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:

- <u>A more appropriate means of dealing with the problem of juvenile recidivism</u>. 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.[1]

- **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.[2]

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."[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.**

[1] Judicial Commission of New South Wales. 1991(b) p.5

[2] 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

[3] Submission 33. p.264

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.[4] 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;

[4] 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."[5]

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."[6]

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.

[5] Submission 30. p.2

[6] Judicial Commission of New South Wales. 1991(b) pp.1-2

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..."[7]

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**".[8] 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.

[7] Submission 52. p.4

[8] Submission 1. p.5

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.[9] 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."[10]

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."[11]

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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[9] Submission 33. p.270

[10] Submission 52. p.5

[11] 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."[12]

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:

[12] 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."[13]

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.[14] 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.[15] 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." [16]

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

[13] Submission 34. p.2

[14] Statute Law (Miscellaneous Provisions) 1991

[15] Submission 33. p.275

[16] 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."[17]

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

[17] 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."[18]

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.[19]

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."[20]

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."[21]

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[18] Submission 55. p.1-2

[19] Submission 33. p.271 (Emphasis added)

[20] Submission 33. p.276

[21] 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."[22]

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."[23]

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."[24]

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[22] Evidence 10.12.91 p.13

[23] Submission 33. p.291

[24] 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.[25]

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."[26]

[25] Submission 33. p.12

[26] Submission 41. p.4

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.

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)

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.[27]

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.

[27] 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.[28]

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.**"[29]

[28] Submission 86.

[29] Evidence 4.4.91 p.3 (Emphasis added)

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)."[30]

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.**

[30] Submission 33. p.296 (citing a NSW Department of Family and Community Services submission to the Royal Commission into Aboriginal Deaths in Custody)

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".[31] 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."[32]

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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[31] Judicial Commission of New South Wales. 1991(a) p.5

[32] 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."[33] 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.**

[33] 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."[34]

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."[35]

The Committee understands that, as at 25 March 1992, approximately 55 panels were operating throughout New South Wales.[36]

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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[34] Submission 7. p.1

[35] Submission 64. p.1

[36] New South Wales Police Service. 1992 p.1

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.[37] 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.[38]

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.[39]

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."[40]

[37] Submission 7. p.3

[38] Evidence 4.2.92.

[39] Evidence 2.12.91 p.8

[40] 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." [41]

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.[42]

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..."[43]

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

[41] Submission 7. p.3

[42] Submission 7. p.3

[43] New South Wales Police Service. 1989 pp.7-8

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."[44]

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."[45]

[44] Evidence 29.1.92 p.13

[45] Evidence 7.2.92 pp.20-21

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."[46]

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."[47]

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."[48]

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

[46] Evidence 10.12.92 p.10

[47] New South Wales Police Service. 1989 p.8

[48] 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.

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

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.**

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."[49]

[49] 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."[50]

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)

[50] 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."[51]

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

[51] 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."[52]

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

[52] 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.[53]

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

[53] 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."[54]

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.**

[54] 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.[55]

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

[55] Royal Commission into Aboriginal Deaths in Custody. 1991(a) p.15

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".[56] 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."[57]

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

[56] NSW Minister for Justice. 25.11.91

[57] Submission 86. p.10

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.[58] 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".[59]

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."[60]

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

[58] Evidence 4.2.92

[59] Evidence 4.2.92

[60] 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."[61] 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.**

[61] 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."[62]

[62] 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.**