

## **Submission to the Public Accounts Committee of the NSW Legislative Assembly Concerning the Inquiry into State Plan Reporting.**

The New South Wales Council for Civil Liberties thanks the Public Accounts Committee for the invitation to contribute to this inquiry.

Our original concerns about some aspects of the Plan have been heightened recently by a considerable increase in the number of complaints we have received about unwarranted police violence, bullying and irresponsible behaviour. We recommend that the Public Accounts Committee adopt mechanisms for determining the extent of deleterious consequences of actions taken in accordance with the Plan, and whether, as we feared, they are severe enough to entirely discredit the material concerning reducing rates of crime and reducing re-offending.

This submission is limited to the matters raised by the chapter on rights, respect and responsibility.

### **Summary of recommendations**

**Recommendation 1.** That the Public Accounts Committee foster research into the extent to which changes in the rates of crime are the result of actions taken under the State Plan, and not merely coincidental changes.

**Recommendation 2.** That the Public Accounts Committee foster research into the influence of the State Plan and actions taken in accordance with it, on the culture of police officers, and in particular into any influence on wrongdoing by police officers.

**Recommendation 3:** That the Public Accounts Committee report on the extent to which the fears of those who opposed the giving of anti-terrorism powers to police were justified.

**Recommendation 4.** That the Public Accounts Committee monitor attempts to reduce the extent of recidivism and attempts to reduce the rates of crime by addressing its causes. It should report on relevant changes in prison conditions, the relative frequency in which imprisonment and other approaches are used, the provision of relevant services, and the way these things change in response to new research.

**Recommendation 5:** That if the Public Accounts Committee ventures into the assessment of the levels of mutual respect in the community (including respect for the police), that it pay attention to the examples set by all government agencies (including the example set by the police).

**Recommendation 6:** That the Public Accounts Committee examine from time to time the support given to the victims of crimes by way of government and community assistance.

**Recommendation 7:** That the Public Accounts Committee monitor the extent to which agitation about victim's rights leads to unjust laws or influences sentencing.

**Recommendation 8:** That the Public Accounts Committee report regularly on Government funding for community organisations, and on the access to ministers and public servants granted to them.

**Recommendation 9.** That the Public Accounts Committee report regularly on changes in the State Plan, including especially any movement towards recognition of the importance of safeguarding people's rights and encouraging them in their duties.

## **1. Crime Rates.**

The first half of that chapter, on keeping people safe, is principally concerned with reducing crime rates, and especially with reducing recidivism. An extra matter, concerned with victim's rights, is dealt with below. We note our disappointment that a section concerned with rights is so limited in the rights it addresses.

On page 24, the Plan reports that 'the community told us that they would like to see a higher level of visible policing on the streets, stronger penalties to deter offenders and an increased focus on strategies that would help address the underlying causes of crime and stop people from re-offending.' The assumptions underlying these beliefs need to be supported, but are not. In particular, the belief that increasing penalties increases deterrence is widely discredited.

To assess the effectiveness of these and other strategies, the Plan proposes, reasonably,<sup>1</sup> that the rates of crime be measured. It is very important, however, that any inferences drawn about causal connections between the introduction of new measures and subsequent changes in crime rates are based on proper research into causal processes, and not on a mere changes in crime rates.

To illustrate, the increase in unwarranted police violence and other wrongful actions which has been reported to the CCL follows a period in which police powers have been substantially increased and there has been a great deal of talk of being tough on crime. It is tempting to jump to the conclusion that the increase in police misbehaviour is the *result* of the increase in powers and the associated spruiking. But to assume without further research that the increase in wrongdoing is *caused* by the provision of new powers and the encouragement to "strong measures" would be to commit the post hoc ergo propter hoc fallacy.

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<sup>1</sup> Measuring progress, p 26.

Similarly, to claim (without proper investigation) that a reduction in crime is the *result* of measures introduced in accordance with the Plan, or that a continuance of or rise in the levels of crime prove a *failure* of the Plan, would be to commit the same fallacy.

The Public Accounts Committee (PUC) therefore should support research studies which go beyond the mere reporting of facts about crime rates and address the issues of causation.

**Recommendation 1.** That the Public Accounts Committee foster research into the extent to which changes in the rates of crime are the result of actions taken under the State Plan, and not merely coincidental changes.

## **2. Changes in police culture.**

It has been our concern that encouraging police officers to think that oversight of their actions was obstructive bureaucracy, or red tape, would lead to repeated demands for less and less accountability. Similarly, while the Plan proposes that the Government will continue ‘to support the NSW Police with strong and effective powers...’, in fact they are being given more powers, while opportunities to challenge misuse of those powers through the courts and independent investigation is being reduced. This is likely to lead to further demands for more powers. And governments will be reluctant to deny them those powers. Only Parliament is in a position to deny them.

Worse, since these powers are being granted contrary to people’s rights, it may foster in police officers the idea that it does not matter if they ignore the rights of suspects, if innocent people are roughed up and then are charged with factitious offences, if people are denied access to their medicines, as long as drug taking and drug peddling is reduced or thieves are caught.<sup>2</sup>

The CCL has evidence that these abuses are increasing. We do not have the resources to study how widespread they are, or to what extent they are influenced by the attitudes expressed in the law and order debate, the campaign against terrorism and in the State Plan. The attitudes shown by police in the cases that we are aware of are very worrying.

**Recommendation 2.** That the Public Accounts Committee foster research into the influence of the State Plan and actions taken in accordance with it, on the culture of police officers, and in particular into any influence on wrongdoing by police officers.

## **3. Antiterrorism.**

The Government’s anti-terrorism measures were greeted with a good deal of concern by a wide variety of organisations and groups. Amongst the objections were that the powers went beyond what was necessary, that the safeguards were inadequate, and that the likelihood was that whenever there was concern about terrorism, the powers would be

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<sup>2</sup> These ideas were endemic in the last decades of the twentieth century.

increased and the safeguards be reduced, culminating in threats to our democratic way of life. Here too there was concern about the messages being sent to police about what actions are justified when suspicions are raised or allegations are made about terrorist activity.

An important issue for those who would evaluate the State Plan is whether those concerns were justified.

**Recommendation 3:** That the Public Accounts Committee report on the extent to which the fears of those who opposed the giving of anti-terrorism powers to police were justified.

#### **4. Rates of Recidivism.**

The CCL notes that the Plan lays some emphasis on measures which it is hoped will reduce the rates of re-offending. We commend this approach, together with other attempts to address the causes of crime. The Public Accounts Committee could usefully monitor the extent to which these intentions are implemented, and how the practice changes in response to new research. In particular, the Committee might monitor the conditions in the states' prisons, the extent to which prisoners' rights are respected, and any relationship between these matters and satisfactory outcomes.

**Recommendation 4.** That the Public Accounts Committee monitor attempts to reduce the extent of recidivism and attempts to reduce the rates of crime by addressing its causes. It should report on relevant changes in prison conditions, the relative frequency in which imprisonment and other approaches are used, the provision of relevant services, and the way these things change in response to new research.

#### **5. Respect for Police.**

It is indeed important that people respect police. They work under very difficult conditions, sometimes at considerable risk to themselves. They often cannot do their job unless people trust them, being prepared to offer them information and assistance.

Respect is hard to earn, and it is easily lost. Good police foster it; their actions produce admiration and gratitude. But it takes only a few stupid pieces of bullying to undo much of that good work and to create a climate of distrust and scorn. This is particularly the case where the victims are young people.

In addition to the special respect which police may gain or lose by their actions, they have the entitlement to respect for persons which is the foundation of most accounts of rights.<sup>3</sup> They are entitled to the same respect that all persons, including accused persons, whether innocent or guilty, are entitled. They have the same rights as everyone else.

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<sup>3</sup> The exception is the utilitarian account.

Because there is no reason for respecting police which is not also a reason for respecting others, if the Plan is to ensure police are afforded respect, it should be committed to fostering that general respect for persons.

To its credit, the Plan does on page 34 relate respect for police to a culture in which people respect each other. (It does not have much to say, though, about how that respect is to be encouraged. Fostering this respect for persons is in effect fostering morality. That is not going to be done merely by introducing school rules. Nor does the Plan have anything to say about encouraging police to respect others.)

Assessing the aims in this area will be difficult. Teachers know that there is no teaching students to respect each other, nor to respect the staff, unless they, the staff, show their respect for their students and for each other. However, if efforts are to be made by the Government, they should examine not only the teaching of schools, but also how other government agencies respect those with whom they have to deal. Ideally, there would also be some assessment of the interaction of Federal Departments with those they provide services to. Recent examples set by the Departments of Immigration and of Industrial Relations are not helpful.

**Recommendation 5:** That if the Public Accounts Committee ventures into the assessment of the levels of mutual respect in the community (including respect for the police), that it pay attention to the examples set by all government agencies (including the example set by the police).

## **6. Victims' rights.**

On page 23, a matter is raised which is not dealt with anywhere else in the chapter—support for the rights of victims.

Because there are no proposals for action over this matter, it is not clear what it is supposed the rights (as opposed to the interests) of victims are, nor how it could be demonstrated that there are such rights.

It is the responsibility of all members of the community, and of the government as our agent, to give aid and succour to victims of crimes, as it is to give aid and succour to those who suffer from other misfortunes. But there is no right to revenge,<sup>4</sup> and since there are multiple considerations which should go into determining what is the appropriate sentence for a crime, no right of victims to determine what the punishment should be.

A person who suffers as a result of criminal actions may feel that their sufferings are not seen as significant, and that they are not valued as persons, if no effort is made to find, try and punish the perpetrators of a crime. The fact that they feel downgraded does not mean, however, that they are. The standard accounts of what rights are, the

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<sup>4</sup> None of the standard accounts of rights support the existence of such a right.

deontological, neoaristotelian and utilitarian accounts, do not provide an argument for victims having rights to see wrongdoers punished.

**Recommendation 6:** That the Public Accounts Committee examine from time to time the support given to the victims of crimes by way of government and community assistance.

**Recommendation 7:** That the Public Accounts Committee monitor the extent to which agitation about victim's rights leads to unjust laws or influences sentencing.

## **7. Encouraging community participation in community and cultural activities.**

The CCL welcomes this initiative. As a voluntary organisation, unsupported by government funding, we are acutely aware of the problem of obtaining finance to support our activities. Fostering new organisations, especially those run for or by disadvantaged groups, will usefully include financial support. Where the organisations include an advocacy role, it is important also that they have regular access to the relevant ministers and departmental heads.

**Recommendation 8:** That the Public Accounts Committee report regularly on Government funding for community organisations, and on the access to ministers and public servants granted to them.

## **7. Rights and duties, responsibilities and entitlements.**

The CCL repeats its concern that a statement purporting to be about rights and responsibilities has very little to say about rights and their corresponding duties, other than, by implication, the right not to be subjected to crimes and the duty not to commit them. Nor, though it refers to responsibilities, does it place any emphasis on corresponding entitlements.

**Recommendation 9.** That the Public Accounts Committee report regularly on changes in the State Plan, including especially any movement towards recognition of the importance of safeguarding people's rights and encouraging them in their duties.

Martin Bibby, Convenor, Civil and Indigenous Rights Subcommittee, NSW Council for Civil Liberties.

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