles, California, U.S.A.

Sergeant John Valencia  
Delinquency Prevention Detail  
Juvenile Investigations Bureau  
Whittier, California, U.S.A.

**Overseas Discussions and Briefings**

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Sergeant Ronald Lander  
Juvenile Investigations Bureau  
Whittier, California, U.S.A.

Mr William H. Smith  
Vice President  
Director of Clinical Services  
Phoenix House  
Santa Ana, California, U.S.A.

Dr Jerry W. Larson  
Director  
Pride House  
Van Nuys, California, U.S.A.

Mr Horst Bauer  
Training Officer  
Juvenile Court  
City and County of San Francisco, U.S.A.

Justice Harmon G. Scoville  
Special Master  
Marin County Superior Court  
Tiburon, California, U.S.A.

## GLOSSARY OF TERMS

**Aborigine/Aboriginal:**

Wherever the terms "Aborigine" or "Aboriginal" appear, the Committee wishes them to be read as including Torres Strait Islanders.

**Bail:**

The release of a person held in legal custody pending a court appearance. Bail may be granted by the police or the Court. Where bail is denied, an accused person is held in custody.

**Caution:**

A formal police reprimand given to a young, normally first or minor offender who admits to an offence.

A sentencing option available to Children's Magistrates usually for first and/or minor offenders.

**Children's Court:**

A specialised court that determines matters relating to children charged with criminal offences and those subject to a care application.

**Children's Magistrate:**

A specialist magistrate who presides over a Children's Court.

**Community Youth Centres:**

Office of Juvenile Justice services that offer supervision and counselling to young offenders.

**Control Order:**

A custodial sentence given to a young offender.

**Court Diversion:**

A process of steering young offenders away from the court system.

**Evidence:**

Oral information supplied under oath or affirmation to the Committee by witnesses during formal Hearings.

**Juvenile Justice Community Services:**

Community-based services provided by the Office of Juvenile Justice for young offenders. Formerly known as Young Offenders Support Services.

**Juvenile Justice Centres:**

Facilities that detain young people who are charged with a criminal offence and have been denied bail, pending their next court appearance, and young people convicted of a criminal offence and given a custodial sentence.

**Juvenile Justice Officers:**

Community-based juvenile justice personnel except those involved in the Community Youth Centre program (Office of Juvenile Justice circular number 26/91).

**Probation:**

A sentencing option. The sentence normally requires an offender to be of good behaviour for the duration of the sentence. Further conditions generally attach to the order, including supervision.

**Recognizance/Bond:**

A sentencing option. The sentence normally requires an offender to be of good behaviour for the duration of the sentence. An offender may be required to forfeit a sum of money if he or she breaches the order.

**Submission:**

Written material supplied to the Committee by an individual or organisation, containing the author's views in relation to the Inquiry.

**Witness:**

A person summonsed by the Committee to give evidence at formal Hearings concerning the Inquiry.

**Young Offender:**

Generally, a person under the age of 18 years convicted of a criminal offence. Under the Children (Criminal Proceedings) Act a person who was under the age of 18 years when an offence was committed and under the age of 21 years when charged before the Children's Court with an offence, may be dealt with and convicted by the Children's Court.

**Youth Worker:**

A person who works with young people, including young offenders. The term can apply to workers in community organisations and to workers in Juvenile Justice Centres.

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## BIBLIOGRAPHY

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**PREVIOUS PUBLICATIONS BY THE**  
**STANDING COMMITTEE ON SOCIAL ISSUES**

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|--------------|---|
| Report No. 1 | Accessing Adoption Information<br>October 1989      |
| Report No. 2 | Drug Abuse Among Youth, Volume One<br>December 1990 |
| Report No. 3 | Medically Acquired H.I.V.<br>October 1991           |

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