

## CHAPTER ELEVEN

### NEW SOUTH WALES POLICE SERVICE

The police play a major role in many aspects relevant to youth violence. For most young violent offenders, they are the first point of contact to entry into the juvenile justice or adult criminal justice systems.

The chapter examines the broad question of police powers, and examines the use of these powers in dealing with young people under the Summary Offences Act; dealing with weapons; dealing with young people from ethnic communities; dealing with young Aborigines; and video surveillance. The police response to gangs is also considered. The role of police in crime prevention activities in schools is discussed. A range of policy responses relevant to addressing youth violence is also considered, including the Police Youth Policy Statement; Youth Liaison Officers; police training; community consultation; and interagency collaboration.

The Committee received evidence concerning the inappropriate and violent methods used at times by some police in their interactions with young people. These issues are also discussed in this chapter.

#### 11.1 POLICE POWERS

Some witnesses appearing before the Committee suggested that police powers to act on citizens' complaints are limited:

*The police say to me, "What can we do? When we go down there [the young people] deny [involvement in criminal activity]. We get them in court and court officials laugh at us and tell us that we are harassing them" (In camera Evidence).*

The General Meeting of the Real Estate Institute passed a motion relating to gang violence, requesting the President contact the Attorney General and Minister for Police to seek the implementation of increased legal powers and police resources to provide a proper level of public protection (Submission 24).

Reports prepared for the NSW Police Service on gangs and violence contend that there is sufficient legislation to empower police to deal with these issues, but question whether police officers are sufficiently aware of their powers (Pulse Consultants, 1994:29).

##### 11.1.1 Summary Offences Act

The Committee heard a range of evidence regarding the *Summary Offences Act 1988*. The submission of the Wollongong Youth Refuge Association Inc., for example, recommended the repeal of the Act, suggesting that Aboriginal youths, homeless young people and young people from a non-English speaking background can be disadvantaged:

*This Act promotes the criminalisation of young people's behaviour rather than seeing this behaviour as childish. The figures depicting the high number of young people entering the juvenile justice system due to charges under this Act reflect discriminatory practices and police harassment as much as the so called "offensive" public behaviour on the part of young people (Submission 19).*

A submission to the Committee from the Director of the National Children's and Youth Law Centre suggests that while police outreach is positive, minor infractions which could draw young people into the justice system should be de-emphasised (Submission 26).

A solicitor with the Aboriginal Legal Service in Dubbo supported the decriminalisation of offensive language, but suggested the offensive conduct provisions of Section 4(1) of the *Summary Offences Act* should be retained to enable police to act in cases of an imminent breach of the peace. He also contended that the violent disorder provisions of Section 28 of the Act provide considerable police power to address violence and obtain convictions (Dennis Evidence, 11.08.94). Section 28(1) of the Act states:

*If 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using or threatening unlawful violence is guilty of an offence.*

Another view was expressed by one concerned citizen who suggested that it was difficult, except in aggravated circumstances, for the police to obtain a conviction for offensive conduct. This witness called for a return of the police powers under the old *Summary Offences Act* in relation to dealing with street crime and offensive behaviour, threatening behaviour and obstruction (In camera Evidence).

The Committee considered at length the applicability of the *Summary Offences Act 1988* to juveniles in the Committee's 1992 Inquiry into Juvenile Justice. While not condoning offensive language, the Committee considered that within the community in general, language deemed offensive was frequently part of the vernacular. To charge a juvenile for offensive language was considered by the Committee to blame the young person for an activity he or she may not recognise as a criminal offence (Standing Committee on Social Issues, 1992:78).

The Committee considered that the penalty for offensive language by juveniles should be reduced to a Police Caution in the first instance and summary offences relating to juveniles should not be dealt with through the court system.

A dissenting opinion recommended s4(1)(b) of the *Summary Offences Act* be deleted so that the simple use of offensive language no longer attracts a criminal sanction and the option of a prison sentence for offensive conduct be abolished. The *Summary Offences (Amendment) Act 1993* subsequently abolished the imprisonment option for offensive language.

The Committee continues to be concerned that the offensive language provisions of the Act may be used to harass young people. It also believes a police caution should be the maximum penalty for this offence.

### RECOMMENDATION 108

That the Minister for Police ensure the provisions of the *Summary Offences Act, 1988*, dealing with offensive language are not used by police officers to harass young people.

### RECOMMENDATION 109

That the Attorney General ensure the maximum penalty for offensive language by juveniles be a formal police caution.

#### 11.1.2 Dealing with Weapons

The Committee heard that the increase in the use of knives and similar sorts of weapons may require a legislative response:

*I think there should be equivalent powers for the police as they have with liquor to confiscate the knife (Blackmore Evidence, 28.07.94).*

Several types of knives, including flick knives and butterfly knives, are prohibited under the *Prohibited Weapons Act, 1989*. For other types of knives, it was suggested to the Committee that the police have to prove that a person is carrying a knife for felonious intent. Section 10 of the *Summary Offences Act* refers to "custody of offensive implement". The legislation states that a person shall not, without reasonable excuse, proof of which lies upon that person, have in his or her custody an offensive implement in a public place.

The Committee heard that many young offenders are aware of the provisions of the Act. It was alleged that a young person found to be carrying a knife stated to police that it was part of his historic culture to carry a knife, and he had no intention of using it illegally. As a result, the police did not lay charges (In camera Evidence). While recognising historical and cultural differences in our society, the Committee refuses to accept that weapon carrying is anything other than a likely hazard to violent behaviour.

One police officer recommended that these provisions be amended to refer to "knife or offensive implement" to provide a greater deterrent, and that the defence of reasonable excuse be removed in relation to knives. However, the officer conceded he did not believe there would be difficulties in obtaining convictions under the present provisions (In camera Evidence). The Committee does not believe legislative amendment is required. The Committee has been advised that police have a common law discretion to remove knives even if charges are not laid, and that a receipt should be issued with advice that the knife can be collected if the young person attends the station accompanied by a parent or caregiver. Young people may also be cautioned with no further formal action taken.

The Committee heard that the patrol commander of one inner-city patrol has recently attempted to heighten his officers' awareness of the offensive weapons provisions of the *Summary Offences Act*, to make sure everyone at the patrol is fully aware of police powers in this regard (In camera evidence). The Senior Children's Magistrate also recommended a community education campaign to discourage young people from carrying knives and inform them of the law in this regard (Blackmore Evidence, 28.07.94). The Committee supports both these approaches.

The Committee was informed that a concerned citizen has written to the Federal Minister for Consumer Affairs asking her to intercede in the matter of the importation of cutting weapons into Australia, following an attack that resulted in a wound being inflicted with a short, imported sword outside a suburban hotel. The Minister responsible for Customs was contacted in this regard, and replied that an import ban would not provide a complete solution, and that local manufacture, sale and possession of such articles is the responsibility of State and Territory Governments (Tabled Document). The Committee supports an import ban on military-style cutting weapons, except for antique items, but also recognises that a review of both imported and locally-produced weapons may be required. While the *Prohibited Weapons Act 1989* prohibits a number of types of knives, it contains no reference to larger cutting weapons such as machetes, swords or bayonets. The Committee believes that the types of weapons legally available should be examined in order to determine whether a broader range of knives and weapons should be prohibited by regulations under the *Prohibited Weapons Act 1989*.

#### **RECOMMENDATION 110**

**That the Minister for Police develop and conduct a community education campaign to discourage young people from carrying offensive implements and prohibited weapons and informing them of the law in this respect.**

#### **RECOMMENDATION 111**

**That the Minister for Police conduct an education campaign to ensure all police officers are aware of their powers to act regarding offensive weapons and that knives which are clearly being carried for unlawful purposes are confiscated.**

#### **RECOMMENDATION 112**

**That the Minister for Consumer Affairs and Minister for Police:**

- **survey and review the local manufacture and sale of cutting weapons to determine whether a broader range of knives and weapons should be prohibited under the *Prohibited Weapons Act 1989*; and, if so,**
- **support a ban on the import of such weapons in the Ministerial Council for the Administration of Justice.**

### 11.1.3 Dealing with Young People from Ethnic Communities

Attention has been drawn to poor police-community relations in a number of incidents involving violence. The Ethnic Affairs Commission has recently completed an Inquiry following a disturbance involving police at an Arabic Day Carnival at a park in Tempe in 1993.

In addition to examining information on that disturbance, the Commission identified relevant issues or circumstances which have the potential to affect relations between the police and ethnic communities, and especially between the police and young people from ethnic communities.

The inquiry found that:

- some community members may be reluctant to seek assistance from the police because of their experiences in other communities.
- unfamiliarity with our legal system may create unnecessary trouble between police and ethnic communities. There is a need for better education directed at ethnic communities on the role of police in our society; and
- some police lack knowledge about and sensitivity to the needs of ethnic communities. There is a need for improved education in this area (Ethnic Affairs Commission of NSW, 1994:xiii).

The Inquiry reviewed the mechanisms for liaison and co-operation between police and ethnic communities. Some main conclusions were:

- police policies on interpreter use are not always applied in a thorough and consistent manner;
- consideration needs to be given to measures to improve the effectiveness of Community Consultative Committees (CCCs). In addition, other mechanisms for consultation and cooperation between police and ethnic communities should be encouraged;
- Ethnic Community Liaison Officers (ECLOs) promote cooperation between police and communities of non-English speaking background. The number and distribution of these officers are inadequate for their role; and
- there is a relatively small number of police officers of non-English speaking background. This ratio should be improved as a matter of importance (Ethnic Affairs Commission of NSW, 1994:xiv).

The NSW Police Service has attempted to attract more recruits from non-English speaking backgrounds. Discriminatory height and weight restrictions have been removed from selection criteria.

With the assistance of the Police Academy, bridging programs have been developed to assist people from Aboriginal backgrounds attain the required educational standard for recruitment. Thought has been given to establishing particular bridging programs for applicants of non-English speaking backgrounds but the need has not been established, as most of these applicants meet educational standards. A task-oriented committee has been established within the Police Service to encourage members of the East Asian and Australian-born Chinese communities to join the service, although until recently the service has been unsuccessful in recruiting many people of Asian background (Office of the NSW Ombudsman, 1994a:29).

Police recruitment targets include 10% of people from non-English speaking backgrounds. However, in a discussion paper on race relations and the Police Service, the Ombudsman has suggested that recruitment methods continue to work against a more representative membership of the Police Service. Heavy weighting is given to English examination results, and little value given to the ability to speak more than one language (Office of the NSW Ombudsman, 1994a:30,27). The latest Equal Employment Opportunity Report indicated that 8.65% of police recruits were from non-English speaking background. The Ombudsman has contended that a proportion of 20% would indicate that the force was representative of the wider community (Office of the NSW Ombudsman, 1994a:25). The Committee believes positive recruitment strategies should be extended.

The Ombudsman's discussion paper also suggests that the behaviour of some police officers is often racist and negative stereotyping is part of a learned police culture (Office of the NSW Ombudsman, 1994a:46).

The final report of the Ombudsman's Inquiry recommends:

- the establishment of a Police Community Relations Branch;
- the establishment of essential qualifications and competencies for officers posted to identified patrols;
- the determination of participation rate targets to the year 2000 to change the appearance, operation and culture of the Service, with lateral entry points to promote affirmative action for females and minority groups; and
- an annual external audit of the Police Service's achievements in better servicing Aboriginal, ethnic and minority groups by a suitably independent agency whose report should be submitted to Parliament (Office of the NSW Ombudsman, 1995b).

In response to the Ombudsman's report, the Police Service announced the formation of a Standing Committee on Race Relations to improve its standing with minority groups.

The Police Service published an Ethnic Affairs Policy Statement in 1993, setting out a three-year program aimed at making all ethnic groups aware of police services; ensuring there is no

racial discrimination in the Service; and providing culturally sensitive and appropriate services (NSW Police Service, 1993:57).

The previous Government's White Paper on Juvenile Justice referred to the development of a Police Service Anti-Racism Policy and Prevention Plan (NSW Department of Juvenile Justice, 1994a:8). The Committee supports this initiative. The Committee also believes that anti-discrimination and anti-racism modules in police training courses should be offered as in-service modules for senior officers.

The Committee heard that some communities have attempted to encourage better relations between police and ethnic communities. Marrickville Council, for example, facilitated a meeting between Arabic community leaders and the police. Suggestions arising from the meeting included the provision of identification cards for community leaders to attend police stations to advocate for people from their community. Community leaders could also provide cultural awareness training for police, and be contacted when a young person from their community has been arrested (Newman Evidence, 01.11.93).

The Committee heard evidence from a number of Ethnic Community Liaison Officers. The role of an Ethnic Community Liaison Officer is to establish and maintain a rapport between the police and ethnic communities. His or her principal duties include:

- the establishment of effective communication between police and the local ethnic community;
- mediation in disputes involving police and ethnic groups;
- the establishment and maintenance of a rapport with ethnic community leaders;
- assistance to relatives visiting ethnic prisoners;
- marketing the function of the Police Service;
- attendance at interviews involving juvenile members of the ethnic community; and
- contribution to the training and development of patrol personnel.

Ethnic Community Liaison Officers are allocated as follows:

<b>PATROL</b>	<b>No. of ECLOs</b>	<b>ETHNICITY OF ECLO</b>
Cabramatta	1	Vietnamese
	1	Lao
	1	Khmer
Fairfield	1	Croatian
	1	Vietnamese
Marrickville	1	Vietnamese
Bankstown	1	Vietnamese
Sydney	1	Chinese
Ashfield	1	Chinese

From the above information, it can be seen that eight of the nine ethnic community liaison officers are of South East Asian or East Asian background. The Ethnic Affairs Commission's *Police and Ethnic Communities* report suggests there are serious questions about the adequacy of the numbers of these personnel and the effectiveness with which they are targeted (Ethnic Affairs Commission of NSW, 1994:54).

The Committee believes these officers are vital to improving links between the police and the communities they serve, and recommends more positions be established.

#### **RECOMMENDATION 113**

**That the Minister for Police introduce positive recruitment strategies to ensure an increasingly representative membership of the New South Wales Police Service and to reflect the State's ethnic diversity.**

#### **RECOMMENDATION 114**

**That the Minister for Police develop a Police Service Anti-Racism Policy and Prevention Plan as a matter of priority.**

#### **RECOMMENDATION 115**

**That the Minister for Police ensure anti-discrimination and anti-racism modules are key components in police training and extend these as in-service modules for senior officers.**



**RECOMMENDATION 116**

**That the Minister for Police develop initiatives that encourage better relations and facilitate communication between local police and ethnic communities.**

**RECOMMENDATION 117**

**That the Minister for Police establish additional positions of Ethnic Community Liaison Officer to enhance community relations.**

**11.1.4 Dealing with Young Aborigines**

In reviewing available research on the experiences of young Aboriginal people in the justice system, the Green Paper, *Future Directions for Juvenile Justice in NSW*, found a bias against young Aborigines at the police level. Detained Aboriginal youth are less likely to receive a caution, summons or court attendance notice, and more likely to be charged (Juvenile Justice Advisory Council, 1993:208).

The White Paper on Juvenile Justice, released by the previous Government, discussed plans to enhance police responsiveness on juvenile justice issues. Strategies included consultation with Aboriginal people, communities and organisations on policing practices and policies. Increased employment of Aboriginal people within all levels of the Police Service and, in particular, in policy development and operational areas, was also supported (Department of Juvenile Justice, 1994a:8). Approximately 40 Aboriginal Community Liaison officers have been appointed throughout the state. The Committee believes consultative strategies should be implemented and strategies to facilitate Aboriginal recruitment identified. The number of Aboriginal Community Liaison Officer positions should be increased, with more Aboriginal women encouraged to take up these positions.

The White Paper also provided for police officers to notify the Aboriginal Legal Service and a parent or guardian when an Aboriginal juvenile is to be taken to a police station. Police were also to be encouraged to utilise alternatives to arrest, such as court attendance notices and summonses, when dealing with young Aboriginal people (Department of Juvenile Justice, 1994a:24). The Committee supports these approaches. It also considers it appropriate that an Aboriginal adult be entitled to stay with an incarcerated young person in the police cell as an anti-violence measure.

The Police Service released an Aboriginal Policy Statement in 1992, which commits the Service to develop educational/training packages for officers and implement programs outlining to Aboriginal people the responsibilities of police. A Police-Aboriginal Council was established to monitor the Policy Statement's implementation and provide advice (NSW Police Service, 1993:55).

### **RECOMMENDATION 118**

**That the Minister for Community Services and the Minister for Police ensure Aboriginal communities are consulted on policing practices, and a report on the outcome of these consultations is prepared. The report should include strategies for the recruitment of Aborigines to the Police Service.**

### **RECOMMENDATION 119**

**That the Minister for Police:**

- **increase the number of positions of Aboriginal Community Liaison Officers to make the service provided by them available to more communities; and**
- **develop and implement strategies to encourage more Aboriginal women to take up positions as Aboriginal Community Liaison Officers.**

### **RECOMMENDATION 120**

**That the Minister for Police encourage police to use alternatives to arrest, such as court attendance notices and summons, when dealing with young Aboriginal people.**

#### **11.1.5 Response to "Gangs"**

The Committee recognises the term "gang" is often used erroneously to refer to any group of young people. However, the Committee recognises that, while it may be inappropriate to use the term "gang", some groups of young people are frequently identified as acting illegally in their communities. One police witness informed the Committee of strategies implemented by a patrol in an area identified as having particular problems with groups of young people involved in violent crime. This patrol has increased the number of beat police in the area from 10 to 14. Special police operations have also been conducted, involving both high-profile and covert patrols of station platforms, trains and adjacent streets. These operations had a significant impact, with a number of arrests made. While the station area remains quiet, the group causing problems has been identified in another area and patrol activities are to be increased in that area (In camera Evidence).

The study on Street Gangs prepared for the NSW Police Service by Pulse Consultants (1994) concludes that general street gangs require a soft police response:

*heavy police action mostly reinforces the group and increases the status of members. Work within community organisations, schools and with parents is most suitable (Pulse Consultants, 1994:ii).*

The report notes that one of the key goals of a street gang is status, and suggests that confrontation with the police is a means of gaining this status. The report suggests that actions to be avoided include:

- unwittingly conferring status by giving unnecessary attention to gangs;
- unnecessary aggression;
- being offside with social workers, schools, community leaders and others; and
- ignoring the existence of gangs (Pulse Consultants, 1994:30).

The Committee believes media beat-ups about youth gangs contribute to this problem, and media organisations should be informed that stories on gangs are creating the problem they purport to reveal. Politicians should equally be mindful of their responsibilities.

The *Street Gangs* report notes that targeting meeting places and moving groups of young people is of limited value because the group will simply rotate between a number of meeting places (Pulse Consultants, 1994:28).

If more direct action is to be taken, the report states that a comprehensive approach is required, including informing parents, laying charges, shaming of both the youths and the parents and providing counselling. The Committee believes appropriate strategies should be developed to discourage gang involvement by young people of all cultural backgrounds.

The Committee endorses the creative responses to the recreational and entertainment needs of young people discussed in Chapter Six.

## **RECOMMENDATION 121**

**That the Minister for Police inform media organisations that stories on gangs risk creating the problem they purport to reveal.**

### **11.1.6 Video Surveillance**

The previous Minister for Police informed the Committee in correspondence of the range of initiatives undertaken by the City of Sydney Patrol in the George Street entertainment area, including patrols by two beat police for each shift over a 24 hour period; plain clothes patrols on Friday and Saturday nights; and a proposed four month trial of video recording activity in the area, which has now commenced. The Committee understands that Fairfield and Campbelltown City Councils are also investigating the use of video surveillance cameras as a means of preventing street crime. Whilst the Committee recognises that the use of video technology may be useful as a safety measure, it is concerned that the privacy rights of individuals are not undermined. It considers that such strategies require community consultation

and broad-based support and that other measures such as appropriate urban planning and design should be investigated as strategies for crime prevention, including violence.

## **11.2 POLICE AND SCHOOLS**

The Committee heard evidence regarding a range of initiatives undertaken by NSW police in an attempt to reduce youth crime and violence. The Committee endorses these initiatives and encourages the development of further strategies that accord with the needs of local regions. Particular attention should be paid to schools in which extortion is identified as occurring against young people.

### **RECOMMENDATION 122**

**That the Minister for Police ensure police liaise with school personnel in patrols in which extortion is identified as occurring against young people.**

#### **11.2.1 Operation Maverick**

The Committee heard of an Operation in the Fairfield area targeting truanting school children. A large number of school-age children had been observed in the business district during school hours, and were responsible for the commission of a significant number of offences, including assault and robbery. Police and Department of School Education Home School Liaison officers target truanting youth, and accompany or direct the student to return to school, notifying appropriate principals.

The project has extended to 11 operations, with education officers accompanying police to various locations in the patrols, such as shopping centres, and amusement parlours.

#### **11.2.2 Cool Squad**

The Committee heard evidence regarding the Cool Squad project at the North Sydney police patrol. The project was initiated by a Beat Police Supervisor approaching a young offender who was reporting to the station as part of his parole conditions. The offender was invited to become involved in a crime prevention program in local schools. A juvenile justice officer and a volunteer in policing also became involved in the project, which has been trialed at the Marist Brothers school in North Sydney.

The project has progressed as a result of a commitment from the rehabilitating young offender and the police officer who provides encouragement and support. Attitudinal change has occurred in both parties. The Beat Police Supervisor informed the Committee that the involvement of the young offender provides a positive role model for other offenders within his peer group who may still be offending, but who may be encouraged to reform their behaviour (Woodward Evidence, 28.07.94).

It was suggested to the Committee that the project has the potential to be adapted for young females, young people from non-English speaking backgrounds, and Aboriginal youth. The Committee was informed that the Executive Director, Education and Training Command of the NSW Police Service has proposed a three-month secondment to the Strategy and Review Branch for an officer to evaluate the program (Woodward Evidence, 28.07.94).

### **11.2.3 Adopt a Cop**

The 'Adopt-a-Cop' program was developed as an Aboriginal youth/police liaison program in Brewarrina. Difficulties faced by these young people, such as racial tension, lack of facilities and few job opportunities had led some of them to become involved in anti-social behaviour. The program aimed at addressing problems faced by Aboriginal young people in the town by involving them in police-sponsored activities.

Activities run under the program, which was supported by all Brewarrina police, included social events to develop interpersonal skills, educational activities (crime prevention workshops, visits to the police station and court house, essay writing), sporting matches, and informal counselling for problems.

The success of Adopt-a-Cop in reducing the number of appearances by young people before the court and community savings through reduced crime have led the Service to support the program's implementation in appropriate areas statewide (NSW Police Service, 1993:56).

### **11.2.4 Crime Prevention Workshops**

NSW police have conducted crime prevention workshops for school students throughout the State. At a crime prevention workshop at Revesby, for example, police and young people talked about a range of issues, including peer pressure; crime and its consequences, both upon young people themselves and the community; the effects of smoking, drugs and alcohol; sexual assault and domestic violence.

## **11.3 POLICY RESPONSES**

Two key areas of the NSW Police Services Corporate Plan are relevant to addressing the issue of youth violence: personal safety and street safety. The Police Service is pursuing a goal of safer streets by the year 2000.

### **11.3.1 Youth Policy Statement**

A Police *Youth Policy Statement* was released by the NSW Police Service in February 1995. The Statement contains five goals: to reduce youth crimes; treat children and young people fairly; use court as a last resort; support and involve victims; and foster positive social change (NSW Police Service, 1995a:4).

The strategies listed to achieve these goals include:

- the implementation of programs directed towards youth crime prevention and problem solving;
- increased youth liaison by enhancing the role of General Duties Youth Officers;
- incorporating the *Youth Policy Statement* in appropriate education and training programs for police personnel;
- fostering, through education and training, greater use of pre-court and pre-sentence options;
- active involvement in multi-agency initiatives; and
- communication of details of the Statement to the community, and young people in particular, and striving to reduce fear by countering misinformation about juvenile crime (NSW Police Service, 1995a:5).

An action plan has been developed to ensure the Police Service meets the needs of children and young people. This plan addresses the recommendations of the White Paper on Juvenile Justice, *Breaking the Crime Cycle*, and outlines a range of strategies to improve the service provided to this section of the community. Key initiatives include:

- creation of a Police Youth Policy Advisory Council;
- enhanced training and deployment of General Duties Youth Officers;
- participation in Community Youth Conferencing;
- improved investigation of child abuse matters;
- increased consultation with young people, parents and guardians to prevent youth crime;
- greater involvement of Police Citizens Youth Clubs in local policing initiatives; and
- increased opportunities for young people to have work experience in police establishments (NSW Police Service, 1995a:6).

### 11.3.2 Youth Liaison Officers

The General Duties Youth Officers' Program has been introduced in many patrols across the State as the main contact between local police and young people. These are recognised, as opposed to authorised, positions with the officers performing the youth liaison role in addition to their general duties. Activities associated with this initiative vary according to community

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need but range from breakfasts and soup kitchens to crime prevention workshops and drug or alcohol programs (NSW Police Service, 1993:58).

The Youth Advisory Council recommended to the Social Issues Committee that Youth Liaison Officers be located at every police station (Submission 45). The Committee supports this action in patrols with a significant youth population.

The Youth Justice Coalition's *Nobody Listens* report recommended police in these positions must:

- be responsible for the development of youth/police relationships in the local area;
- be closely linked with young people's groups, and youth and community services; and
- help coordinate (in conjunction with a committee drawn from the whole community, including young people who have regular contact with police) the training of police in youth issues (Youth Justice Coalition *et al*, 1994:40).

The Committee is concerned to guarantee promotional opportunities for those police officers appointed to such positions, and that their status within the system be respected.

### **RECOMMENDATION 123**

**That the Minister for Police ensure positions of one or more Police Youth Liaison Officer are established in every police patrol where there is a significant youth population.**

#### **11.3.3 Police Training**

The submission from the Director of the National Children's and Youth Law Centre recommends that police recruitment and training should emphasise non-violent policing methods (Submission 26).

An Action Plan outlining the police response to youth violence was produced following the release of the Pulse Consultants' report on Street Gangs. The draft Action Plan included the introduction of Youth Violence studies in Applied Policing curriculum at the NSW Police Academy to address issues of legislation, powers, identification of levels of threat and response techniques.

The previous Government's White Paper on Juvenile Justice discussed a review of the curriculum at the Police Academy, with juvenile justice to be included as a core topic within all levels of police training. Training for police on the special needs of juveniles who come under police notice, with attention to the needs of identified groups including young women was also to be carried out (Department of Juvenile Justice, 1994a:8). The *Police Youth Policy Statement* also suggests that instruction will be provided on behaviour management and conflict resolution and community safety principles in the Police Academy curriculum (NSW Police Service, 1995a:7). The Committee believes the police training should emphasise non-violent policing methods; that Youth Violence Studies should be introduced and that in-service training should be implemented on the needs of special groups of young people.

#### **RECOMMENDATION 124**

**That the Minister for Police:**

- **ensure police training emphasises non-violent policing methods;**
- **introduce Youth Violence Studies into the Police Academy curriculum; and**
- **implement in-service training for police on the needs of special groups, including young women, young Aborigines and young people from a non-English speaking background.**

#### **11.3.4 Community Consultation**

Approximately 160 Community Consultative Committees have been established throughout New South Wales. They comprise the local Patrol Commander and people interested in preventing crime, providing an opportunity for local problem-solving and a forum to address the needs of youth, the physically disabled, the elderly, ethnic groups and Aborigines (NSW Police Service, 1992:38).

Community Consultative Committees have recently been subject to an operations review initiated by the Service. The review confirmed the Committees' value as forums for local police/community interaction and suggested ways to maximise their effectiveness (NSW Police Service, 1993:54).

The NSW Police Service established eight Customer Councils across the state in 1992-93. The Councils act as advisory bodies to assist the Service in improving the quality and appropriateness of policing by building upon the public liaison developed at patrol level through the operation of the Community Consultative Committees (NSW Police Service, 1993:54).

However, briefing notes prepared for police appearing before the Committee state that there is room for marked improvement in the relationship between police and young people:



*At this time there are very limited formal mechanisms which bring police and young people into an environment of positive interaction. The Police Youth movement and local policing initiatives in schools have addressed this issue, but it is interesting to note that groups like Neighbourhood Watch and the various Community Consultative Committees do not include direct input by young people on a formal basis. Perhaps full recognition of young people, their needs and aspirations in the consultative process could address this issue.*

The Police *Youth Policy Statement* includes a commitment to establish a Police Youth Policy Advisory Council and to invite local youth groups to attend Community Consultative meetings (NSW Police Service, 1995a:6).

The Committee believes the representation of young people in existing consultative mechanisms should be encouraged.

Another briefing document provided to the Committee discusses suggestions that youth liaison committees be established at the local level. The Committee believes the establishment of such Committees should proceed as a pilot in selected patrols.

#### **RECOMMENDATION 125**

**That the Minister for Police encourage appropriate youth representation on Community Consultative Committees and Customer Councils.**

#### **RECOMMENDATION 126**

**That the Minister for Police establish Police-Youth Liaison Committees as a pilot project in selected patrols.**

#### **11.3.5 Safety Audits, Community Safety Management Plans and Community Policing**

In 1989, community crime prevention projects commenced in Waverley and Fairfield Local Government Areas. The projects aimed to develop local crime prevention strategies based on a systematic analysis of local crime problems and the available resources for dealing with them.

Although the Waverley project had police co-operation, basic information on the incidence of crime was found not to be available in a usable format (Waverley Municipal Council, 1991:12).

However, two issues were identified as major local concerns through interviews and discussions:

- the impact of crime and the fear of crime on the elderly; and

- the incidence of alcohol related violence and anti-social behaviour in and around licensed premises (Waverley Municipal Council, 1991:13).

The Waverley project introduced a number of initiatives, including a kit for Older Women's Self Protection groups; a community survey of 45 older residents; and plans for an alcohol server intervention pilot project and a Development Control Plan for community crime prevention used by Council in assessing development applications.

The final report of the project concluded that "crime mapping" would have been an invaluable tool both for the project and for the development of crime prevention strategies in the future. Measures such as a computergraphic crime mapping system displaying crime patterns and trends on a geographic basis would assist in meeting this objective (Waverley Municipal Council, 1991:40).

The Committee understands that local government authorities in some areas are implementing such systems.

In briefing the Committee, senior police suggested there is a developing attitude among officers that matters of youth crime require a collaborative approach and the removal of traditional jurisdictional boundaries.

A major initiative involving the Police Service is the development of Community Safety Management Plans. These Plans seek to involve a range of agencies to look at environmental factors to reduce perceived community fear. They aim to reduce vandalism and other local crime by reviewing design standards and the zoning of entertainment areas by Local Governments. Community Safety Management Plans are to be trialed in seven Local Government Areas, and are to be introduced state-wide over the next five years. It was suggested to the Committee that one of the key targets of the Safer by Design component of the strategy will be schools. The Department of Public Works has given an undertaking to ensure the school design process takes reasonable and affordable steps to reduce the dangers of violence in and around school buildings.

The Plans involve Community Safety Audits in which local committees identify areas of concern through local surveys. These areas are divided into small locations and Committees pursue strategies to reduce the likelihood of criminal activity through specific environment modifications.

The Committee endorses the concept of Community Safety Management Plans and encourages further consideration of strategies to remove jurisdictional boundaries to enable interagency and community collaboration in reducing youth violence.

As a key recommendation, the Committee believes all Police Consultative Committees should co-ordinate Safety Audits to identify potential, perceived and/or actual locations of violent activity. Appropriate strategies to deal with such violence should be devised to ensure public environments are conducive to community safety.

The Committee also believes that high profile community policing activities should be enhanced within specific communities where youth violence is identified.

**RECOMMENDATION 127**

**That the Minister for Police ensure all patrols of the New South Wales Police Service collaborate with government and community agencies to:**

- **undertake a Safety Audit in their Local Government Area to identify potential, perceived, and/or actual locations of violent activity;**
- **devise appropriate strategies to deal with such violence and ensure public environments are conducive to community safety.**

**RECOMMENDATION 128**

**That the Minister for Police establish and enhance high profile community policing activities within specific communities where youth violence is identified.**

**11.4 DEALING WITH YOUNG PEOPLE****11.4.1 Police Harassment**

The Committee heard that the use of violence by police contributes to the use of violence by young people. In its submission, the Youth Advisory Council informed the Committee that it is aware of allegations of a police officer posing as a youth worker to enter a residence, and of police, with identification numbers removed, entering needle-exchange buses to body-search young people and harass clients. The submission urges adequate police training and accountability to prevent police abusing their powers (Submission 45).

In meeting with young offenders at Cobham Juvenile Justice Centre, the Committee heard allegations of police brutality, including the beating of one young person with batons on the street when he refused to be taken in for questioning.

A recent report has examined the experiences of police contact with 141 young people aged 12 to 18 years. The report, *Nobody Listens*, found that "police contact with many young people is vigorous to the point of harassment", with young people considering the nature of police behaviour towards them as "unfair and intrusive". The alleged contacts reported generally involved verbal abuse, were frequently physically violent, and sometimes resulted in serious injury and sexual abuse by police (Youth Justice Coalition *et al*, 1994:1). A total of 33 young people sustained injuries. Young people from a non-English speaking background were far more likely to be injured in the course of their contact with police. The results suggested that:

- young people describing themselves as coming from an "Australian" background sustained injuries in over 11% of reported contacts;
- young people from Asian backgrounds sustained injuries in almost 30% of reported contacts;

- young people of Aboriginal descent sustained injuries in over 41 % of reported contacts; and
- young people from a Pacific Islander background sustained injuries in 25 % of reported contacts (Youth Justice Coalition *et al*, 1994:44).

Similar findings were evident when the background of young people who had police contact as part of a group were examined. Young people who were part of a group describing themselves as "Australian" sustained injuries in approximately 10% of contacts. Those in groups describing themselves as other than Australian sustained injuries in almost half the contacts described in the survey (Youth Justice Coalition *et al*, 1994:46). Twenty young people sustained superficial injuries; one had broken bones; four suffered internal injuries; and 18 sustained other injuries (Youth Justice Coalition *et al*, 1994:29).

A national survey of young people by the Australian Youth Foundation found a high incidence of complaints by young people about police harassment, and fear of police violence to be most keenly felt by young Aborigines and those known to have a record (Daniel and Cornwall, 1993:2,3).

The Committee heard that

*there is a general attitude among the police that if you give a young person a kick up the bum, it's OK, but its not all right to do that to adults so why should it be all right to do it to young people?* (Brown Evidence, 25.10.93).

Within the municipality of Marrickville, there have been several cases involving allegations of violence by police towards young people and others of particular ethnic backgrounds. The Marrickville Legal Centre has referred a number of instances to the Office of the Ombudsman for further investigation:

*the ones that I am particularly aware of are from young people of Arabic-speaking background. They include bashings, they include strip searches in McDonald's. I have also heard of complaints from people who are Vietnamese* (Acheson Evidence, 01.11.93).

Other evidence presented to the Committee suggested that these complaints are made by gang members regarding police stopping them in the street and searching for weapons:

*I believe that [the young people] regularly go to the Ombudsman and a number of other senior people trying to claim police harassment—to avoid being charged with anything and to appear to be unfairly treated, which obviously suits them* (In camera Evidence).

The submission from the Director of the National Children's and Youth Law Centre recommends police violence against young people be investigated, and complaints processes be designed to encourage and facilitate reporting (Submission 26).

The Committee believes a state-wide review of the alleged extent of police violence against young people should be undertaken, together with the development of strategies for dealing with such incidents.

#### **RECOMMENDATION 129**

**That the Government commission an independent state-wide review examining the extent of police violence against young people and developing strategies to deal with incidents of violence against young people.**

#### **11.4.2 Complaints Mechanisms and the Ombudsman's Office**

People can lodge a complaint against members of the Police Service through one of the following means:

- by discussion with the senior officer or patrol commander at the local police station;
- by calling the Customer Service Unit;
- by writing to the police;
- by writing to the Ombudsman; and
- by contacting the local Member of Parliament.

The Police Service is obliged to conciliate as many complaints as possible at the local level. A copy of the complaint must be sent to the Ombudsman. When complaints are lodged with the Ombudsman, the Ombudsman has in the past taken one of the following actions:

- dismissed the complaint due to lack of evidence;
- referred the matter to the Police Service for conciliation;
- referred the matter to the Police Service for a preliminary inquiry; or
- referred the matter to the Police Service for investigation.

The Ombudsman has then reviewed the matter, and has been able to either request further investigation by the Police Service or personally re-investigate the matter.

Where there is sufficient evidence for the Ombudsman to find a police officer has acted improperly or illegally, recommendations may be made to the Commissioner for disciplinary action. Under the *Police Service Act*, the Commissioner of Police has a number of disciplinary actions including:

- that the police officer be admonished; or
- that a departmental charge be preferred against the police officer; or
- that consideration be given to the police officer being charged with a criminal offence.

The Ombudsman recently conducted a review of police investigations of complaints of police misconduct to identify patterns associated with poor quality investigations. One case involved a complaint of an assault against a youth who was involved in an altercation. In this case, one officer grabbed the youth in a headlock while another officer punched him in the stomach. The Police Service found the complaint by a witness to the assault to be not sustained. The Ombudsman, in reviewing this investigation, suggested that the involvement of a "third man" threatening police may have been fabricated to justify the officers' improper actions. The complaint was found to be sustained, and the Ombudsman recommended the matter be referred to the Director of Public Prosecutions for advice as to whether criminal or departmental charges can be brought against any officer (Office of the NSW Ombudsman, 1995a:21).

Other cases include the investigation of an assault of a prisoner in which the investigating officer had not been supplied with all relevant material, including photographic evidence, and a case of an indecent assault on a female inmate in which a medical report relating to a subsequent hospital examination had not been considered (Office of the NSW Ombudsman, 1995a:4-6).

The *Police Service (Complaints, Discipline and Appeals) Amendment Act 1993* commenced on 1 July 1993. A notable inclusion, which had not existed in the previous legislation, is the power for the Ombudsman to monitor on-going investigations carried out by the Police Service into complaints about police conduct. The Ombudsman's annual report states that this power has been used on 12 occasions (Office of the NSW Ombudsman, 1994b:36).

The amendments have also enabled the Ombudsman to deal with complaints directly, rather than having to rely on the traditional method of using the Police Service to investigate complaints. In 1993-1994 the Ombudsman conducted three direct investigations under these new powers. The annual report of the Ombudsman suggests there are, however, difficulties in conducting direct investigations:

*Due to our very modest funding, it is unfortunately not possible to conduct more than a few direct investigations each year, far less than we would like*  
(Office of the NSW Ombudsman, 1994b:40).

The annual report of the New South Wales Ombudsman contains details of the outcome of complaints relating to assault and harassment which are outlined in Table Nine below:

TABLE NINE

## Complaints about Police to the Ombudsman: Assault and Harassment

Category	Not fully investigated	Sustained	Not Sustained	Unable to be determined	Conciliation/ / resolved	Total
Physical or mental injury outside police premises	90	40	74	86	2	292
Physical or mental injury inside police premises	49	5	57	59	0	170
Minor physical or mental injury outside police premises	121	11	38	50	3	223
Minor physical or mental injury inside police premises	95	3	28	36	0	162
Threats or harassment	298	12	73	75	73	531
Sexual harassment	12	7	1	2	6	28
<b>Total</b>	<b>665</b>	<b>78</b>	<b>271</b>	<b>308</b>	<b>84</b>	<b>1,406</b>

Source: Office of the NSW Ombudsman, 1994b:26.

In its Inquiry into Police and Ethnic Communities, the Ethnic Affairs Commission wrote to the Ombudsman in an attempt to clarify some of the matters raised in submissions from the communities involved. Information sought included the number of complaints against the Police made by young people 17 years and younger of non-English speaking background in comparison to the total number of complaints against the Police made by young people 17 years of age and younger.

The Ombudsman advised that persons lodging complaints are not required to reveal age or ethnicity. No reliable statistics on the number of complaints lodged by people of non-English speaking backgrounds or from people 17 years and younger were therefore available. The Ombudsman, however, was "concerned that young people are under-represented in the complaint base" (Ethnic Affairs Commission, 1994:74).

The Ethnic Affairs Commission report notes

*the Ombudsman's concern could be viewed as an acknowledgment of the inaccessibility of the services provided through the Office of the Ombudsman to young people generally, and to young people from non-English speaking background in particular* (Ethnic Affairs Commission of NSW, 1994:74).

The Committee has been informed by a representative of the Ombudsman's Office that power imbalances between police and young people are taken into account when assessing which cases should be monitored or investigated independently.

The Committee believes the Ombudsman should be appropriately resourced to ensure that all cases involving allegations of police violence against young people can be monitored by the Ombudsman. In certain cases of this nature, the Committee believes the Ombudsman should undertake the investigation independently. In cases where allegations of criminal violence are upheld, the matter should be referred to the Director of Public Prosecutions for appropriate action.

The *Nobody Listens* report calls for the implementation of a comprehensive range of mechanisms to provide for accountability in the policing of young people, and the establishment of a better resourced, more accessible independent complaints mechanism such as a Children's Ombudsman (Youth Justice Coalition *et al*, 1994:40).

The Committee also recommended the creation of a position of Deputy Ombudsman with the responsibility for co-ordinating complaints made by children in its report on Juvenile Justice (Standing Committee on Social Issues, 1992:197). The Committee again urges the Government to adopt this recommendation, especially as no formalised agency or office that advocates for, or oversees issues affecting, children and young people currently exists.

#### **RECOMMENDATION 130**

**That the Premier ensure the Office of the Ombudsman has sufficient resources to:**

- **monitor the investigation of complaints of police violence referred to the Police Internal Affairs Branch when the complainant is 17 years of age or younger; and where desirable,**
- **deal directly with these complaints, and refer appropriate cases to the Director of Public Prosecution for suitable action.**

#### **RECOMMENDATION 131**

**That a position be created in the Office of the Ombudsman, with the status of Deputy Ombudsman, responsible for the coordination of complaints made by children and young people, including those in the Juvenile Justice system, and that:**

- **adequate resources be made available to assist in the creation of this position; and**
- **an information campaign for children and young people about the role of the Ombudsman be conducted.**



## 11.5 CONCLUSIONS AND FINDINGS

- There is sufficient legislation to give **police powers** to deal with youth violence. The provisions of the Summary Offences Act dealing with offensive language should not be used by police officers to harass young people. The maximum penalty for offensive language by juveniles should be a formal police caution. A community education campaign should be developed to discourage young people from carrying offensive implements and prohibited **weapons**. An education campaign for all police officers should be developed to ensure that they are aware of their powers to act regarding weapons. The Minister for Consumer Affairs and the Minister for Police should conduct a survey to determine whether a broader range of knives and weapons should be prohibited under the *Prohibited Weapons Act 1989*.
- Positive recruitment strategies should be introduced to ensure membership of the NSW Police Service reflects the state's **ethnic diversity**. An increased number of positions of Ethnic Community Liaison Officer should be created, and a Police Service Anti-Racism policy developed. **Aboriginal** communities should be consulted on policing practices and strategies for the recruitment of Aboriginal people identified. The number of male and female Aboriginal Police Liaison Officers should be increased. Police should use alternatives to arrest, such as court attendance notices and summons when dealing with young Aboriginal people.
- Both the media and politicians should be responsible in their reporting of so-called youth "**gangs**". High profile community policing activities should be established within specific communities where youth violence is identified.
- Positions of one or more **Police Youth Liaison Officer** should be established in every police patrol where there is a significant youth population, and young people should be appropriately represented in existing and new consultative mechanisms. Police training should emphasise non-violent policing methods and include the needs of special groups, and Youth Violence Studies should be introduced into the Police Academy curriculum.
- The Government should commission an independent state-wide review examining the extent of alleged **police violence** against young people and develop strategies to deal with incidents of police violence against young people. The Office of the Ombudsman should have sufficient resources to monitor the investigation of complaints of police violence when the complainant is 17 years of age or younger and, where desirable, deal directly with these complaints, and refer appropriate cases to the Director of Public Prosecutions for suitable action. A position of Children's Ombudsman should be created to coordinate complaints made by children and young people, including those involving allegations of police violence.

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## CHAPTER TWELVE

### THE JUSTICE SYSTEM, SENTENCING AND CORRECTIONS

This chapter will examine a range of issues relevant to the young violent offender who has been processed through the Juvenile Justice and the adult criminal justice and correctional systems. It will look at such issues as court diversion, recidivism, community based and institutional corrections, and examine existing and proposed programs that focus on the violent behaviour of young offenders. It will also discuss the impact of the *Sentencing Act, 1989* on such issues as parole and supervision.

Fundamental to this chapter is the notion that young violent offenders, especially those who commit serious offences, need proper intervention, supervision and management at both the community and the custodial level. The Committee believes that the Department of Juvenile Justice and the Department of Corrective Services have a responsibility to ensure that violent offenders who come into their system are provided with appropriate and effective management to maximise their successful reintegration into the community. To this end the Committee supports, as a key recommendation, the development of appropriate intervention strategies that are adequately and consistently resourced.

#### RECOMMENDATION 132

That the Government provide adequate resources to ensure:

- effective intervention at the time young violent offenders first come in contact with the justice system;
- the multiplicity of problems of incarcerated young violent offenders, such as alcohol and drug abuse, are adequately addressed; and
- effective preventative strategies are developed to break the cycle of recidivism among young violent offenders.

#### 12.1 THE JUVENILE JUSTICE SYSTEM

The Committee has dealt extensively with the Juvenile Justice system in its 1992 report, *Juvenile Justice in New South Wales*. A range of recommendations relating to crime prevention, court diversion, sentencing options and services were contained in that Report, many of which have since been introduced. The Committee's Report was followed by the Green Paper, *Future Directions for Juvenile Justice in New South Wales*, prepared by the NSW Juvenile Justice Advisory Council in 1993, and, in 1994, the White Paper, *Breaking the Crime Cycle: New Directions for Juvenile Justice in New South Wales*.

For the purposes of this Section, the Committee will refer extensively to its 1992 Report on Juvenile Justice, as well as the evidence received for this Inquiry and recent research.

As the Committee found in its 1992 report, juvenile crime, including violent crime is an extremely complex problem. Similarly, the Youth Justice Coalition's *Kids in Justice* Report suggested juvenile crime can be

*accounted for as a consequence of such factors as social change, urbanisation, poverty, difficulties in integration, exclusion from the mainstream, lack of opportunities, gender, increased temptation of lack of access to disposable goods, economic crises and the exigencies of "growing up". It is clear that there are strong links between social disadvantage, deprivation and particular sorts of crime and its control .... More specifically it has clear connections with unemployment, homelessness, school alienation, family breakdown, drug abuse, boredom and low morale and poor self-image, inadequate community, family and youth support services (Youth Justice Coalition, 1990:27).*

#### **12.1.1 Responding to Violent Offending**

As the Committee stressed throughout its 1992 Report, in order to properly address juvenile offending and arrest the cycle of crime, the juvenile justice system must be able to respond adequately to these factors. To this end, the Committee recognised the need for collaboration with a range of Government Departments and community organisations. It recommended the establishment of a Crime Prevention Division in the Attorney General's Department that would have input and involvement from government and community agencies.

The Committee understands that a Juvenile Crime Prevention Division has recently been created within the Attorney General's Department and a Juvenile Crime Prevention Advisory Committee is to be established, consisting of Government, community and private sector representatives. Innovative juvenile crime prevention projects are to be funded to address the causes of crime in target areas. The Committee supports these initiatives and urges appropriate representation of and consultation with young people to facilitate their involvement in the development of strategies to prevent or reduce violence.

#### **RECOMMENDATION 133**

**That the Attorney General ensure young people are appropriately represented on and consulted by the Juvenile Crime Prevention Advisory Committee and the Juvenile Crime Prevention Division in developing strategies to prevent or reduce violence.**

As the Committee learnt throughout this Inquiry, the issue of youth violence can inspire strong emotional responses, from members of the community, politicians and the media. Often this is manifested in calls for more punitive responses to young offenders by the justice system. The

Committee heard for instance, of the establishment in other jurisdictions of so-called "boot camps" which are military style camps that rely on a rigid and highly disciplined regime, and of utilising the option of caning. In relation to boot camps, a recent report produced for the Australian Institute of Criminology found that, for young offenders, they have failed to reduce recidivism or prison overcrowding (Atkinson, 1995).

The Committee does not support the establishment of such camps for New South Wales and rejects any form of punishment for young offenders that involves physical discipline. It considers that such responses, whilst possibly breaching fundamental principles of human rights, can also be counter-productive in the reform and rehabilitative process.

Nevertheless, the Committee recognises and emphasised in its Report on Juvenile Justice, that an effective juvenile justice system must ensure that young offenders are accountable for their actions. This is probably all the more pressing in the case of violent offenders. As was highlighted in the 1992 Juvenile Justice Report (1992:4)

*The "needs" of a young offender and the fact that a "deed" or offence has been committed both have to be managed. It is considered by the Committee that it is important for the young offender to have [his/her] needs addressed separately from the "deeds" they have committed. This view was taken in order that assistance to a young offender is not perceived as a reward for offending.*

The Committee continues to support that approach for this Report. It considers that violent offenders need appropriate intervention and/or supervision and management that is both relevant to the seriousness of the offence and to their needs. This should occur both within the Juvenile Justice system and within a community context. In line with its findings in the 1992 Report it also considers that within the juvenile justice process the victim should be considered and respected.

It is relevant to note at this point that prior to the state election on March 1995 responsibility for Juvenile Justice lay with the Minister for Justice. It now rests with the Minister for Community Services, but remains a discrete department and is still known as the Department of Juvenile Justice.

Section 2.1.2 of this report revealed that the number of juvenile offenders in custody for violent offences as at June 1994 had more than doubled since 1989 to 212, or 44% of the total number of detainees.

Moreover, according to Cain (1995:4)

*a time series analysis of the offence profile of juveniles in custody over [the eight year period from 1986/87 to 1993/94] reflects the more serious juvenile criminal activity .... At the end of June 1989, fewer than one hundred juveniles were in custody for offences against the person. By June 1994, the number had exceeded two hundred. Most of the observed increase in the number of juveniles in custody for violent offences is the result of the sentencing and committal processes rather than the result of bail determinations. This is evident from the rapidly rising number of violent juvenile offenders serving*

*custodial sentences in NSW Juvenile Justice Centres. In contrast, the number of juveniles being remanded in relation to violent offences has remained relatively constant.*

It is unclear what has caused this increase. Cain, himself postulates (1995:38) two theories.

Firstly, he argues that it may be in part

*an indirect and unintended consequence of the principle of diversion. That is, diverting the less serious offender makes those who do enter custody relatively more serious.*

He also maintains that

*the observed level of entrenchment in criminal activity, the escalation to, or continuation of aggressive and violent behaviours, and the repeated return to custody of the majority of juveniles serving time, indicates that little that the juvenile justice system has offered in the past in terms of rehabilitative programs has worked - at least for these recidivist offenders.*

In light of these observations, it is clear that effective, ongoing, focussed and culturally appropriate intervention and supervision is required for violent offenders. Such intervention should be available to offenders in custody and those serving sentences within the community. It would appear that to date, diversion and intervention for all young offenders has not been effective, as indicated by the graduation of many property offenders to violent offenders. Cain (1995:38) has found that

*over fifty per cent of juveniles on control orders are serving time for serious violent offences or drug offences. Armed robberies and serious assaults figure prominently. Generally, these juveniles have "graduated" to these indictable violent and drug offences from less serious property or good order offences.*

### **12.1.2 A Model for Court Diversion**

Throughout this Inquiry and the Inquiry into Juvenile Justice the Committee heard of initiatives and proposals for court diversion schemes, including in other jurisdictions, that aim to steer young offenders away from the Juvenile Justice system before they become entrenched in a cycle of offending. Among them are the New Zealand Family Group Conference Scheme, which attempts to focus the young offender on the consequences of his or her actions and confront the feelings of his or her victim, the victim's family and his or her own family. A family group conferencing scheme based in Wagga Wagga; the Wellington Juvenile Justice Panel and Taree Community Justice Council run by members of the local Aboriginal communities; and a Departmental Community Youth Conferencing Scheme are similar in their objectives.

In its 1992 Report on Juvenile Justice, the Committee recommended the establishment of a court diversionary scheme, known as the Children's Panel, which it believes encompasses all

the positive elements of the models noted above. It was envisaged that the scheme be the responsibility of the Department of Juvenile Justice and include representatives from the Police Service and the community as well as Juvenile Justice personnel. The Committee also determined that where appropriate, a victim be encouraged to attend and participate in the proceedings of the Children's Panel.

It was determined that young offenders who commit offences of a certain nature, such as murder, manslaughter, sexual assault, arson, vicious assault, and repetitive robbery should be subject to a charge and therefore not be eligible for referral to the panel. The Committee continues to support the establishment of a Children's Panel scheme for appropriate young offenders, as a means of diverting them from the court and juvenile justice process and thereby preventing entrenchment in that process.

The Committee considers that young offenders who commit offences that may be categorised as violent but are not of a serious nature should be eligible for involvement in the panel. The Committee firmly believes that for violent offenders in particular, a crucial part of any rehabilitative process would be to confront their victim and gain a first-hand appreciation of the impact of their actions.

For a complete description of the workings of that scheme, readers are referred to the Committee's 1992 report, *Juvenile Justice in New South Wales*.

#### **RECOMMENDATION 134**

**That the Minister for Community Services and the Minister for Police implement Recommendation numbers 35 to 50 of the Standing Committee on Social Issues Report *Juvenile Justice in New South Wales*, (1992).**

#### **12.1.3 Community Based Sentencing Options, Intervention and Supervision**

In its Report *Juvenile Justice in NSW* the Committee recognised that, where possible, community based sentencing options be used in the sentencing of young offenders and incarceration be used only as a last resort. A range of community based sentencing options are provided for in Section 33 of the *Children's (Criminal Proceedings) Act, 1987*. These are in order of severity:

- dismissal of a charge or dismissal with a caution
- release on a recognisance with or without conditions
- imposition of a fine
- release on recognisance and imposition of 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.

A number of witnesses before the Committee and a range of submissions received supported the utilisation of community based options with supervision, and counselling for appropriate violent young offenders.

Whilst the Committee endorses this approach for those young offenders who do not pose such a threat that they require incarceration, it is mindful that programs to support community based options are less than adequate. As Senior Children's Court Magistrate, Mr Rod Blackmore explained to the Committee

*one would think that someone who has committed violence is in strong need of fairly intensive counselling to change attitudes and to show the perspective that other people in the community have about violence, but there is not a great deal available (Blackmore Evidence, 28.07.95).*

Failure to appropriately resource community based options so that Juvenile Justice Officers can provide proper, specific and consistent supervision and counselling to young violent offenders, will do little to rehabilitate the offender and will undermine the community's confidence in the justice and correctional process. The high level of recidivist offenders in custody who previously had the option of community based sentences is strong testament to the need for the implementation of more effectively supervised non-custodial alternatives.

#### ■ Community Youth Centres

The Committee understands that some young offenders, including violent offenders, assessed as appropriate by a counsellor, may be referred by the courts to Community Youth Centres (CYCs). CYCs provide intensive supervision and counselling for those juvenile offenders who receive a probation order or those released from detention. The goal of counselling at CYCs is to assist young offenders reintegrate successfully into the community. They are located at Stanmore, Liverpool and Blacktown and programs are also offered at Wollongong and Newcastle. Pilot Programs have recently been introduced in Wagga Wagga, Dubbo and Grafton (Loughman Briefing, 17.09.93).

The Committee is encouraged by the expansion of CYCs. However, evidence from the Senior Children's Magistrate indicated that the availability of Community Youth Centre programs for young people on probation with supervision orders remains limited (Blackmore Evidence, 28.07.94).



Given the commitment of the Committee to supervision and counselling it strongly supports the expansion of CYC programs. However, it considers that for CYCs to effectively assist young violent offenders, a wide range of suitable programs must be available within the community from which they can draw assistance.

#### **RECOMMENDATION 135**

**That the Attorney General ensure that where appropriate, courts continue to utilise community based options in the sentencing of young offenders, including young violent offenders.**

#### **RECOMMENDATION 136**

**That the Minister for Community Services ensure, as a matter of priority, that adequate resources are available to Department of Juvenile Justice Offices throughout New South Wales to enable the consistent and relevant supervision and counselling of young violent offenders serving community based sentences.**

#### **RECOMMENDATION 137**

**That in order for Juvenile Justice Offices to adequately supervise and counsel a young violent offender in the community the Minister for Community Services must ensure that there is a wide range of suitable programs 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.**

#### **■ Community Service Orders**

Community Service Orders (CSOs) are the most severe penalty that a young offender can receive before the imposition of custodial sentence. Under the CSO scheme, juvenile offenders perform community work as restitution to the community for their offences. The maximum number of hours which a young offender can be sentenced to under a CSO is 100 hours.

In recent times there have been calls for an increase in the number of CSO hours that can be imposed upon a young offender to reflect the seriousness of the offence and the penalty. Senior Children's Court Magistrate, Rod Blackmore indicated to the Committee that he supported the White Paper's proposal of a maximum of 250 hours as "a realistic penalty for what can be quite a serious offence" (Blackmore Evidence, 28.07.94).

The Committee considers that increasing the maximum number of hours which can be given to a young offender under a CSO could provide a realistic alternative to detention in appropriate

cases. However, it is mindful that merely increasing the hours of the penalty but failing to provide adequate supervision or failing to offer or support appropriate options and schemes under which a young offender can undertake his or her CSO will have little positive advantage. If there are limited options of community work that a young offender can perform, there is a real risk that this penalty is by-passed and a custodial sentence is instead imposed. Cain, (1995: 14, 26) for instance, has found that as at 13 April, 1994

*two-thirds (68.7%) of juveniles in custody had not been given the benefit of a community service order, which is viewed as the penultimate penalty .... Only one-third of Aboriginal juveniles on control orders had previously received a CSO.*

The Committee supports the increase in the maximum number of hours under a CSO from 100 to 250 hours as a realistic alternative to detention for appropriate young offenders. However, it considers that such an increase should only occur if the Minister for Community Services can guarantee that resources are available and relevant support services able to be drawn upon to assist Juvenile Justice personnel in all regions to adequately supervise and offer a range of community work to those young offenders placed on CSOs. It also considers that counselling programs for young violent offenders on CSOs be offered as part of the fulfilment of these orders in addition to other work orders.

#### **RECOMMENDATION 138**

**That the Minister for Community Services ensure that:**

- **adequate resources are available and relevant support services able to be drawn upon to assist Juvenile Justice officers in all regions to adequately supervise and to offer a range of community work to those young offenders placed on Community Service Orders; and**
- **counselling programs for violent offenders on Community Service Orders can be offered as part of the fulfilment of Community Service Orders in addition to other work orders.**

#### **RECOMMENDATION 139**

**That conditional upon the implementation of Recommendation 138 the Minister for Community Services amend the Children (Community Service Orders) Act, 1987 to allow the maximum number of hours which can be given to young offenders under a Community Service Order to be 250 hours.**

■ **Conditional Release**

Section 24(1) of the *Children (Detention Centre) Act, 1987* provides for juvenile offenders to be granted leave and be absent from a Juvenile Justice Centre for a purpose which is considered as being beneficial to the juvenile's welfare or rehabilitation such as education, employment, training and family matters.

Under close supervision and with intensive counselling, conditional release permits the young offender to live in the general community and participate in community based educational and vocational programs.

Whilst violent offenders do participate in the program conditional release it is not available to those young offenders who have been convicted of a serious indictable matter or classified by the court as a danger to the community.

The Committee considers that programs within an institutional setting that are aimed at altering the violent behaviour of young people should be augmented by behaviour modification programs within the community. It therefore considers that appropriate counselling and support should be extended to violent offenders on conditional release.

**RECOMMENDATION 140**

**That the Minister for Community Services ensure appropriate counselling and support is extended to violent offenders on conditional release.**

■ **Violent Offenders Program**

The Committee is encouraged by recent initiatives being considered by the Department of Juvenile Justice in relation to young violent offenders released into the community. A violent offenders program is being developed which will focus on working with young people and their families within a community setting and as part of a comprehensive case management plan. The program will seek to identify and deal with factors underlying the offending behaviour. It will be designed to provide a continuum of service for young people moving from detention to the community by providing psychiatric consultancy to Juvenile Justice Centres.

The Committee endorses this initiative and urges that the Minister for Community Services establish it as a matter of priority. It is essential to its successful operation that the violent offenders program be appropriately resourced. The Committee also considers that judicial education will be required to ensure that violent offenders are referred to the violent offenders program as appropriate.

### **RECOMMENDATION 141**

**That the Minister for Community Services establish the violent offenders program as a priority and ensure that it is appropriately resourced to enable its utilisation throughout New South Wales.**

### **RECOMMENDATION 142**

**That the Attorney General and Minister for Community Services ensure that judicial education is undertaken by members of the magistracy and judiciary likely to preside over matters involving violent juvenile offenders, to facilitate such offenders being referred to the Violent Offenders Program as appropriate.**

#### **■ Attendance Centres**

The issue of Attendance Centres, which serve somewhat similar purposes to CYCs, was addressed in the White Paper where it indicated that legislation would be introduced to create an additional sentencing option to be utilised by Children's Court Magistrates. The purpose of Attendance Centres would be to involve intensive programs to address offending behaviour or the environment in which the offending was committed and to provide skills for community integration (NSW Department of Juvenile Justice, 1994:11). The Committee understands that a pilot Attendance Centre scheme has been conducted for juvenile offenders in Sydney's Western region for two small group of offenders since November 1993. An evaluation of the pilot operating at Blacktown Community Centre is currently under way.

Evidence submitted to the Committee indicated that while the scheme has the potential to address anger and aggression in juvenile offenders, it would not be an appropriate option for those juveniles deemed by the courts to pose a risk to the community. Nevertheless, it is envisaged that there would be opportunities for young people having committed some violent offences to participate in the scheme. Guidelines are being developed for the operation of the scheme that will address issues regarding the participation of violent offenders (Tie Evidence, 29.08.94).

The Committee endorses the development of the Attendance Centre Order scheme, and, subject to the outcome of the evaluation of the pilot scheme, urges that Attendance Centres be established throughout New South Wales. It considers that this sentencing option should be available to violent offenders, under appropriate guidelines, and programs addressing violent offending behaviour should be offered at Attendance Centres.

#### RECOMMENDATION 143

**That the Minister for Community Services ensure that, having regard to the evaluation of the pilot scheme, Attendance Centres and programs are established throughout New South Wales.**

#### RECOMMENDATION 144

**That the Minister for Community Services ensure that, in developing guidelines for the Attendance Centre orders and programs:**

- **due regard is given to the availability of the Attendance Centre sentencing option to violent offenders, where appropriate; and**
- **programs are developed which address violent offending behaviour.**

#### 12.1.4 Young People in Detention

Young male violent offenders serving a custodial sentence can be detained in Kariong (which is a high security unit) or the Walpole and Vernon Units at Mt Penang. Less sophisticated offenders (who may nevertheless have committed a violent offence) may be placed in Karinya or Woods, also within the Mt Penang complex. Boys up to the age of 16 years can also be detained at Reiby Juvenile Justice Centre.

Young female offenders are detained at Yasmar Juvenile Justice Centre.

It has been well-documented that most young offenders in custody are recidivist offenders, many of whom have been incarcerated on a previous occasion. This issue was dealt with at length in the Committee's 1992 report, *Juvenile Justice in New South Wales*. More recently, Cain (1995:14) has found that as at 13 April, 1994 and with a Juvenile Justice Centre population of 423

*nine of every ten persons in juvenile detention had previously served time in custody .... For 114 juveniles (37.1%), the current term of custody is their second to fifth; for nine juveniles (2.9%) the number of previous sentences ranged from six and up to nine; and, for a further two juveniles, ten or more separate custodial terms had been served in juvenile justice centres.*

As it was noted earlier in this Chapter, over fifty percent of juveniles on control orders are serving time for serious violent offences or drug offences, most of whom have graduated from less serious property or good order offences (Cain, 1995:38).

As Cain (1993b:36) has previously observed

*the proportion of juveniles re-entering Juvenile Justice Centres on violent offences following initial custodial terms for non-violent offences questions the rehabilitative qualities of Juvenile Justice Centres, their ability to deter juveniles from re-offending, and their ability to prevent or minimise exposure to the more experienced and the more violent criminal elements they house.*

The Committee considers that Department of Juvenile Justice should establish a system that monitors the level of recidivism among juvenile offenders, especially in relation to the graduation to crimes of violence, and evaluate the impact of detention on recidivism and the nature of offending.

In relation to the graduation of young offenders to the adult system, Hogan has estimated that 60-75% of adult prisoners were previously involved in the juvenile justice system (in Bagnall, 1992:38). Since a large number of young offenders break away from crime as they mature, longitudinal studies tracking juvenile offenders and establishing offending histories of adult offenders are required. The Committee understands that the Department of Juvenile Justice is planning to conduct research in collaboration with the Department of Corrective Services to examine this issue in 1995. The Committee supports this initiative.

#### **RECOMMENDATION 145**

**That the Minister for Community Services ensure that:**

- the level of recidivism among young offenders in the juvenile justice system is consistently monitored to assess the rate of graduation to more serious and violent offences; and
- the impact of detention on recidivism and the nature of offending behaviour is evaluated.

#### **RECOMMENDATION 146**

**That the Minister for Community Services and the Minister for Corrective Services conduct research, involving the Department of Juvenile Justice and the Department of Corrective Services, that examines the graduation of juvenile offenders to the adult system.**

The Committee understands the Department of Juvenile Justice offers some specific programs for violent offenders in custody, including at Kariong and the newly established Robinson Boys Program at Reiby, and the Sex Offenders program. Juvenile Justice Centres also provide education and training to young offenders in custody on a range of subjects and areas.

The Committee understands that the majority of juvenile offenders display distinct deficiencies in social and living skills and appropriate programs are available in all centres to increase their capacity to cope in the normal stream of community life (NSW Department of Juvenile Justice, 1994:15).

The Committee recognises the significance of education and training in the rehabilitation process for detained young offenders, many of whom have experienced limited opportunities in this regard. It considers that institutional based education and training should be appropriate for all groups in Juvenile Justice Centres, including young women, Aborigines and young offenders of non-English speaking background.

The following section proposes to deal with those programs that are specifically violence focussed.

■ **Kariong Juvenile Justice Centre**

As many of the detainees in Kariong have committed serious violent offences, Kariong offers a specific, individually-based and highly structured behaviour modification program. The program focuses on the positive characteristics of each young person and aims to address the violent behaviour which resulted in the young person being sent to the facility.

Among the components to the program are:

- an initial six week anger control and management program run by a clinical psychologist and other qualified staff;
- follow-up programs focussing on problem solving, building self-esteem and conflict resolution; and
- school, trade and sport and recreation programs (Tabled document).

Each young person is reviewed monthly to determine if he is ready to return to the mainstream detention system or if he should remain at Kariong for another month.

■ **The Robinson Program for Boys at Reiby Juvenile Justice Centre**

The Robinson Program for Boys is a recent initiative of the Department of Juvenile Justice aimed at more successfully managing juvenile detainees "who are characterised by violence, poor impulse control, acting out, and other aggressive behaviours" (Cain, 1995:38). It was developed in response to the increasing proportion of young men in custody with offending backgrounds involving violence, and aggression and self-harm incidents that occur in detention centres (Tie, Evidence, 29.08.94). Boys are referred to the program from Reiby itself or any of the other Juvenile Justice Centres for boys, on the basis of their behaviour in detention or the seriousness of their offence or alleged offence.

The Program is run on a therapeutic model with an emphasis upon assessment and stabilisation of behaviour, skills development and integration into mainstream detention and eventually, into the community.

In light of his findings in relation to recidivism rates in detention and the increase in the number of violent offenders in custody in recent times, Cain argues that the establishment of the Robinson Program is a "positive step" in the management of violent offenders. The Committee considers that the Robinson Program for Boys will offer an important alternative for young offenders with aggressive tendencies. It further considers that the Program should address the underlying causes of violence, including issues relating to gender construction. The Committee understands that a comprehensive evaluation of the Program will be undertaken in late 1995 (Cain, 1995:38).

#### **RECOMMENDATION 147**

**That the Minister for Community Services ensure that the Robinson Program for Boys addresses the underlying causes of violence, including issues relating to gender construction.**

#### ■ **Sex Offender Programs**

The Sex Offender Program is a specialist program within the Department of Juvenile Justice providing comprehensive, individualised treatment and management of adolescents who have been convicted of offences of a sexual nature. The program was designed in response to an increasing recognition that sexual offences committed by juveniles are more than "normal" experimentation or developmental curiosity. One hundred and twenty boys currently participate in the program. The program has both a detention centre and community based focus.

It also has a research component and a collaborative research unit has been set up between the Department of Juvenile Justice and the Impulse Disorders Unit, University of New South Wales. The Committee understands that two major research projects are currently under consideration: recidivism and on-going evaluation of the current program.

The philosophy of the program involves the young offender developing a sense of responsibility for his behaviour, gaining insight into that behaviour and developing coping skills and strategies to prevent further sexual offending.

Approximately one-third of boys in the program come from rural areas. In many instances, the offender remains in his local community and receives counselling from a local counsellor employed by the Department on a fee-for service basis. However, difficulties arise where that local counsellor is not specialised in working with sex offenders.



A submission from a group of practitioners from Wagga Wagga identified the difficulties in effectively managing juvenile sex offenders in rural areas, who require residential care and on-going treatment facilities. Some offenders had been placed in inappropriate situations and were removed from or not able to return to their families, creating potentially damaging situations (Submission 33). That submission also proposed the establishment of a community based sex offender program that would aim to maximise the involvement of families while providing a residential unit of a non-custodial nature.

The Committee considers that availability of counselling services for juvenile sex offenders in rural areas should be reviewed, and the feasibility of expanding the Sex Offender Program and establishing specialist residential services should be assessed.

The Committee understands that adult sex offenders tend to start offending during childhood or adolescence. It considers that it is crucial that appropriate and intensive intervention occur at an early stage. The Committee therefore sees considerable merit in the Juvenile Sex Offender Program.

#### **RECOMMENDATION 148**

**That the Minister for Community Services ensure adequate resources are consistently provided to the Department of Juvenile Justice's Sex Offender Program so that the program can function effectively.**

#### **RECOMMENDATION 149**

**That the Minister for Community Services ensure adequate funding is provided to meet the management and treatment needs of juvenile sex offenders in rural areas.**

#### **RECOMMENDATION 150**

**That the Minister for Community Services assess the need for and feasibility of providing specialist, community based residential services for juvenile sex offenders who do not receive control orders or who are released into the community.**

#### **■ Programs for Aboriginal Youth**

The issue of the over-representation of Aboriginal youth at all stages of the juvenile justice process, including in detention, has been documented in numerous reports, including this Committee's report on *Juvenile Justice in New South Wales*. Cain maintains that the numbers of Aboriginal youth entering juvenile detention continue to remain disproportionately high and are, in some cases, increasing. As the Committee also acknowledged in its report on Juvenile Justice, the causes of this over representation are complex and cannot be adequately addressed

unless, "greater recognition is given to the complex social, economic, legal and inter-racial factors" (Cain, 1995:40).

Cain's findings (1995:40-41) in relation to detained youth as at 13 April 1994 show that

*Aboriginal juveniles in custody ... are no more serious in terms of their current offence than non-Aboriginal youth. However, in terms of the number of prior proven offences and number of times previously in custody, Aboriginal young people are amongst the most experienced and recidivist of juvenile offenders in custody. This is the case for both remandees and those serving custodial sentences .... It is very likely ... that [the] extensive criminal records are themselves a function of the 'very powerful ... compounding effect' of discriminatory practices.*

The White Paper referred to the establishment of a range of accommodation options for Aboriginal young people who would otherwise be refused bail. The Department of Juvenile Justice is currently considering expressions of interest for the re-establishment of a bail hostel for Aborigines in the Sydney metropolitan area to replace the Jaapalpa bail hostel.

A pilot Aboriginal Juvenile Bail Support Scheme was planned for Dubbo and Wellington to assist Aboriginal juveniles who have allegedly committed minor offences and who are likely to be refused bail on the basis of homelessness or lack of suitable accommodation. If extended family networks cannot assist with accommodation, an alternative placement was to be sought in an attempt to provide a stable, caring environment. Aboriginal workers from the Department of Juvenile Justice and Aboriginal community workers were to conduct an awareness program in an attempt to build a network of alternative carers within the Aboriginal community. The Departments of Juvenile Justice and Community Services are currently negotiating as to whether individual families or organisations should be accredited as carers. A similar scheme, with families as accredited carers, is currently operating in Wagga Wagga. The Committee believes that the potential for introducing a state-wide scheme should be evaluated.

#### **RECOMMENDATION 151**

**That the Minister for Community Services facilitate the introduction of pilot Aboriginal Juvenile Bail Support Schemes, and evaluate the potential to extend the Scheme to other communities.**

Like all young people who commit violent offences, Aboriginal youth require appropriate intervention and supervision that is relevant to their needs and the offence. In endorsing the violence-focussed programs and initiatives being undertaken or proposed in both Juvenile Justice Centres and in the community, the Committee urges that there be appropriate input from Aboriginal communities and recommends that the Department of Juvenile Justice ensure that these programs and initiatives be culturally sensitive. In the community context, the Committee is encouraged by the appointment of Aboriginal Community Program Officers, who

are to assist local communities develop viable local juvenile justice programs. It also endorses the appointment of an Aboriginal Community Project Officer who will assist in the development, implementation and oversight of a range of alternatives to detention and court processing for young offenders.

## RECOMMENDATION 152

**That the Minister for Community Services ensure that any program developed by the Department of Juvenile Justice that targets young violent offenders both in custody and the community, and includes young Aboriginal offenders, has appropriate input from Aboriginal communities and is culturally sensitive.**

### ■ Programs for Young People from non-English Speaking Backgrounds

The ethnicity of violent offenders in Juvenile Justice Centres has been discussed in Chapter Two. Cain (1995:41-42) observes that

*Aborigines are not the only ethnic/cultural group over-represented in custody. The Indo-Chinese, Lebanese, Pacific Islanders and Maoris have disproportionately large numbers of their youth in custody on remand and control. Such over-representation also raises the possibility of discrimination operating in relation to these groups .... In absolute terms, the number of Indo-Chinese youth in custody for violent crimes has not risen although the reduced numbers in custody for drug crimes has brought about a relative increase in the proportion of Indo-Chinese youth in custody for violent offences .... On face value, [the Pacific Islander group], constitute the most violent group of offenders in custody .... Like their Pacific Island counterparts, the principal offence for which [juveniles of Lebanese and Maori background] were placed in custody is more often than not a crime of violence.*

The Department of Juvenile Justice is currently attempting to address the cultural appropriateness of its counselling programs, particularly in relation to the reintegration of Indo-Chinese offenders into the community.

The Department is examining strategies to increase the employment of Indo-Chinese Australians in Juvenile Justice Centres and is providing training to other staff on Indo-Chinese language, culture and tradition. Language and culture classes have been initiated for residents, in addition to ESL classes. Indo-Chinese community organisations are encouraged to support Indo-Chinese youth in detention (Graham, 1993:8). The Committee supports the continued development of such initiatives.

An Indo-Chinese Youth Support Program has been established to assist Indo-Chinese young offenders who are eligible for conditional release to return to their community.

There are no existing culturally appropriate counselling programs for Pacific Islander juveniles in custody, despite their high recidivism rate and their involvement in violent offences (Cain, 1995:41). There are similar limitations in the options available for Maori and Lebanese young offenders.

As Cain (1995:42) maintains

*the emergence of a number of different ethnic groups who are over-represented in the NSW Juvenile Justice Centre population is placing incredible strain on the Department of Juvenile Justice to respond creatively and strategically with a variety of culturally appropriate counselling and management services. There is a real danger that members of these and other ethnic groups in custody will not respond to, or be rehabilitated by, the typically White Anglo-Australian counselling programs being provided .... Whilst there is no guarantee that new, culturally-specific management and counselling programs will work any better, until they are developed and introduced, past performance informs us that the success of existing juvenile justice services and programs will be limited. The majority of individuals in juvenile detention will re-offend and find their way back into detention or, worse still, face a life in prison when they are no longer covered by children's legislation.*

The Committee strongly endorses the introduction of culturally appropriate programs for young offenders of non-English speaking background, including violent offenders, both within custody and in a community setting. It further supports the involvement and input of members of non-English speaking background communities in the development of such programs.

### **RECOMMENDATION 153**

**That the Minister for Community Services ensure that any program developed by the Department of Juvenile Justice that targets young violent offenders both in custody and the community, and includes young offenders of non-English speaking background, has appropriate input from relevant ethnic communities and is culturally sensitive to the offender's background.**

The Committee has heard that racial animosity has existed between inmates of Juvenile Justice Centres. A number of strategies have been identified to address this issue, including the dispersal of the groups through the various centres, providing adequate interpreting services, and bringing in members of the relevant communities to assist in working with young people. The Committee heard that:

*involving the community in programs and trying to open up the centres has actually had a stabilising effect on the behaviour of the young people in custody (Loughman Briefing, 17.09.93).*

■ **Programs for Female Offenders**

In its 1992 report, *Juvenile Justice in New South Wales*, the Committee found that

*there are very limited programs that cater specifically for girls in the system and those at risk of entering the system. Since boys represent the greater "at risk" offender population, programs and services seem to be geared toward their needs and boys tend to dominate those programs that are available (Standing Committee on Social Issues, 1992:54).*

Since that time a new Juvenile Justice program specifically managing young women in custody has been established at Yasmar Juvenile Justice Centre, with close proximity to the city allowing ready access to services provided by community agencies.

Whilst girls represent only a small proportion of the young offender population, most of them, especially those in custody, have specific needs that often relate to a history of physical and sexual abuse, drug and/or alcohol dependency and family dysfunction.

Cain's research (1995:39) has identified that

*Like their male counterparts, females in juvenile detention appear to be getting not only more serious in terms of their criminal histories, but more violent in their offending.*

He notes (1995:19) that of the 19 females in NSW Juvenile Justice Centres as at 13 April 1994, eight (80%) were serving control orders in relation to violent offences.

These findings make the need for development of appropriate and effective programs, both in the community and in a custodial setting, for young female offenders who have committed violent offences all the more pressing. Given the special needs of young women, it is essential that such programs address broader issues such as drug and alcohol abuse and physical and sexual abuse and offer appropriate counselling in relation to these issues.

**RECOMMENDATION 154**

**That the Minister for Community Services:**

- **develop appropriate programs and counselling services for young female offenders in the community and in detention, that focus on violent offending among young women; and**
- **ensure that such programs and counselling services are sensitive to the specific needs of young female offenders.**

■ **Pre-discharge Units**

In its earlier report, *Juvenile Justice in New South Wales* (1992:186), the Committee considered that some young offenders who have served a custodial sentence require the use of special accommodation facilities that provide a number of services to assist them in their re-integration into the community. The Committee considered that such facilities should be situated throughout New South Wales, and could only be effective if the program was a compulsory aspect of the continuum of a rehabilitation program for those young offenders who are deemed (because of their assessment) to be in need of such a period of supervision.

The White Paper referred to the establishment of pre-discharge units and pre-discharge programs as strategies to assist young people in detention to develop independent living skills and prepare them for their return to the community (NSW Department of Juvenile Justice, 1994:16). The Committee was informed that pre-discharge units will be established at each Juvenile Justice Centre. A longer term strategy will be to move these units into the local community, particularly in regions where no Juvenile Justice Centre is located to enable juveniles to be supported within their own communities. Rural areas are most likely to benefit from this strategy as most Juvenile Justice Centres are currently located in metropolitan areas (Tie Evidence, 29.08.94).

The pre-discharge program will involve the planned and coordinated management of young people in custody, focussing on linking young people with their communities in preparation for release. Programs will seek to link young people into employment, accommodation, school or training, health services and their families where appropriate (Tabled document).

The Committee strongly endorses the establishment of pre-discharge units in Juvenile Justice Centres, and supports the extension of the programs into community settings.

**RECOMMENDATION 155**

**That the Minister for Community Services ensure adequate pre-discharge units are established, and the programs offered from these units are extended into community settings and to all young offenders leaving custody.**

**12.1.5 Community and Family Involvement**

The Committee was informed that where possible and appropriate, young people who have offended are dealt with in their communities to sustain and enhance family and community support (Tie Evidence, 29.08.94).

The Department of Juvenile Justice has indicated that in recognition of the importance of families and extended families as a fundamental influence upon children, families are actively involved in the development of case management plans for juvenile offenders where appropriate. The Department may also provide financial assistance towards travel and

accommodation costs to enable families and significant others to visit and maintain contact with young people in custody.

It was suggested to the Committee that most young people in detention return to their families when released. Providing young people in detention with opportunities for pre-release leave and other forms of approved leave allows for the possibility of the renewal of positive relations with the family and the community.

However, as the Committee was told, the family backgrounds of many of these young offenders are often characterised by tension, and if they return to this environment

*it is just going to place them back in the same situation and it will tend to blow up and that young person will be out of their home or offending again or returning to the institution because it is much safer there (Marsden Evidence, 01.11.93).*

The Committee believes that the potential for all young offenders to be reintegrated into their families should be assessed prior to their release from Juvenile Justice Centres. The Committee also recommends a family mediation project be developed to assist in this reintegration, while recognising that reintroducing a young person into a family which has been a source of difficulties will not be desirable in all cases.

The Committee notes that a "grandparent" program has also been developed for juveniles in custody who lack family support. The program involves selected volunteers acting as parental and role models for young people who do not have appropriate family support. The Committee supports the continuation of this program.

#### **RECOMMENDATION 156**

**That the Minister for Community Services ensure**

- **the potential for all young offenders to be reintegrated into their families is assessed prior to their release from Juvenile Justice Centres;**
- **a family mediation project is developed for young offenders to assist in this reintegration, where desirable; and,**
- **where re-integration is not possible, the young offenders are given appropriate support in re-entering the community.**

#### **12.2 THE DEPARTMENT OF CORRECTIVE SERVICES**

For young offenders who have committed an offence over the age of 18 years, supervised penalties are normally regulated by the Department of Corrective Services. Since evidence

presented to the Committee regarding this Department dealt primarily with the issue of correction centres or prisons, the following discussion deals with that aspect only of the Department of Corrective Services.

Chapter Two of the Report revealed that in 1994, 2098 prisoners in NSW, out of a total of 7351, were between the ages of 18 to 24 years. From this group, 716 are in prison for violent offences, representing 9.7% of the total prison population. As noted in Chapter Two, 696 of these young violent offenders are male and 20 are female.

One witness with experience in the corrections system suggested to the Committee that

*the gaol system does nothing to reduce violence. In fact, people go in and come out even more violent* (Denborough Evidence, 29.06.94).

However, the Committee heard that programs relating to conflict resolution, anger management, communication and self-esteem have been introduced into all correction centres. The Committee was also informed that prisoners have access to psychologists, psychiatrists and drug and alcohol workers (Vita Evidence, 29.08.94).

However, given the fact that prisons tend to perpetuate violence, the Committee is concerned that these services be adequate. The Committee considers that it is imperative that young violent offenders in NSW prisons are offered appropriate and ongoing support. Suitable levels of counselling services and counselling staff should therefore all times be maintained to reflect the size and needs of this group.

Apart from those local programs in each correctional centre, the Department has a number of specialised programs.

### **12.2.1 The Special Care Centre**

The Special Care Centre at Long Bay Correctional Centre has three autonomous units, including the Special Care Unit, which is a 14-week voluntary program for inmates with behavioural problems or self-defeating behaviour. The Committee recognises that such an approach is of significance in providing a behaviour modification program. Inmates apply from the mainstream prison system and are re-integrated to where they came from within the system after completing the program.

The objectives of the Special Care Unit are:

- to provide inmates with the opportunity to actively examine their self-defeating behaviour as well as affording them an opportunity to implement changes and to accept responsibility for their actions and decisions; and
- to provide the opportunity for staff to examine and implement, in a practical way, various techniques in the management of inmates, as well as promoting a very high degree of staff participation in program content and delivery (Tabled Document).



Rather than dealing specifically with the inmates' crimes, programs at the Special Care Unit attempt to deal with some of the underlying reasons which may have contributed to their crimes. The Unit has been awarded a National Violence Prevention Award.

The Committee was informed that, while the Special Care Unit provides a systematic program for a short period of time, it is not appropriately supported in the mainstream system:

*we need to develop programs from day one to the day they are released, encouraging them to take responsibility for their actions .... [Inmates] go into an environment [in the Special Care Centre] that is much more caring ... but after three months they go straight back into perhaps a maximum security institution where there is no support and no follow-up for those issues. It is a great program, but it needs to be supported (Denborough Evidence, 29.06.94).*

The Committee believes systematic programs such as the Special Care Unit should be appropriately supported in the mainstream prison system.

#### **RECOMMENDATION 157**

**That the Minister for Corrective Services ensure systematic programs such as the Special Care Unit are supported by the provision of appropriate follow-up programs for inmates when they leave the Special Care Unit and return to the mainstream prison system.**

#### **12.2.2 Violence Prevention Unit**

The Department of Corrective Services has set up a committee to examine the establishment of a Violence Prevention Unit as a 10-bed facility attached to the Special Care Centre at Long Bay Correctional Centre in 1995. A Senior Clinical Psychologist has been engaged to develop a therapeutic program. The program will aim to:

- address issues of anger management and conflict resolution of inmates;
- provide a continuity of service through case management practices;
- develop program links with the Special Care Unit; and
- develop and train staff to manage these inmates in a therapeutic milieu (Tabled Document).

The Unit will deal specifically with inmates who have committed premeditated violence within the prison system. It is hoped that the programs can establish links with community groups and the judicial system to provide ongoing support (Vita Evidence, 29.08.94).

While the Committee endorses the establishment of the Violence Prevention Unit at Long Bay Correctional Centre, it believes that violence prevention programs can also be offered in prisons without the considerable capital expenditure required to construct separate facilities. Once a therapeutic program is developed, the Committee recommends the feasibility of extending that program to other Correctional Centres should be assessed.

#### **RECOMMENDATION 158**

**That the Minister for Corrective Services:**

- **facilitate the establishment of the Violence Prevention Unit at Long Bay Correctional Centre; and**
- **examine the feasibility of extending the therapeutic program developed for the Violence Prevention Unit to other Correctional Centres.**

#### **12.2.3 The Young Offenders' Program**

The Young Offenders' Program has been operating since 1992. The Young Offenders' Program aims to include all male 18-22 year old offenders who have been sentenced to an adult Correctional Centre for a term of less than four years. Depending upon their suitability, offenders up to the age of 24 may also be included in the program. Young offenders on the program are separated from the mainstream correctional centre population at Parramatta and Parklea Correctional Centres and at the former Newnes Correctional Centre.

The program is highly structured and focuses on six areas which are aimed at addressing the underlying needs of young offenders. They include work, educational, developmental, vocational, recreational and pre-release programs. These program areas are fully integrated so that no program operates in isolation from the others, but complements and reinforces the work being done in other areas.

The program is aimed at beginning the process of changing attitudes and behaviour by addressing the underlying needs of young offenders.

The Committee was informed that an evaluation of the Program was planned (Vita Evidence, 29.08.94). The Committee endorses this approach.

#### **12.2.4 Crisis Support Units**

The Crisis Support Unit at Long Bay Correctional Centre is an area for suicidal and/or self mutilating inmates, with cells designed to ensure that self-harm is minimised.

A form of Crisis Support Unit exists at Goulburn Correctional Centre and a pre-release Crisis Support Unit, which is similar to a Peer Support Program, is offered at Kirkconnell Correctional Centre.

While the Committee supports the intent behind the establishment of Crisis Units within Correctional Centres, it nevertheless considers that their ultimate goal can also be supported through the development of appropriate programs that can be offered at all Correctional Centres. An amount of \$2.9 million was allocated in 1994-5 to enable an extension of induction processes in all correctional facilities, so that prisoners are fully assessed and informed of services within the prison such as psychologists. The Committee supports this approach.

Because of the incidence of self-mutilation, the Committee urges the establishment of a Crisis Support Program at the women's prison at Mulawa Correctional Centre as a matter of priority.

#### **RECOMMENDATION 159**

**That the Minister for Corrective Services:**

- **establish, as a matter of priority, a Crisis Support Program at Mulawa Correctional Centre; and**
- **continue to establish Crisis Support Units and Programs throughout New South Wales Correctional Centres.**

#### **12.2.5 Sexual Assault**

It was suggested to the Committee that within Correctional Centres the issue of male sexual assault needs to be addressed, both in terms of sexual assaults in prisons and for victims of past assaults:

*it is fairly well known that a high proportion [of prisoners] have been assaulted [in] boys' homes or institutions and that it is not being dealt with is a real issue (Denborough Evidence, 29.06.94).*

The Committee is aware of the high rate of sexual assault survivors among female prisoners. The Women in Prison Taskforce (1985:54) reported one estimate suggesting 80% of female prisoners had been sexually assaulted as children. In the Committee's Inquiry into Juvenile Justice in NSW, evidence suggested that 90% of young female offenders in institutions had experienced sexual assault (Standing Committee on Social Issues, 1992:139).

The Committee believes pilot programs should be developed for victims of sexual assaults in prisons, and for victims of past sexual assaults, including gender-specific programs.

Data from the 1994 NSW Prison Census reveal 3.4% of prisoners aged under 25 years have been gaoled for rape or serious sexual assault as their most serious offence. These crimes constitute a higher proportion (6.2%) of the most serious offences of prisoners over 25 years (Tabled Document). However, when the numbers of prisoners gaoled for these offences are compared with population statistics in these age groups for every 100,000 of the general population aged from 18 to 24 years, there are 11.5 imprisoned sexual offenders. The rate for older prisoners is 9 per 100,000 of the general population in this age group. The Committee is also aware that many older sex offenders are recidivists who commenced offending at a young age, and that young sex offenders are likely to continue offending. U.S. research shows that most sex offenders begin their deviant sexual histories as teenagers or earlier:

*[W]e find that the majority of [rape] offenders had attempted or committed their first sexual offence by the age of sixteen (Groth and Hobson, 1983:161, cited in Hecht Schafran, 1993:1043).*

While a program for child sex offenders existed at Cooma Correctional Centre, as yet no programs have been specifically designed for prisoners sentenced for sexual offences, or who commit sexual assaults in prisons.

Given its concern regarding the incidence and recidivism of young sex offenders, and the seriousness of sexual offences, the Committee believes that prison and community-based pilot programs should be developed to target this group in an attempt to prevent future victimisation. The Committee believes the effectiveness of any such programs should be evaluated after a reasonable time.

#### **RECOMMENDATION 160**

**That the Minister for Corrective Services develop pilot programs:**

- for victims of sexual assaults in prisons; and
- for victims of past sexual assaults, including a program designed specifically for female inmates.

#### **RECOMMENDATION 161**

**That the Minister for Corrective Services:**

- develop prison and community-based pilot programs for young sex offenders; and
- evaluate the effectiveness of such programs after a reasonable time.

## **12.2.6 Responding to Violence in Prison**

### **■ Protection Status**

The Committee heard that strategies available to the Department of Corrective Services to minimise the risk of violence occurring in prisons include protection status which segregates prisoners deemed to be at risk of assault by other inmates.

### **■ Administrative Segregation**

If an inmate assaults another inmate, and as a result of that assault a superintendent of an institution deems that the continued association of that inmate with the prison population would constitute a threat to good security and safety, the assailant can be moved to a segregation area for a period of 14 days. The Committee was informed that segregation of inmates does not occur primarily as a punishment, but rather for the good order and discipline of the prison (Vita Evidence, 29.08.94).

### **■ Charges under the Prisons Act**

Inmates involved in a fight or assault can be charged under the Prisons Act, with penalties ranging from the removal of privileges and amenities for a period up to 28 days, to confinement in cells for a period of up to 72 hours. In cases of a major assault, a superintendent can refer the matter to the visiting Justice for adjudication. Irrespective of the nature of the assault, it is always reported to the police. If the person that has been attacked wishes to pursue police charges, then Corrective Services staff cannot deal with the issue under the Prisons Act and it becomes a police matter (Vita Evidence, 29.08.94).

### **■ Prevention**

The Department of Corrective Services has instituted a more structured day for inmates over the last two years, with equal components of education, employment and recreation. The Committee heard that if prisoners are occupied with meaningful work and education, they are less likely to become involved in misconduct, fighting and assaults (Vita Evidence, 29.08.94).

The Committee endorses the continuation of spatial arrangements, programs and policies that contribute to the prevention of violence in prisons.

The Committee also acknowledges that drug and alcohol rehabilitation programs are necessary, since there is a level of drug-related violence in prisons, which includes self-harm.

### **■ The Alternatives to Violence Project (AVP)**

The Alternatives to Violence project was first established in 1975 when the Society of Friends (Quakers) in New York State set up a program to help inmates in Greenhaven prison who were

working with under-age offenders. Following that involvement, the program was conducted in the prison.

The project aims to reduce violence in society by teaching non-violent empowerment through experiential workshops which build self-esteem. Participants practise affirmation, community building, communication and listening and experience co-operation.

There are three levels of workshops. At the advanced level participants contribute to decisions regarding the workshop content, which may include dealing with issues such as anger, AIDS, fear, forgiveness, power and stereotyping.

In New South Wales the first prison workshop was conducted in October 1992. Prison inmates volunteer to participate in the program, and the programs are facilitated by volunteers. In 1993, 36 inmates completed the basic course in three groups. In 1994, one basic course with 15 participants and one advanced course with nine inmates were completed (Joy Evidence, 29.08.94).

The project also aims to train prison inmates and individuals in the community as workshop facilitators, but this is yet to be achieved in NSW. Since workshops have been conducted in the Reception and Industrial Centre at Long Bay Correctional Centre, with a highly mobile prison population, the project has been unable to retain a group of volunteer inmates to be trained as facilitators.

A number of testimonials were tendered in evidence to the Committee by AVP volunteers, outlining the attitudinal change the AVP workshops had fostered:

*"I see a change in myself since I came to gaol, something has changed me, because I haven't been in any trouble for a fair while. When I first came to jail three years ago I was always in trouble. The course was nearly a year ago, and I think it was part of why I've changed"* (Joy Evidence, 29.08.94).

In Queensland, a large proportion of inmates in several prisons have completed the course, which has resulted in a change in the prison culture. This has been reinforced by the provision of off-site correctional services AVP training, with time in lieu provisions implemented (Joy Evidence, 29.08.94). The Committee believes that staff involvement in AVP training would be advantageous.

While the program was set up through the Education section, project volunteers suggested to the Committee that this arrangement has limitations because of the time commitment and environment that the workshops require. At Long Bay, workshops have been truncated, as the inmates must leave for lunch and muster, and at times they cannot easily rejoin the workshops:

*We are not creating what we call the AVP climate. We are not getting the climate we can work in where people can trust one another* (Joy Evidence, 29.08.94).

Other accommodation problems have included the closure of the Education Centre pending the allocation of new facilities for education programs. The Committee heard that

*We need our own private, dedicated space, without people just wandering through* (de Voogd Evidence, 29.08.94).

An additional constraint for the effective operation of the project is that the Education Centre only operates during the week, and most volunteers have full-time work commitments. In Queensland, weekend workshops have been conducted in the prisons, and the Committee was informed of the greater success of the project in that state (Weiss Evidence, 29.08.94). The Committee believes that every assistance should be offered to ensure the success of AVP workshops in Correctional Centres in NSW.

#### **RECOMMENDATION 162**

**That the Minister for Corrective Services**

- **investigate the feasibility of allowing the Alternatives to Violence Project (AVP) to conduct weekend workshops in Correctional Centres;**
- **provide appropriate premises within Correctional Centres to conduct AVP workshops; and**
- **ensure disruptions to AVP workshops in Correctional Centres are minimised and participants are not removed during the course of the workshops.**

#### **RECOMMENDATION 163**

**That the Minister for Corrective Services consider including Alternatives to Violence Project workshops as a staff training option for personnel of the Department of Corrective Services.**

### **12.3 SENTENCING AND COURT-RELATED ISSUES**

#### **12.3.1 Parole Supervision Following Release From Custody**

Under the *Sentencing Act 1989 (NSW)*, it is mandatory for judges and magistrates, when ordering a custodial sentence, to set a minimum term which must be served by an offender. For sentences six months or over, an additional term may be set to be served as parole, which is not to exceed one-third of the minimum term. For juvenile offenders a period of parole in excess of the mandated one third of the minimum term may be set. All sentences for six months or less must be served in full.

The NSW Judicial Commission's report *Sentencing Juvenile Offenders and the Sentencing Act 1989 (NSW)* indicates that the number of custodial orders with a parole component is down

to 8% from 64% prior to the *Sentencing Act* (Cain and Luke, 1991:29). In evidence to the Committee, the Senior Children's Magistrate suggested that the truth-in-sentencing provisions of the Sentencing Act have provided the scope both for giving a long custodial sentence, if that is justified, and providing for a short custodial sentence and a long term on parole (Blackmore Evidence, 28.07.94).

However, a recent review conducted by the Department of Juvenile Justice on the extent to which supervision is provided for juvenile detainees following their release on parole found the courts were failing to specify an agency to handle post-release supervision. The review noted that the Department of Juvenile Justice cannot take up supervision of juvenile detainees at the expiration of their minimum term unless this is specified by the sentencing court. It was also found the Sentencing Act had dramatically reduced the proportion of control orders that contained an additional term of parole. There had also been a reduction in the average length of parole (Cain, 1993a: 4-6).

The report recommended judicial officers should be made aware of the low level at which conditions for parole supervision are being specified; the unnecessarily limited use of parole as a feature of custodial sentences for young offenders; and the greatly reduced average period of parole offered to young offenders. Legislative amendment of s.27(4) of the *Sentencing Act* would be required to ensure that all parole is supervised, and that the Department of Juvenile Justice must accept responsibility for the supervision of juveniles where the court has failed to specify a parole agency (Cain, 1993a:8-9). The Committee supports such an amendment.

The Committee also believes that judicial education should be undertaken to encourage the greater use of appropriately supervised parole as a feature of custodial sentences for young offenders.

#### **RECOMMENDATION 164**

**That the Attorney General amend s.27(4) of the *Sentencing Act* to ensure**

- **all parole involving young offenders is supervised; and**
- **the Department of Juvenile Justice accepts responsibility for the supervision of juvenile offenders where the court has failed to specify a parole agency.**

#### **RECOMMENDATION 165**

**That the Minister for Community Services and the Attorney General ensure, following the amendment of s.27(4) of the *Sentencing Act*, judicial education is provided to ensure that the changes to the legislation are understood and accepted to facilitate the use of appropriately supervised parole as a feature of custodial sentences for young offenders.**



### **12.3.2 Homosexual Panic Defence**

The Committee was informed by a solicitor involved with the Legal Working Group of the Aids Council of N.S.W. (ACON) of a number of recent cases involving what has become known as the "homosexual panic defence". Evidence presented by defence counsel in these cases suggests that an accused person was forced to use violence in order to repel an alleged sexual advance or was so angered by such an advance that he lost control and used violence in the heat of the moment.

In a Victorian Supreme Court case, a 23-year-old man was accused of murdering a 65-year-old who allegedly made a sexual advance. The dead man's head had been cut off with a kitchen knife and bashed in with a telephone. The accused then set fire to his flat before leaving. The jury returned a verdict of not guilty on the grounds of self-defence in this case (Bendall Evidence, 29.06.94).

In a NSW case in 1991, evidence in a murder case suggested the accused had told friends before the attack that he intended to pick up a homosexual to rob, and after the incident had bragged that he had "rolled a fag". Notwithstanding this evidence, the accused was acquitted on the grounds of self-defence (Submission 54). A similar verdict was reached in a case in May 1995.

The Attorney General has instructed the Criminal Law Review Division of his Department to investigate and report on this matter, with appropriate consultation with organisations representing the homosexual and lesbian community. The Committee believes the Attorney should consider this issue as a matter of urgency when the report is made available, and respond appropriately.

### **RECOMMENDATION 166**

**That upon the release of the report from the Criminal Law Review Division the Attorney General give priority to examining the validity and legality of the "homosexual panic defence".**

### **12.4 CONCLUSIONS AND FINDINGS**

- Prevention should be the first response of an effective juvenile and adult offending policy.
- Juvenile offenders who commit relatively minor offences, including those that involve less serious incidents of violence, should be referred to a Children's Panel, coordinated by the Department of Juvenile Justice and with involvement by the Police Service, community representatives, the offender and his/her family and the victim and any support people.

- Appropriate diversion and intervention strategies at the pre-court and sentence stage, including custodial stage, need to be developed, implemented and evaluated.
- The Department of Juvenile Justice and the Department of Corrective Services have a responsibility to ensure that violent offenders who come into their system are provided with appropriate and effective management to maximise their successful reintegration into the community.
- Violent juvenile offenders who are sentenced to a community based penalty involving supervision should be properly and consistently managed by the Department of Juvenile Justice and be provided with appropriate programs and counselling to address their violent behaviour.
- Violent juvenile offenders who are sentenced to a custodial sentence require intensive intervention, supervision and counselling that addresses their violent behaviour, and such supervision and counselling should be available to the offenders upon their release into the community.
- All violence-focussed programs and services for young offenders, both community and custodial based, should be culturally appropriate and be responsive to the needs of young offenders from various ethnic and cultural backgrounds.
- Specific programs should be developed for young female offenders who have committed violent offences and be responsive to their special needs.
- The Committee urges that the Juvenile Crime Prevention Advisory Committee have appropriate representation of and consultation with young people so as to develop strategies to reduce or prevent violence.
- Suitable levels of counselling services and counselling staff should be maintained to reflect the size and needs of the group of young violent offenders in adult Correction Centres.
- Systematic behaviour modification programs such as the adult-based Special Care Unit should be appropriately supported in the mainstream prison system, the establishment of the Violence Prevention Unit at Long Bay Correctional Centre should be facilitated and a Crisis Support Program should be established at Mulawa Correctional Centre as a matter of priority.
- Pilot programs for victims of sexual assault who are in the prison system should be developed and drug and alcohol rehabilitation programs in prisons should be adequately and consistently resourced.

- The *Sentencing Act, 1989* should be amended to ensure that all parole of young offenders is supervised, and that the Department of Juvenile Justice accepts responsibility for the supervision of juvenile offenders.
- The Attorney General should give priority to examining the validity and legality of the "homosexual panic defence".

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