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**Gangs in NSW**

by

**Roza Lozusic**

**Briefing Paper No 16/02**

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## **EXECUTIVE SUMMARY**

There has been a periodic focus on the problem of criminal gangs in NSW - particularly “youth gangs”. The issue of “youth gangs” and ethnicity is also historically linked in public debate.

Recent events in NSW in the past few years have heightened the focus on youth gangs and ethnic youth gangs in particular.

Section two deals with the difficult area of concepts and terminology (pp 3-4).

Section three explores the issue of youth gangs - what they are, how and why they form, and public perceptions of them (pp 5-14).

Section five discusses the ethnic gang debate in NSW (pp 17-26).

Sections six and seven outline the various legislative and other initiatives that are targeted at gangs, in particular preventing the formation of youth gangs and the prevention of youth gang criminal activity (pp 27-40).

Section eight is a brief overview of anti-gang initiatives in the US (pp 41-44).

## 1. INTRODUCTION

In September 2001, the NSW Government announced a package of legislative measures designed to combat “gang-related” crime in NSW. The *Justice Legislation Amendment (Non-Association and Place Restriction) Act 2001*, which was central to the package, was introduced into Parliament on 26 October 2001 and assented to on 11 December 2001. This paper examines that, and other anti-gang measures, and explores the factors and events that led to their introduction. It examines gang activity, particularly youth gangs, and social debate about gangs and ethnicity.

In 2001, the Government introduced the following legislation as part of a package of anti-gang laws which amended/modified existing laws so as to target various aspects of gang-related crime (in order):

- *Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001* (Second reading speech 4 September 2001, assented to 21 September 2001, commenced 1 October 2001<sup>1</sup>)
- *Police Powers (Vehicles) Amendment Act 2001* (Minister’s second reading speech (LA) 18 September 2001, assented to 25 October 2001, commenced 1 January 2002<sup>2</sup>).
- *The Crimes Amendment (Gang and Vehicle Related Offences) Act 2001* (Minister’s second reading speech (LA) 17 October 2001, assented to 21 December 2001, commenced 14 December 2001<sup>3</sup>).
- *Motor Trade Legislation Amendment Act 2001* (Minister’s second reading speech (LA) 24 October 2001, assented to 28 November 2001, most of the provisions commenced operation by/on 1 July 2002<sup>4</sup>).
- *Justice Legislation Amendment (Non-Association and Place Restriction) Act 2001* (second reading speech 26 October 2001, assented to 11 December 2001, commenced in full 22 July 2002<sup>5</sup>)

The package of laws was intended to target the formation of gangs and gang activity.

The Premier stated (following the passage of non-association and place restriction laws in the Legislative Council):

This means that courts can now order gang members not to associate with other gang members or even go to their so-called "turf". With these new laws the Government is establishing the legislative framework that

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<sup>1</sup> GG No 146 of 28.9.2001, p 8182.

<sup>2</sup> GG No 196 of 21.12.2001, p 10445.

<sup>3</sup> GG No 190 of 14.12.2001, p 9829.

<sup>4</sup> 1.3.2002, GG No 56 of 1.3.2002, p 1469; 1.7.2002 GG No 106 of 28.6.2002, p 4677; uncommenced provisions Sch 1 [39], Sch 2 [5] [13] [14] [18] [21] [34]–[37] and [64].

<sup>5</sup> Date of commencement of secs 1, 2 and 4 and Sch 2, 13.5.2002, GG No 85 of 10.5.2002, p 2739; date of commencement of the remainder, 22.7.2002, GG No 119 of 19.7.2002, p 5431.

police need to target gangs and organised crime. Now there are new evidence-based powers for police: powers to stop and search vehicles, to seek identification from both driver and passenger, to move on gangs, to search for and confiscate knives, and to break through the fortified doors of drug houses and arrest those inside. The Government has introduced new offences of threatening to intimidate witnesses, recruiting children to commit crimes and car rebirthing.

While the Government has been drafting and introducing these laws, developing the legislative model that police need, Commissioner Ryan and his team have been gathering intelligence and targeting criminal gangs. Police have now developed criminal profiles for all different tiers of gang activity: from the street level nuisance of the graffiti gang to the organised crime gang and outlaw motorcycle gang. Police have developed these profiles because different problems and different types of gang activity require different solutions. Local problems need local solutions.<sup>6</sup>

The Opposition supported the legislation.<sup>7</sup> During the second reading debate, Mr C Hartcher MP, Shadow Attorney-General, stated:

This legislation is long overdue. It is clear that much crime is related to gang activity and much juvenile crime is caused by gang activity and peer pressure. Young people on their own will not commit offences that they frequently commit in company. Society needs to prevent the coming together of people with criminal intent or people who are idle, because it may lead to criminal conduct.<sup>8</sup>

At periodic intervals, attempts have been made to address the problem of “gang” crime in NSW through legislative measures. Legislation was foreshadowed in 1996 but did not eventuate.<sup>9</sup> Legislation was also enacted in 1998.<sup>10</sup>

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<sup>6</sup> *NSWPD*, 29/11/01, p 19239.

<sup>7</sup> *NSWPD*, 26/10/01, p 18330.

<sup>8</sup> *NSWPD*, 9/11/01, p 18330.

<sup>9</sup> See Section 9.

<sup>10</sup> *Crimes Legislation Amendment (Police and Public Safety) Act 1998*

## 2. CONCEPTS AND TERMINOLOGY

...There is no agreed consensus on gangs – there is disagreement about the key aspects of gang-related behaviour, identification of gang members and the formation and disintegration of gangs. But gangs, however they may be described, are fairly transient, with members coming and going.<sup>12</sup>

The term “gang” is used in a variety of ways by the media, law enforcement, politicians and members of the community.

There is no single definition of a “gang”. The word generally refers to a group of people acting or going about together for a common and usually criminal purpose. The word is used loosely in the media, and by others, when discussing criminal or anti-social activities - for example: “gangs of soccer hooligans”; “drug gangs”; and “gangs of kids roaming the streets”. The word “gang” is not defined in the criminal law of any Australian jurisdiction. And, although recent NSW legislation has contained the word “gang” in its title, the term has not been defined. Several States in America have defined the term in their criminal law statutes. The types of crime committed by gangs depend on the type of gang. For example, the predominant criminal activity of outlaw motorcycle gangs is the cultivation and distribution of cannabis and the manufacture and distribution of amphetamines.

There is a spectrum of criminal activity perpetrated by groups of people and a range of “gangs” operating along that spectrum, from street gangs committing petty crime, to well structured and entrenched organised crime groups. This paper will concentrate on “youth gangs” in the NSW context - as distinguished or differentiated from “youth gangs” in other contexts/jurisdictions such as American “colour” gangs. This paper will also discuss “ethnic gangs” and briefly outline the debate/concerns surrounding this issue.

The problem with defining a gang, is one of identification and perception. A gang can mean different things to different people. And the perception of a gang may not accord with the existence of a gang. This is why gangs present a particular problem for law enforcement agencies as distinct from individual criminals. Whether or not people are grouped together for social or anti-social purposes cannot be easily or readily identified and distinguished.<sup>13</sup>

It has been noted by the Director of the Australian Institute of Criminology, Dr Adam Graycar, that:

“Youth gangs” range from harmless groups of young people who simply hang around together to those engaged in serious law breaking. There

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<sup>12</sup> White, R, “Understanding Youth Gangs”, *trends and issues in crime and criminal justice* No 237, Australian Institute of Criminology, August 2002.

<sup>13</sup> Pulse Consultants, *Street Gangs*, Study for the NSW Police Service, April 1994, p 3.



is very little empirical material in Australia that would tell us how many “gangs” exist, who is in them and what they do.<sup>14</sup>

According to White: “Simply put, if a group sees itself as a “gang”, and is perceived by others as a gang, *primarily because of its illegal activities*, then this constitutes the minimum baseline definition of a gang.”<sup>15</sup>

Therefore, a criminal element must be present in this definition of gang. And by extension, a criminal element must be present in a definition of a “youth gang”.<sup>16</sup>

A group of youths who “hang out” for social purposes due to common interests such as music, ethnic, cultural or other interests (and do not engage in criminal activity) can be distinguished from such youth gangs.

In this paper the use of the term “youth gang” will be a reference to a criminal youth gang. It will not refer to the myriad types of other groups of youths who simply “hang out” together.

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<sup>14</sup> This quote is a preface in the paper by White, R, “Understanding Youth Gangs”, *trends and issues in crime and criminal justice No 237*, Australian Institute of Criminology, August 2002, p 1.

<sup>15</sup> White, R, “Understanding Youth Gangs”, *trends and issues in crime and criminal justice No 237*, Australian Institute of Criminology, August 2002. Other definitions include “several people who regularly act together in an illegal or threatening manner. A gang has some form of ongoing organisation” Pulse Consultants (1994), *Street Gangs: Study for the NSW Police Service*, Sydney, p 1 as quoted by the Legislative Council Standing Committee on Social Issues, *A Report into Youth Violence in New South Wales*, 1995, p 52.

<sup>16</sup> A wide range in age can be used when describing youth gangs. The Pulse Consultants report on *Street Gangs* (1994) did not specify an age range in their definition of youth gang as it was “unnecessarily limiting”, however “...an age range of 15 to 20 covers the vast majority of youth gang members”. (p 2)

### 3. YOUTH GANGS IN NSW

#### Existence and extent of “youth gangs” in NSW

There is very little empirical material in Australia that would tell us how many “gangs” exist, who is in them and what they do.<sup>17</sup>

Research into gangs in Australia is in its infancy<sup>18</sup>. As such there is little empirical data on the existence and extent of “youth gangs”. It would be an understatement to say that the topic of youth gangs (and particularly ethnic youth gangs) has attracted controversy. There are a number of arguments presented across a spectrum, from those who argue that youth gangs do not exist (ie they are a media concoction) or are difficult to quantify, on the one hand, to those who argue that they do exist.

One reason for this is, as noted above, due to the conceptual and terminological difficulties surrounding the issue of youth gangs. The lack of a singular and uniformly acceptable definition of youth gang has been noted as being one of the reasons for the paucity of research and “...the inability to precisely quantify the magnitude of the problem”.<sup>19</sup>

In the Australian Multicultural Foundation report on *Ethnic Youth Gangs in Australia: Do They Exist?*, White et al undertook qualitative interviews with young people<sup>20</sup> on their perception of types of gangs in their area. The responses showed that of the types of gangs in their area, 27% (the largest category) were perceived to be troublemakers, 24.7% were perceived to be just groups of friends, 20.2% were perceived to be an ethnic group of some kind, 10.1% were perceived to be drug dealers and 18% were other or unclassified.<sup>21</sup>

As the research was dealing with the perception of types of gangs and not involvement with gangs, it found that there were conceptual problems in terms of identifying a gang as distinguished from a

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<sup>17</sup> Adam Graycar, Director of the Australian Institute of Criminology, in the preface to the research paper by White, R, “Understanding Youth Gangs”, *trends and issues in crime and criminal justice No 237*, August 2002.

<sup>18</sup> Perrone S and White R, “Young People and Gangs”, *trends & issues in crime and criminal justice*, Australian Institute of Criminology, September 2000, p 2. White, R, “Understanding Youth Gangs”, *trends and issues in crime and criminal justice No 237*, Australian Institute of Criminology, August 2002.

<sup>19</sup> Perrone S and White R, “Young People and Gangs”, *trends & issues in crime and criminal justice*, Australian Institute of Criminology, September 2000, p 2.

<sup>20</sup> The young people interviewed were from 5 different areas of Melbourne that had a reportedly high incidence of ‘ethnic youth gang’ activity.(p. 5) The sample included ethnic youth who were representative of the ‘dominant’ ethnic group in the particular region.

<sup>21</sup> White R, Perrone S, Guerra C, and Lampugnani R, *Ethnic Youth Gangs in Australia – Do They Exist?*, Australian Multicultural Foundation, 1999, p 20.

group of friends or other types of groups.<sup>22</sup> They found “...very often the notion of ‘youth gang’ was ill-defined or contentious on the part of the young people who were interviewed. It could refer to types of activities, group associations and/or use of violence. It could refer to youth group formations involved in legal and/or illegal sorts of activities and behaviours.”

They state that “...‘gang’ membership is easily conflated or mixed up with membership of particular friendship groups, or with particular ethnic groups. The idea of a ‘criminal’ gang therefore has less relevance to the analysis than concepts pertaining to group identification and social identity.”

They concluded that:

According to the research findings, there was the perception that many young people across the diverse communities and neighbourhoods engaged in various forms of illegal activity. This was generally related to drugs (both the use of, and dealing in, illicit substances), and to property (including theft of various kinds, and vandalism). The reasons given for engagement in these kinds of activities were lack of money, young people’s attempts to deal with boredom, and having few community resources to draw upon in their leisure pursuits.

Further:

There was much confusion and ambiguity over the difference between ‘gangs’ and ‘groups’. In each case, membership tended to revolve around similar interests (such as choice of music, sport, style of dress), similar appearance or ethnic identity (such as language, religion and culture), and the need for social belonging (such as friendship, support and protection). Group affiliation was sometimes perceived as the greatest reason why certain young people were singled out as being a ‘gang’, and why particular conflicts occurred between different groups of young people.<sup>23</sup>

In 1995 the NSW Legislative Standing Committee on Social Issues released their *Report into Youth Violence in New South Wales* (‘the Social Issues Report’). In their section on gang violence the Committee noted, that there was a lack of evidence on gang activity in official records and that this lack of evidence “...may reveal the limitations of data collection rather than the level of gang activity.” The Committee concluded, however, that “...while a number of gangs involving young people do exist, their number and prevalence is greatly exaggerated by the media. The media attention and subsequent public fear regarding gangs is not a recent phenomenon.”<sup>24</sup>

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<sup>22</sup> *Ethnic Youth Gangs in Australia – Do They Exist?*, 1999, p 20.

<sup>23</sup> op cit n 21, p 29.

<sup>24</sup> NSW, Parliament, Legislative Council, Standing Committee on Social Issues, *A Report into Youth Violence in New South Wales* (A Symonds, MLC, Chairperson), NSW Parliament, 1995, p 53.

In the 1994 study undertaken by Pulse Consultants for the NSW Police Service, over 100 youth gangs were identified as being in existence in the early 1990s. However, Pulse Consultants concluded that most evidence pointed to the existence of about 50 groups in NSW.<sup>25</sup> The consultants distinguished between three categories of gangs: graffiti gangs, street or youth gangs and criminal gangs and they found that the number of members varied considerably between gangs. They estimated that in 1994 the upper limit of gang members was 1500 with membership of most gangs ranging from 10 to 20 members.<sup>26</sup>

The Director of the NSW Bureau of Crime Statistics, Dr Don Weatherburn, has stated, with respect to the issue of crime-prone places and gangs and organised crime:

Neighbourhoods (at least in Australia) are normally made crime-prone by the fact that large numbers of residents (or visitors) independently engage in crime. Sometimes, however, the crime problems of an area are magnified by the emergence of gangs or other kinds of criminal groupings and/or organisation. This problem tends to be exaggerated by the Australian media, sections of which seem to depict every gathering of young people as a threat to law and order. Though there has been no formal study of the problem, it is doubtful that criminal gangs are anywhere near as common in Australia as they are in the United States. This said, there is no doubt that some gangs in Australia are deeply involved in criminal activity.<sup>27</sup>

In sum there appears to be evidence that youth gangs exist. However, there is general agreement that there is a lack of data on all facets of youth gangs in NSW. Due to the lack of information it is difficult to make any definitive conclusions on the extent of youth gang problems in NSW.

There has, however, been a recent announcement of the establishment of the Ozgang Research Network. The Director of the Australian Institute of Criminology has stated that the network is “concerned with systematic research into youth group formations and anti-gang strategies in Australia”. He further noted that he “hoped that the Network, which plans to undertake cross-national research, will...fill many of our knowledge gaps in relation to youth gangs”.<sup>28</sup>

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<sup>25</sup> Pulse Consultants Pty Ltd, *Street Gangs – Study for the NSW Police Service*, April 1994, p 10 (and Executive Summary).

<sup>26</sup> Pulse Consultants Pty Ltd, *Street Gangs – Study for the NSW Police Service*, April 1994, p 11. However as gangs disintegrate and form new groupings these figures might not necessarily be representative today.

<sup>27</sup> Weatherburn D, “What Causes Crime”, *Contemporary Issues in Crime and Justice No 54*, NSW Bureau of Crime Statistics & Research, February 2001, pp 6-7.

<sup>28</sup> Adam Graycar, preface to the paper by White, R, “Understanding Youth Gangs”, *trends and issues in crime and criminal justice No 237*, August 2002.

### ***Transient nature of youth gangs***

Another problem with gathering data on youth gangs is the transient nature of them. Members can come and go and groups can disintegrate or splinter off into small groups. Information would therefore need to be continually updated to keep pace with such changes.

The transient nature of gangs means “...that knowledge of how they form and how they disintegrate is important”.<sup>29</sup>

According to White, in the paper on *Understanding Youth Gangs*, there are several key factors in gang disintegration (which are reproduced below):

- Growing out of gang life through natural maturation and new priorities in life.
- Defeat of the group by external use of force.
- Loss of external enemies or threat.
- Loss of identity, status and image.
- Decay of group cohesiveness, solidarity and attraction value.
- Fragmentation of the group into smaller units which may be too weak to survive.<sup>30</sup>

### **Why youth join gangs/ why youth gangs form**

#### ***Why youths join gangs***

The reasons why a youth may join a gang are varied and complex. There may even be no conscious decision to join a gang or participate in gang activity. It may be organic and evolve over time. Or a youth may be recruited or pressured into joining a gang.

The reason why youth gangs form is also not fully understood.<sup>31</sup> Some suggest that socio-economic factors and marginalisation are contributing factors. For youths who are displaced and economically disadvantaged, gangs may provide social status and “belonging”.

Some gangs could form together for, solely or primarily, social purposes and remain that way, whilst others could form for that purpose but then start to engage in anti-social and criminal behaviour.<sup>32</sup> Other gangs could form largely with the intention of engaging in anti-social and criminal behaviour.

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<sup>29</sup> White, R, “Understanding Youth Gangs”, *trends and issues in crime and criminal justice No 237*, Australian Institute of Criminology, August 2002.

<sup>30</sup> *ibid.*, p 4 citing Bjorgo (1999)

<sup>31</sup> Pulse Consultants, *Street Gangs*, Study for the NSW Police Service, April 1994, pp 15-20.

<sup>32</sup> Note: overseas research refers to this dynamic. The OJJDP paper on “Modern Day Youth Gangs”, Office of Juvenile Justice and Delinquency Prevention (OJJDP) *Juvenile Justice Bulletin*, at p 6 asks “Do gangs move through patterns of offending as they mature? Do they progress from involvement in property crimes to involvement in violent crimes?” They note that “A few gang studies have produced evidence of this kind of progression.”

Irrespective of why or how gangs form it is when gangs engage in anti-social and/or criminal behaviour that they become a social problem. Legislation deals with only the criminal aspect of gangs.

Weatherburn notes:

The underlying causes of this problem...[the emergence of gangs]...are not well understood, although the existence of a strong local market for drugs often play a part. The existence of strong illegal markets for sex and stolen goods probably also plays a role. The factors that influence the creation of gangs may, nevertheless, not be entirely monetary. It has been suggested by some that economic and social marginalisation tempts young people to form gangs as a means of conferring social status on themselves unobtainable from conventional society.<sup>33</sup>

Others have stated that “the gang has taken on the responsibility of doing what the family, school, and other social agencies have failed to do – provide mechanisms for age and sex development, establish norms of behaviour, and define and structure outlets for friendship, human support and the like”.<sup>34</sup>

A recent paper by White for the Australian Institute of Criminology on *Understanding Youth Gangs* stated that the reasons why a young person might identify as being part of a gang or claim gang status “...was to affirm social presence, to ensure mutual protection and to compensate for a generally marginalised economic and social position.”<sup>35</sup>

So there are many possible reasons that why young people join gangs:

- alienation from school
- peer pressures
- family ties
- the need for protection<sup>36</sup>
- status
- age role models
- support

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<sup>33</sup> Weatherburn D, “What Causes Crime”, *Contemporary Issues in Crime and Justice No 54*, NSW Bureau of Crime Statistics & Research, February 2001, pp 6-7.

<sup>34</sup> Vigil D, *Barrio Gangs: Street life and identity in Southern California*, University of Texas Press, Austin. Cited in the paper by Eggleston E, titled “New Zealand Youth Gangs: Key findings and recommendations from an urban ethnograph”, available at <http://www.psychologist.net.nz/publications/Egg-gang3.htm>

<sup>35</sup> White R, op cit n 12, p 4.

<sup>36</sup> These are four factors which have been are listed in a schooling context - by R White in his paper on “School Strategies to Deal with Gangs” in the Australian Institute of Criminology series, *trends & issues in crime and criminal justice*, No 240, September 2002, p 1.

- friendship
- excitement/escape

### ***Factors that contribute to the establishment of gangs***

The Social Issues Committee report notes that, with respect to graffiti and street gangs (as opposed to criminal gangs) certain factors have been noted as encouraging their establishment and promotion:

- entertainment media,
- high unemployment,
- immigrants who are from troubled areas of the world; and
- declining cultural and family ties<sup>37</sup>

They noted that additional factors that may “lead to the development of criminal gangs include”:

- a high concentration of individuals who are similar (often from the same ethnic base)
- an acceptance of a culture of crime, and
- some older people in the gang who organise and influence others.<sup>38</sup>

In addition to the above, active recruitment of young people by older gang members has also been cited as a contributing factor.<sup>39</sup>

There appears to be evidence that for certain “at-risk” categories of youths, certain other factors can contribute to the problem of gang membership. Such factors include the expulsion of students from schools.<sup>40</sup>

### **Youth gangs and crime**

A recent paper by White, states that gang membership can affect criminal behaviour. According to the paper, gang membership can increase the risk of involvement in, and frequency of, serious and violent crime. “In other words, gang membership does not explain juvenile offending in general, but it can exacerbate juvenile offending in specific cases.”<sup>41</sup>

<sup>37</sup> NSW, Parliament, Legislative Council, Standing Committee on Social Issues, *A Report into Youth Violence in New South Wales* (A Symonds, MLC, Chairperson), NSW Parliament, 1995, p 52, citing Pulse Consultants, p 16.

<sup>38</sup> Ibid, citing Pulse Consultants, p 19.

<sup>39</sup> Media reports at the time of the introduction of the recent gang laws quoted the Premier, the Hon B Carr MP, as saying that the laws “...will target gang members who prey upon children and initiate them into gang culture at an early age” *The Australian*, 1/9/01, p 3.

<sup>40</sup> White R, “School Strategies to Deal with Gangs”, *trends and issues in crime and criminal justice No 240*, Australian Institute of Criminology, September 2002. See also: “Schools warned on expulsions”, *The Sydney Morning Herald*, 30/9/02.

<sup>41</sup> White, R, “Understanding Youth Gangs”, *trends and issues in crime and criminal justice No 237*, Australian Institute of Criminology, August 2002, p 1 & 3.

White notes that as gang membership can affect criminal behaviour, the study of youth gangs is important in the development of strategies to prevent the formation of criminal youth gangs and thus minimising crime.<sup>42</sup>

The causes of crime are complex and the causes of gang related crime are equally complex. Many factors are relevant, including the socio-economic environment of offenders.<sup>43</sup>

There is a difference between the types of crime committed by adult criminal gangs and youth gangs, which in general can be said to range from more serious to less serious respectively.<sup>44</sup>

In terms of the type of crime perpetrated by gangs in general, it has been said that:

Whatever the origins of gangs and other forms of organised crime, the crime problems they generate are often qualitatively distinct from those generated by neighbourhoods which simply have a large number of individuals more or less independently involved in crime. Competition for control of illicit drug markets, for example, can result in violence, intimidation, extortion, money laundering and official corruption. Organised gangs may come to completely dominate drug production or distribution and sometimes involve themselves in other large scale criminal enterprises such as fraud.<sup>45</sup>

The criminal activities of adult gangs can be distinguished from the criminal activities of youth gangs. White has noted, “American, Canadian and European research has increasingly emphasised that gang formation is a social process involving complex forms of membership, transformation and disintegration...Indeed, recent American research challenges popular media images based on traditional stereotypes. This research demonstrates, for example, that in many cases gangs typically are not highly organised, and that the gangs, drugs and violence connection applies more to adult gangs than to youth gangs”<sup>46</sup>

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<sup>42</sup> Ibid.

<sup>43</sup> For further information on causes of crime see: Weatherburn D, “What Causes Crime?”, *Contemporary Issues in Crime and Justice Number 54*, NSW Bureau of Crime Statistics and Research, February 2001. The paper provides an overview of a range of factors that influence crime. See also the NSW Legislative Council Standing Committee on Social Issues *Report into Youth Violence in NSW*, 1995, chapter 1.

<sup>44</sup> Note: The Pulse Consultants Report on *Street Gangs*, 1994, noted that there was a ‘quantum leap’ between youth gang (or street gang) activity and organised criminal gangs with the severity of the activities conducted by them ranging from petty crime to organised crime respectively. (pp 17-18)

<sup>45</sup> op cit n 27.

<sup>46</sup> White, R, “Understanding Youth Gangs”, *trends and issues in crime and criminal justice No 237*, Australian Institute of Criminology, August 2002, p 3.



Nonetheless, being a member of a youth gang will place a young person at a greater risk of committing a crime than not being in a gang. This is so even when the young person could be defined as “at-risk”:

While youth offending cannot be equated with gang activity as such, membership of a gang can play a major part in criminal engagement. American research, for example, has shown that there are significant differences between the criminal behaviour of youth gang members and non-gang (but similarly at-risk) young people. It was found that gang membership increases the likelihood and frequency that members will commit serious and violent crimes...In other words, gang membership does not explain juvenile offending in general, but it can exacerbate juvenile offending in specific cases.<sup>47</sup>

Interestingly and “significantly, research indicates that where young people themselves claim gang membership, they tend to engage in substantially more antisocial and criminal behaviour than those who do not profess to be gang members.”<sup>48</sup>

In terms of data on gang activity, the Legislative Council Standing Committee on Social Issues noted in their report on youth violence:

The lack of evidence of gang activity in official records may reveal the limitations of data collection rather than the level of gang activity. The *Street Gangs* report notes that, since there is no crime of “gangs”, no court statistics on gang activity are maintained and police reports are unreliable and inconsistent in their recording of gang activity.<sup>49</sup>

### ***Crimes committed in company***

There are some crimes that are committed by more than one person which are described as “crimes committed in company” which may not necessarily not fall within the category of gang crime as examined in this paper. For example, several robberies may be committed by a group of people, or a group of people may commit a “gang rape”. Crimes such as these are often described in terms of gang crime in the media. The law viewed crimes committed in company particularly harshly and recently penalties have been increased for such crimes as briefly outlined below.

**Gang rapists:** A group of people who have perpetrated a gang rape may not fall within the description of gang if the crime happened once. However, in the sense that some gang rapists may commit the offence more than once, gang rapists may fall within the general definition of a gang as

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<sup>47</sup> White, R, “Understanding Youth Gangs”, *trends and issues in crime and criminal justice* No 237, Australian Institute of Criminology, August 2002, p 3.

<sup>48</sup> White R, op cit n 12, p 4.

<sup>49</sup> op cit n 52, p 53. Citing the report by Pulse Consultants, *Street Gangs* at p 7.

people bound together for the ongoing purpose of committing criminal acts. New laws to increase the penalties for gang rape were introduced in NSW last year.<sup>50</sup>

### Public perception of youth gangs in NSW

According to the NSW Bureau of Crime Statistics and Research (BOCSAR) the neighbourhood problem ranked third highest in the level of concern in 1995 and 1996 in NSW overall was “louts/youth gangs”, with 12% of persons who perceived a crime problem in those years nominating this category.<sup>51</sup> BOCSAR also noted that a particularly high proportion of residents in the North Western Statistical Division of NSW choose this as the main problem and that: “[s]imilarly, some areas of Sydney showed comparatively high proportions of persons concerned about louts/youth gangs... a large percentage of residents on the Northern Beaches chose this as their main neighbourhood problem (19.5% compared with 13.6% of Sydney residents overall), as did 18.5% of Outer South Western Sydney residents and 17.5 % in the St George Sutherland area.”

Public perceptions (and fear) of youth gangs, and gang violence, can be said to be fuelled by media reports. In 1995 the NSW Parliament Legislative Standing Committee on Social Issues conducted an inquiry into youth violence in NSW.<sup>52</sup> The committee reported that the number, and prevalence of gangs, is “greatly exaggerated by the media” and that the “media attention and subsequent public fear regarding gangs is not a recent phenomenon”.<sup>53</sup> They further stated:

The Committee heard that when there is a perception in the community that there is a high level of youth violence, citizens become concerned when young people are seen together on the streets and telephone

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<sup>50</sup> See: ‘Sentencing ‘Gang Rapists’: The Crimes Amendment (Aggravated Sexual Assault in Company) Bill 2001’, by Rowena Johns, Gareth Griffith and Rachel Simpson, *New South Wales Parliamentary Library Briefing Paper No 12/2001*.

<sup>51</sup> Chilvers M, ‘Public perceptions of neighbourhood crime in New south Wales’, *Crime and Justice Bulletin Contemporary Issues in Crime and Justice*, NSW Bureau of Crime Statistics and Research, Number 44, May 1999, p 4. Note that the first and second ranking crimes were housebreaking and dangerous driving. Following ‘louts/youth gangs’, the next most frequently nominated categories of concern in NSW were vandalism/graffiti (7.8)%, illegal drugs (7.7%) and car theft (4.9%). This information is based on the annual survey of the victims of crime in NSW conducted on behalf of BOCSAR by the Australian Bureau of Statistics. This survey is known as the Crime and Safety Survey. Information is collected from both individuals and households about their experiences of selected crimes and crime reporting behaviour, and from individuals about their perceptions of crime problems in their neighbourhoods.

<sup>52</sup> NSW, Parliament, Legislative Council, Standing Committee on Social Issues, *A Report into Youth Violence in New South Wales* (A Symonds, MLC, Chairperson), NSW Parliament, 1995.

<sup>53</sup> op cit n 52, p 56.

police. When the police investigate, they find no law has been broken (Pisarski Evidence, 29.07.94).

A recent study has also been undertaken on ethnic perceptions of crime. It found that concern about crime and safety was widespread in the ethnic community. Out of those studied it found that 64% agreed that there was a problem with youth gangs.<sup>55</sup>

### **General observations on youth gangs**

White makes some general observations about gangs that can be applied across assorted geographic, demographic and ethnic settings. This is reproduced below:

- **Gangs are diverse** – they vary, for example, in ethnic composition, criminal activities, age of members, propensity toward violence and organisational stability.
- **Gangs change** – they evolve due to direct factors (such as prevention, intervention and suppression efforts) and in response to indirect factors (such as demographic shifts, economic conditions and influence of the media).
- **Reactions to gangs vary** – some communities deny they exist while others sensationalise them if one is identified. Some communities establish task forces to address gang issues while others conduct assessments to determine the nature and scope of gang problems.
- **Effective responses are diverse** – communities have developed various responses to gangs, including prevention, intervention and suppression or enforcement.

The paper concludes: “Clearly there is no one single model of a “gang” as such...Often commentators rely upon either stereotypes of youth gangs or narrow definitions of what constitutes a gang. Policy and practice options likewise need to be devised in relation to analysis of specific groups, incidents and situations. Practical examples and case studies from diverse jurisdictions can nevertheless provide insights into how best to respond to perceived gang problems.”<sup>56</sup>

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<sup>54</sup> Collins J, Noble G, Poynting S and Tabar P, *Kebabs, Kids Cops and Crime: Youth Ethnicity and Crime*, Pluto Press, 2000. For a listing of media articles (and other material) with respect to the drive by shooting of a Police station in Lakemba, see the following website: [http://journalism.uts.edu.au/archive/lakemba/lak\\_sitemap.html](http://journalism.uts.edu.au/archive/lakemba/lak_sitemap.html)

<sup>55</sup> Available at [http://www.uts.edu.au/new/releases/2002/September/pdfs/a\\_execsummary.pdf](http://www.uts.edu.au/new/releases/2002/September/pdfs/a_execsummary.pdf) pp iii-iv.

<sup>56</sup> op cit n 12.

#### 4. OTHER TYPES OF GANGS

There are many other types of gangs, usually adult organised criminal gangs. The following outlines in brief two examples of organised criminal gangs. The information is taken from the National Crime Authority website.

##### **Motorcycle gangs**<sup>57</sup>

Many large and well-organised motorcycle clubs have been linked to various types of criminal activities in Australia and overseas and are often referred to as “gangs”. Indeed, law enforcement agencies commonly refer to them as “outlaw motor cycle gangs” or “OMCGs”. The reference to outlaw in this term does not mean that the clubs are actually banned from forming an organisation; rather, it refers to their view of themselves as outside the law. The criminal activities of OMCGs differentiate them from the many recreational motorcycle riding clubs which comprise people who get together solely for the purpose of riding their motorcycles and socialising (although some OMCGs claim to be simply recreational riding clubs).

OMCGs originated in the USA with the Hells Angels in the 1940’s. There are now many OMCGs in Australia and some have chapters in several States, as well as “parent chapters” overseas (mainly in the USA).<sup>58</sup> Clubs with chapters in NSW include the Nomads, the Bandidos, the Rebels, and the Gipsy Jokers. A few general observations can be made about OMCGs; members are all male; they wear club colours and ride certain models of motor bike; and each club has its own rules, charters or laws that govern the behaviour of its members and the operation of the club. The most common form of criminal activity pursued by OMCG members is the cultivation and distribution of cannabis and the manufacture and distribution of amphetamines. Other criminal activities include the theft of motor vehicles and motorcycles, currency counterfeiting and fraud.<sup>59</sup> OMCG members are also frequently involved in serious offences relating to violence including serious assaults and murder. The National Crime Authorities Panzer Task Force (explained below) identified five major factors as the catalyst for these acts of violence: the need to protect criminal activities; the need to protect club/personal activities from law enforcement interest; personal interest/personal matters; inter-club rivalry; and intra-club disputes.<sup>60</sup>

The extent of criminal activity perpetrated by OMCGs in the last few decades has moved them

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<sup>57</sup> For a bibliography of material on OMCGs see: [www.users.skynet.be/terrorism/html/bikers.htm](http://www.users.skynet.be/terrorism/html/bikers.htm). Some OMCGs have web pages, such as the Bandidos: [www.bandidosmc.dk/](http://www.bandidosmc.dk/).

<sup>58</sup> A 1990 article in the NSW Police News indicates that at least 21 motorcycle gangs were operating in Australia at that time.

<sup>59</sup> This information was taken from the NCA web site: [www.nca.gov.au](http://www.nca.gov.au).

<sup>60</sup> This information was taken from the NCA web site: [www.nca.gov.au](http://www.nca.gov.au).

into the 'organised crime' category. OMCGs pose one of the biggest threats to police officer safety today, are highly organised and are capable of collecting intelligence information about police officers and their families.<sup>61</sup> In regard to inter-club rivalry, the NCA reports that "[v]iolence between OMCGs is ongoing, with major confrontations having occurred during the past two years. Acts of violence often involve the use of firearms and the high level and nature of weapons-related arrests involving OMCG members indicates that they have mainly acquired weapons through illegal means".<sup>62</sup>

One of the most notorious and violent incidents between motorcycle gangs in Australian history happened in Milperra a western suburb of Sydney where, on 2 September 1984, members of the Bandido Motor Cycle Club and the Comanchero Motor Cycle Club waged a pitched battle with guns, weapons and fists.<sup>63</sup> After the violence ceased, seven people had been killed many more injured. 43 men were charged with the murders.

### **Organised crime gangs**

Other types of criminal gangs include organised crime gangs such as South East Asian Organised Crime Gangs.

The *Blade* taskforce was established to deal with South East Asian Organised Crime Gangs. The taskforce is comprised of 18 agencies from around Australia.

The NCA notes that:

South East Asian Organised Crime (SEAOC) refers to those activities conducted in Australia by South East Asians (whether born in Australia or elsewhere) and which constitute a systematic and continuing conspiracy to commit serious offences. SEAOC describes crime that emanates from a small, criminal minority within the various South East Asian communities in Australia.

The primary focus of the Blade task force is to deal with SEAOC "heroin trafficking, proceeds of heroin trafficking, and enhancing border interdiction into the local distribution networks." The secondary focus is "on trafficking in amphetamine type substances from South East Asia, Immigration malpractice, organised illegal prostitution, extortion and violence."<sup>64</sup>

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<sup>61</sup> Arnold J and Shiels M, 'Outlaw Motor Cycle Gangs', *Policing Issues and Practice Journal*, January 2000, Vol 8, No 1, p 47.

<sup>62</sup> This information was taken from the NCA web site: [www.nca.gov.au](http://www.nca.gov.au).

<sup>63</sup> A book has been written by two Australian journalists about the events that occurred at Milperra: Simpson L and Harvey S, *Brothers in Arms: The Inside Story of Two Bikie Gangs*, Allen and Unwin, 1989.

<sup>64</sup> *Blade National Taskforce*. Available at: <http://www.nca.gov.au/html/operatn.htm>

## 5. THE ETHNIC GANG DEBATE IN NSW

### Concepts and terminology

The definition of ethnic or ethnicity is important in any discussion of ethnic gangs (and crime and ethnicity in general). A variety of definitions of ethnic and ethnicity can and have been used and these generally centre on common characteristics due to such factors as country of origin, language and religion.<sup>65</sup> Frequently, the term ethnic is taken to mean Australians of non-English speaking backgrounds who are: born overseas or; children of parents born overseas.<sup>66</sup> However, not all commentators would use the same definition or they might mean different things when talking about “ethnics”.

### Overview of the ethnic gang debate

Events over recent years have led to a general debate about links between ethnicity and crime—in particular ethnic youth gangs and crime.<sup>67</sup>

The following State, and international, events have contributed to the ethnic crime debate in recent times:

- Drive by shooting of Lakemba Police station (Nov 1998)<sup>68</sup>
- “Gang rapes” perpetrated by Lebanese youths (2000), and subsequent sentencing (2001/2002) – For more information see the NSW Parliamentary Library *Briefing Paper No 12/01* on “Sentencing Gang Rapists”: The Crimes Amendment (Aggravated Sexual Assault in Company) Bill 2001”. It outlines some of the range of views expressed

<sup>65</sup> For example, the Australian Bureau of Statistics for example in their Australian Standard Classification of Cultural and Ethnic Groups notes that: “For the purposes of ASCCEG it is sufficient, and not controversial, to say that the term ‘ethnicity’ refers to the shared identity or similarity of a group of people on the basis of one or more factors, including the following... ■ a long shared history, the memory of which is kept alive; ■ a cultural tradition, including family and social customs, sometimes religiously based; ■ a common geographic origin; ■ a common language (but not necessarily limited to that group); ■ a common literature (written or oral); ■ a common religion; ■ being a minority (often with a sense of being oppressed); and ■ being racially conspicuous.” ABS, Publication 1249.0, 2000-01. The report notes that “In ASCCEG ethnicity is based on the self-perceived group identification approach”.

<sup>66</sup> Note the Australian Multicultural Foundation *Overview Report on Ethnic Youth Gangs in Australia – Do they Exist?* (1999) states “For present purposes the term *ethnic minority* refers to non-Anglo Australians who are non-indigenous.”

<sup>67</sup> This is not, however, a new phenomena. As noted by Jock Collins et al “The supposed links between NESB (non-English speaking background) immigrants and criminal behaviour is a recurring theme in Australian immigration history...”: Collins J, Noble G, Poynting S and Tabar P, *Kebabs, Kids Cops and Crime: Youth Ethnicity and Crime*, Pluto Press, 2000, p 11.

<sup>68</sup> See the following website for some interesting material in relation to the events in Lakemba in 1998: [http://journalism.uts.edu.au/archive/lakemba/lak\\_sitemap.html](http://journalism.uts.edu.au/archive/lakemba/lak_sitemap.html)

in the debate on ethnic crime.<sup>69</sup>

- September 11 terrorist attacks (2001)
- Recent Bali bombings (2002)

In both the case of the drive by shooting in Lakemba, and the “gang rapes”, the debate has been focused on ethnic youth, in particular Lebanese youth.<sup>70</sup>

The Australian Multicultural Foundation publication on *Ethnic Youth Gangs in Australia: Do They Exist?* notes:

The notion of *ethnic youth gangs* has featured prominently in media reports of youth activities over the last few years. Around the country, tales are told of ethnic-based or multi-racial groups of young people being involved in a wide range of illegal, criminal and anti-social activities. Allegations of a ‘Lebanese youth gang’ participating in a drive-by shooting of a police station in Sydney in 1998 is but a recent example of the kind of media coverage and public outcry relating to ethnic minority youth in Australia today.<sup>71</sup>

A great many ethnic groups in NSW have been identified in the context of gang activity (in general) including: Lebanese; Korean; Vietnamese, Romanian, Italian, Irish.<sup>73</sup>

In their 1994 report on *Street Gangs*, Pulse consultants noted that “Much is made of the ethnic make up of many gangs.” However in their study they found that “ethnic bases are overplayed and are declining (with the exceptions of Lebanese and Vietnamese gangs).”<sup>74</sup>

Whilst they found that ethnic bases were declining they stated that “pure ethnic gangs” were a greater cause for concern than other groups:

The mostly pure ethnic gangs are, however, of greater concern than mixed race groups. This is because they have cultural and other ties to

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<sup>69</sup> At pp 25-28.

<sup>70</sup> For transcripts, and other material, relating to a recent Four Corners show on ethnic gangs and ethnic crime see: <http://www.abc.net.au/4corners/stories/s677558.htm>

<sup>71</sup> White R et al, *Ethnic Youth Gangs in Australia: Do They Exist? Overview Report*, Australian Multicultural Foundation, 1999, p 2.

<sup>72</sup> White R et al, *Ethnic Youth Gangs in Australia: Do They Exist? Overview Report*, Australian Multicultural Foundation, 1999, p 2.

<sup>73</sup> The activities of ‘Asian gangs’ in Sydney from the mid 1980’s to the present is examined in a book about violent crime in Australia, compiled by six journalists: Brown M, Ed, *Bombs Guns and Knives: Violent Crime in Australia*, New Holland Publishers Pty Ltd, 2000.

<sup>74</sup> Pulse Consultants, op cit, p 20.

maintain them. They are more likely to last and grow. They are also more difficult for Police to break.<sup>75</sup>

With respect to ethnic youth gangs, however, their existence has been contested.<sup>76</sup> Perrone notes:

Since the early 1990s, media reporting of youth collectives has, however, increasingly assumed a *racialised* character, with a range of ethnic minority groups... – including those of Somalian, Lebanese and Asian descent – being implicated in gang-related conduct. The resultant waves of race-based public panic are customarily triggered by the sensationalised reporting of atypical events. This reporting tends to reinforce the “ethnic” character of the criminal activity in question, based on the “racial background” of the perpetrators – alleged gang members...

Against this backdrop of media sensationalism of collective youth criminality, police concerns and mounting public hysteria, the reality of the extent of youth involvement in gangs, and indeed, the prevalence and nature of such group formations – whether racially based or otherwise – remains largely unknown.<sup>77</sup>

Many commentators draw a distinction between professional, organised criminal gangs on the one hand and more “friendship” based gangs that can sometimes engage in criminal activities. Collins et al draw such a distinction between groups of youths and adult criminal gangs. He questions whether groups of friends should be called gangs in the same context as discussing adult criminal gangs. He states:

There are Lebanese gangs in Sydney, just as there are gangs of criminals of Anglo-Celtic, Italian, Chinese, Vietnamese, and other ethnic backgrounds who are involved in car rackets, drugs, prostitution and other criminal ‘business’ ...Clearly, there are problems with youth and criminal activity in large, culturally diverse cities like Sydney, but are these problems limited to certain ethnic groups? Can the friendship networks of Lebanese youth in Sydney – friendship networks like those

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<sup>75</sup> Pulse Consultants, op cit, p 21.

<sup>76</sup> Perrone S & White R, “Young People and Gangs”, *trends and issues in crime and criminal justice* No 167, Australian Institute of Criminology, September 2000. See also the following reports by White et al, Australian Multicultural Foundation, reports on: *Ethnic Youth Gangs in Australia: Do They Exist?*, Report No 4 *Somalian Young People*; Report No 1 *Vietnamese Young People*; Report No 6 *Anglo Australian Young People*; Report No 3 *Pacific Islander Young People*; Report No 5 *Latin American Young People*; Report No 2 *Turkish Young People*.

<sup>77</sup> Perrone S & White R, “Young People and Gangs”, *trends and issues in crime and criminal justice* No 167, Australian Institute of Criminology, September 2000, pp 1-2.



of all other groups of adolescent males – be called gangs in the same breath as discussion of professional criminal gangs?<sup>78</sup>

Overall, the ethnic crime debate or ethnic gang debate has many different facets: the use of ethnic identifiers – in both the reporting of crime and in police reports of possible suspects; ethnicity and the criminal justice system; and ethnicity as a causal factor of crime.

The following section will primarily deal with the part of the debate that concerns the use of ethnic identifiers and the collection and publication of ethnic based crime data.

### **The use of ethnic identifiers**

There are many arguments presented for and against the use of ethnic identifiers, both in police reports of possible suspects and in media reporting of crime.

On the one hand it is argued that ethnicity should not be overlooked if any law enforcement agency wishes to grapple with the problems of gangs. On the other hand it is argued that ethnic identifiers in this context (particularly when coupled with subsequent media reports) only serve to fuel a perception that ethnic groups are somehow committing more crime or that ethnicity becomes the focus, rather than the crime itself.

With respect to the use of ethnic identifiers in the context of the ethnic youth gang debate, a problem with ethnic identifiers is highlighted by a recent study which showed that whilst half of the youths interviewed stated that they “hang out” in public with their friends, only 10 percent of those youths identified themselves as a “gang” (or considered “their group to be a gang”).<sup>79</sup> In other words from an observer’s point of view, there could be the appearance of a much higher incidence of gangs than would reflect the actual reality.

Collins has stated that the problem with using ethnic identifiers when reporting crime is that it can have the effect of “criminalising entire cultures”. He has stated:

The issue of ethnic crime raises its ugly head constantly in NSW history.

The mafia, the Greek conspiracy, the South-East Asian triads. It keeps coming and it is not always related to the last wave of immigrants, as the latest panic about Lebanese crime indicates. The problem with political developments recently is that we can slip from discussion of the criminality of individuals to the criminality of entire cultures.<sup>80</sup>

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<sup>78</sup> Collins J, Noble G, Poynting S and Tabar P, *Kebabs, Kids Cops and Crime: Youth Ethnicity and Crime*, Pluto Press, 2000, p 11.

<sup>79</sup> Collins et al, *Gangs, Crimes and Community Safety: Perceptions and Experiences in Multicultural Sydney*, September 2002. The report is available at <http://www.uts.edu.au/new/> (accessed 24 September 2002)

<sup>80</sup> “Tunnel vision”, *The Sydney Morning Herald*, 23/9/02, p 11.

Another effect of the focus on ethnicity and crime, according to Collins, is that it “undermines feelings of community safety”:

The politicisation of the ethnic crime issue by both parties and the media’s obsession with the issue in the lead-up to the 2003 state election not only intensifies the fear of crime but undermines feelings of community safety and threatens to undermine social cohesion in the city.<sup>81</sup>

Earlier this year the Director of Public Prosecution in NSW was reported as saying that ethnic links should not be ignored where they exist and are relevant. The DPP stated, in relation to the “gang rapes” committed by Lebanese youths:

There was a tendency among some to condemn the perpetrators because of their ethnicity, not because of their aberrant behaviour,... On the other side there was a tendency among some, not all, ethnic community representatives to lay aside the relevance of ethnicity in the discussion. Open discussion of observable events in the community is healthy and we should definitely find ways to talk about it without embarrassment.<sup>82</sup>

With respect to the use of ethnic identifiers by the police, the NSW Premier, Bob Carr MP, has stated: “I believe the use of ethnic descriptors is an important police tool. By the way police use “middle eastern”, “Caucasian”, “Mediterranean”, “Asian” appearance etc.”<sup>83</sup> On another occasion the Premier stated:

We should be unembarrassed to use information including ethnic origins, if it is going to help police identify people and produce an arrest. That said, we have to be careful that we don’t group people and make young people defensive of their backgrounds. They come from law-abiding families. We have to guard against this sort of stereotyping.<sup>84</sup>

### **Ethnicity and crime data**

Until very recently, no data has been collected in the NSW context with respect to ethnicity and crime.

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<sup>81</sup> “Politicising ethnic crime trades on fear”, *Sydney Morning Herald*, 23/9/02.

<sup>82</sup> “Open eyes to ethnic crime: DPP”, *The Sydney Morning Herald*, 13/7/02, p 7.

<sup>83</sup> Answer to written question posed by Four Corners. Copy of questions and answers available at: <http://www.abc.net.au/4corners/stories/s676653.htm>

<sup>84</sup> “Carr accused of demonising ethnic communities”, *The Sydney Morning Herald*, 21/8/01, p 7. See also: “Carr backs police on ethnic crime”, *The Daily Telegraph*, 13/3/01; “Ethnic gangs a fact, says Carr”, *The Sydney Morning Herald*, 7/11/98, p 11.

Mukherjee notes that the police in all jurisdictions in Australia are a significant source of crime statistics. However, he notes that there are various limitations on this data:

- Less than 40% of crimes are reported.
- In the crimes that are reported, a small number are not recorded.
- Of crimes that are recorded, the identity of the offender is not known until after arrest or identification (except where the crime is a “violent or personal offence where the offender’s identity is usually apparent”).
- Only 25% of recorded crimes are cleared by police. This means that only 10% of all crimes, which occur annually in Australia, are solved, and thus perpetrators known for this 10%. This means for the overwhelming majority of crimes the identity of the offender is not known. Mukherjee notes that “Although it can be assumed that some relationship exists between arrest data and crime data, it is grossly inaccurate to assume that suspects arrested/identified for only 10 per cent of the cleared offences are statistically representative of suspects for the 90 per cent of crimes that remain unsolved.”<sup>85</sup>

In this sense using ethnic identifiers in data collection and reporting may lead to conclusions which may not be supported given that they may not be statistically representative of all crime committed.

According to Mukherjee only Victorian Police publish statistics by country of birth for offenders.

Australia wide figures are available on prisoners by country of birth<sup>86</sup>. But it has been noted that data relating to rates of imprisonment by birthplace is not helpful in elucidating any links between ethnic youth and crime, as the data is applicable to first generation ethnics not the second generation. This is unhelpful as “...it is often second-generation youth – Lebanese or otherwise – who are at the centre of much of the fear of crime in Sydney”.<sup>87</sup>

Collins et al further note:

It is clear, then, that the research and data available to date are not of sufficient quality to support the conclusion that there is a clear, positive relationship between ethnicity and crime in Sydney. This is because nowhere in Australia are accurate ethnicity statistics on criminality available.<sup>88</sup>

They do note however that:

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<sup>85</sup> S Mukherjee, *Ethnicity and Crime – Trends and Issues in Criminal Justice No 117*, May 1999, p 2.

<sup>86</sup> National Prison Census data has been collected since 1983 – Mukherjee, *ibid*, p 3.

<sup>87</sup> Collins et al, *Kebabs, Kids, Cops & Crime: Youth, Ethnicity and Crime*, Pluto Press, Sydney, 2001, p 68.

<sup>88</sup> *ibid*.

Some limited data that uses birthplace as a proxy for ethnicity do show that in some Australian states some ethnic groups are over-represented in different areas of recorded criminal activity. In particular, higher rates of juveniles in custody are evident from some birthplace groups, including the Lebanese, Vietnamese, Pacific Islanders, Maori, Chinese and Turkish. But the numbers are a tiny fraction of the youth population of these birthplace groups.<sup>89</sup>

### ***What isn't collated***

Up until recently, statistics on ethnicity and crime (ie statistics on the ethnic background of criminals) have not been collected by the NSW Bureau of Crime Statistics and Research. As a result, there is no statistical evidence about the nature and extent of 'ethnic' involvement in crime (or the involvement of ethnics in crime) in NSW.

There has been a recent announcement by the Director of the NSW Bureau of Crime Statistics, Dr Don Weatherburn, that ethnic crime statistics will now be collated<sup>90</sup>. The *Sydney Morning Herald* reported:

The director of the NSW Bureau of Crime Statistics, Don Weatherburn, told the ABC's *Four Corners* last night that, as of three months ago, arrested people were being asked for their country of birth as well as their parents' country of origin.

The program was examining serious crimes involving Lebanese youth in Sydney's south-west. Dr Weatherburn said the figures would reveal whether there was any factual basis for recent criticism of the Lebanese community.

Dr Weatherburn stated:

"Once we've got sufficient quantities of that data we will be in a position, for the first time, to make some sort of informed judgement about whether our Lebanese people are over-represented in different kinds of crime," Dr Weatherburn said.

...

"What we know is that there have been some Lebanese people arrested on serious offences," Dr Weatherburn said, but that was also true of people from all backgrounds.

"Whether they're over-represented remains a question to be resolved."<sup>91</sup>

Because of this lack of data on ethnicity and crime<sup>92</sup>, most of the discussion of ethnic people's

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<sup>89</sup> *ibid.*

<sup>90</sup> *Four Corners*, 16/9/02.

<sup>91</sup> "Police study ethnicity of criminals", *Sydney Morning Herald*, 17/9/02, p 2.

involvement in crime is largely anecdotal or speculative in nature<sup>93</sup>.

### ***What should be collected?***

According to Mukherjee:

Ideally, ethnicity and crime statistics should be collected at every stage of the criminal justice system, that is: police (for persons suspected of, cautioned or arrested for crime); prosecution (for persons prosecuted for crimes); courts (for persons charged, appeared or tried at various levels of courts, persons found guilty/ not guilty, persons convicted/ acquitted, persons sentenced); and corrections (for persons serving under different corrective orders, probation, community service orders, imprisonment, home detention, parole)...Any collection of data on ethnicity and crime should begin at the police level.<sup>94</sup>

Interestingly, Mukherjee notes that international research shows second, and subsequent generations of migrants involvement in crime is very similar to that of the native-born. According to Mukherjee this suggests that the study of ethnicity and crime relationship should focus on first generation migrants (ie the overseas-born).

### **International research on ethnicity and crime**

Original research on the subject of immigration/ ethnicity/ race and crime, according to Mukherjee, reveals that:

- Race/ ethnicity/ country of origin has less to do with crime than the environment and the disorganised communities of alleged criminals.
- Particularly in Europe, lack of knowledge of the local language is considered to be a major disadvantage faced by migrant groups.
- Migrants generally have lower levels of education and a very low rate of participation in higher education, which limits their life chances.
- Migrants generally concentrate around poorer and disadvantaged city neighbourhoods.
- Migrants' unemployment rate is significantly higher than that of the native-born.<sup>95</sup>

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<sup>92</sup> Mukherjee S, *Ethnicity and Crime – Trends and Issues in Criminal Justice No 117*, May 1999, p 5.

<sup>93</sup> For a study which deals with juvenile participation in crime see: BOCSAR, *Juveniles in crime – Part 1: Participation rates and risk factors*, para 6.2.4. It is available at <http://www.lawlink.nsw.gov.au/bocsar1.nsf/pages/r45textlink>. In this 1998 study of NSW teenagers by BOCSAR, one of their findings was that “ethnicity was, in general, not related to participation in crime amongst NSW secondary students”. They did note, however, that “Of course it does not follow from either of these findings that ethnicity is completely irrelevant to an understanding of juvenile involvement in crime. Some ethnic groups may have higher rates of involvement in crime than others. What our study does show, however, is that those who are from a non-English speaking background are, as a group, no more likely to be involved in crime than those from an English speaking background.”

<sup>94</sup> Mukherjee, *ibid*, p 5.

<sup>95</sup> This is significant because of the link between unemployment and crime (Mukherjee, *ibid*, p

- There is evidence of some bias against minority groups in their contacts with the criminal justice system. For example, in decisions such as caution or prosecution, social background factors, particularly family stability, play a very important role. Suspects from minority groups often come from “unstable” families, making a caution decision difficult. This situation can influence decisions at subsequent stages of the criminal justice system.<sup>96</sup>

### Causal relationship between ethnicity and crime?

In the public debate on crime, a controversial issue that is sometimes raised or suggested is that there is somehow a causal connection between ethnicity and crime<sup>97</sup> – ie that there is something inherent to a particular ethnic group that makes them more prone to criminal activity, or that some ethnics “import” their criminal ways from overseas. Many commentators reject the argument that there is a causal relationship between ethnicity and crime and suggest that the causes of crime are more complex (or multi-causal rather than mono-causal).<sup>98</sup> For example, the Chairman of the Ethnic Communities Council, Mr Salvatore Scevola, was reported as saying in August this year “We believe there is no relationship between ethnicity and crime. It has more to do with social economic conditions, social disadvantage, social exclusion and unemployment.”<sup>99</sup>

There are also variations of this view expressed. For example, whilst some commentators would not necessarily be of the view that being of a particular ethnic persuasion makes someone more prone to criminal activity, they might attribute criminal ethnic gang activity (or indeed individual ethnic criminal activity) as having origins in the country of that groups descent – that the type of activity is somehow ‘imported’ from that country or from a region of that country. For example,

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<sup>96</sup> This is reproduced from his paper: Mukherjee S, “Ethnicity and Crime”, *trends & issues in crime and criminal justice*, May 1999, p 1.

<sup>97</sup> “The ethnic crime trail runs cold”, *The Sydney Morning Herald*, 3/11/98. The article notes that “A study of NSW teenagers confounds the perception that has surfaced on talkback radio that ethnic background predisposes them to criminal activities”. The article refers to a study conducted by NSW BOCSAR.

<sup>98</sup> For literature on ethnicity and crime in the Australian context see for example: Easteal P “Ethnicity and crime”, in Chappell D and Wilson E (eds), *The Australian Criminal Justice System: The Mid 90s*; S Mukherjee, *Ethnicity and Crime: An Australian Research Study – A report for the Department of Immigration and Multicultural Affairs*, November 1999; S Mukherjee, *Ethnicity and Crime – Trends and Issues in Criminal Justice No 117*, May 1999, p 6. Collins J et al, *Kebabs, Kids, Cops and Crime*, 2000, p 11. See also: BOCSAR, *Juveniles in crime – Part 1: Participation rates and risk factors*, 6.2.4 available at <http://www.lawlink.nsw.gov.au/bocsar1.nsf/pages/r45textlink>

<sup>99</sup> “Carr accused of demonising ethnic communities”, *The Sydney Morning Herald*, 21 August 2001, p 7.

the ABC reported last year<sup>100</sup> that:

After seven years at the helm of Australia's Federal Police, Commissioner Mick Palmer has retired. But yesterday, he ensured a controversial end to his tenure by claiming ethnic crime gangs are largely responsible for the rising rates of violent offences in our capital cities. The commissioner also suggested that the greater use of hand guns and knives by gangs reflected behaviour more likely to be acceptable in the countries they originally came from. So, were his remarks out of order or a long overdue reaction to political correctness?

The former federal Police Commissioner said:

I think there are signs in terms of some of the violent crime that's been committed in some of our major cities.

Of a greater use of handguns and knives in terms of resolving disputes, particularly in fights between warring criminal gangs.

And I think that, to some extent, is a reflection of the behaviour that would have been more likely to be acceptable in the countries from which those people came.

The above comments, however, would seem to refer to adult crime gangs and not youth gangs.

## **Conclusion**

Mukherjee states that:

Debates on the involvement of ethnic/migrant groups in crime are not uncommon, but many are based on inadequate and anecdotal information. Most notably, in efforts to explain the relationship between ethnicity and crime, the only variable used is the country or region of migrants' origin; no references are made to social and economic conditions.

Clearly the full nature and extent of ethnic youths involvement in gang and criminal gang activity is unknown as is the full nature and extent of ethnic involvement in crime in general.

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On the *Lateline* program on 13/3/01. Transcript at:  
<http://www.abc.net.au/lateline/s259535.htm> (accessed on 17/9/02)

## 6. LEGISLATIVE AND OTHER INITIATIVES TO CURB GANG ACTIVITY IN NSW

In early September 1996, the Carr Government proposed the implementation of a Street Safety Bill, to give police powers to deal with suspected gang members. The powers envisaged by the proposal included the power to break up groups of three or more young people where a police officer has a reasonable suspicion that the group was likely to obstruct, intimidate or harass other people, and to demand the names and addresses of suspected gang members.<sup>101</sup> The Bill did not eventuate.

On 4 September 2001, the Carr Government announced a “comprehensive anti-gang package” targeting gang related crime in NSW. The package involved several pieces of legislation as outlined below. The new laws will affect all gang activity, not just youth gangs.

The following outlines in brief the various new laws that are targeted at gang related crime in NSW: non-association and place-restriction orders; gang rape; new gang related offences under the crimes act such as car jacking, recruiting children to engage in criminal activity, threatening or intimidating victims or witnesses; new police powers to stop and search vehicles and to question passengers in cars which were used in connection with the commission of an indictable offence; and new offences for crimes committed in company such as car re-birthing.

### Non-association and place-restriction orders

The *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001* which confers power upon the NSW courts to make “non-association” and “place restriction” orders was assented to on 11 December 2001.<sup>102</sup> Described as “the cornerstone of the Carr Government’s comprehensive anti-gang package”,<sup>103</sup> the orders are designed to undermine gang activity by breaking down an offender’s association with persons and places that increase the likelihood of their re-offending.

The orders can be made when sentencing a person convicted of a criminal offence. Non-association orders prevent the subject of such an order from associating with specified persons. Place-restriction orders prevent the subject of such an order attending a particular place or area.

The legislation received the support of the Opposition<sup>104</sup>; although it was critical of the length of time it took for the Government to introduce anti-gang measures.

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<sup>101</sup> ‘Dealing with Street Gangs: Proposed Legislative Changes’, by Fiona Manning, *New South Wales Parliamentary Library Briefing Paper No 26/1996*, p 3.

<sup>102</sup> Justice Legislation Amendment (Non-association and Place Restriction) Act 2001.

<sup>103</sup> *NSWPD*, 6/11/02, p 18104.

<sup>104</sup> C Hartcher MP, *NSWPD*, 9/11/2001, p 18330.



The Greens unsuccessfully opposed the bill in the Legislative Council.<sup>105</sup> The Unity Party also did not support the legislation.<sup>106</sup>

The *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001* amends the following Acts:

- *Crime (Sentencing Procedure) Act 1999* (NSW) – in relation to sentencing procedure.
- *Children (Criminal Proceedings) Act 1987* (NSW) - in relation to sentencing procedure
- *Bail Act 1978* (NSW) – in relation to bail conditions
- *Crimes (Administration of Sentences) Act 1999* (NSW) – in relation to sentence administration: leave, parole, and home detention.
- *Children (Detention Centres) Act 1987* (NSW) - in relation to leave.<sup>108</sup>

The two key areas in which the orders operate are with respect to sentencing and bail. There are differences in how orders can be made in these two contexts.

As noted above, non-association and place-restriction orders can be made when sentencing a person for a criminal offence. The non-association orders can be made to prevent the subject of the order from associating with particular persons, and place-restriction orders prevent the subject of the order from attending a particular place or area. The legislation “...as it applies to *sentencing* allows for orders *prohibiting* certain associations or attendance at specified places or districts, while the legislation as it applies to all other situations...[such as bail conditions]...allows for conditions that may either *prohibit* or *restrict* certain associations or attendance at specified places or districts.”<sup>109</sup> When making an order at the time of sentencing, it is to be made in addition to, and *not instead of*, any other penalty for the offence.<sup>110</sup> When making an order at the

<sup>105</sup> L Rhiannon MLC, ‘Opposition weak to support flawed gang laws’, *Media Release*, 23/10/01.

<sup>106</sup> *NSWPD* (LC), 27/11/01, p 18857.

<sup>107</sup> “Blitz on Gangs Recruiting Children”, *The Australian*, 1/9/01. The Opposition Leader at the time was quoted in the media as saying at the legislation was “made on the run” and would result in false arrests. She is quoted as saying that “The word ‘gang’ is very emotional – how do you tell a criminal gang from a bunch of kids standing around on a Saturday night, waiting for a movie.”

<sup>108</sup> See the following article for an outline of how the new laws work: Currie S, “New powers to restrict association: the Justice Legislation Amendment (Non-association and Place Restriction) Act 2001”, *Law Society Journal*, August 2002, pp 62-69. It contains an explanation of the new laws as well as examples of different scenarios.

<sup>109</sup> Currie S, “New powers to restrict association: the Justice Legislation Amendment (Non-association and Place Restriction) Act 2001”, *Law Society Journal*, August 2002, pp 64.

<sup>110</sup> s 17A(4) of the *Crimes (Sentencing Procedure) Act 1999* as inserted by Section 3 and Schedule 1 [2] of the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*

time of bail, an order can be made in addition to, *or instead of*, any condition imposed under ss36 or 36A *Bail Act 1978*.<sup>111</sup>

Under the Act “associate with” means: “(a) to be in company with, or (b) to communicate with by any means (including post, facsimile, telephone and email).”

With respect to sentencing, there is a limitation on non-association and place-restriction orders. Under section 100A<sup>112</sup> non-association and place restriction orders are not to restrict certain associations or activities.

Under section 100A(1) non-association orders may not include any member of the offender’s close family. Close family is defined under section 100A(3) as including: spouse, de facto, same sex partner; and parents, step-parents and grandparents; and children step-children and grandchildren; and brothers, sisters, step-brothers and step-sisters; and guardians or carers.

Under section 100A(2) place-restriction orders may not include: the offender’s place of residence or the residence of any member of their close family; or any place of work in which the offender is regularly employed; or any education institution at which the offender is enrolled; or any place of worship at which the offender regularly attends. Notably it is at the time that the order is made that the places in these categories are determined. For example if at the time that the order is made the offender is attending TAFE X, TAFE X may not be the subject of a place-restriction order but presumably another TAFE may be.

With respect to the granting of bail, there is no similar limitation on non-association and non-restriction orders.<sup>113</sup>

Non-association and place-restriction orders have a finite life. Under the legislation, the court can set the period for such orders, which are not to exceed one year. The orders, with respect to sentencing, are also intended to operate whilst an offender is in the community (as opposed to being under custodial sentence - which would obviously not be necessary).<sup>114</sup>

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<sup>111</sup> Section 36B(2) of the *Bail Act 1978* as inserted by Section 4 and Schedule 2 [6] of the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*.

<sup>112</sup> of the *Crimes (Sentencing Procedure) Act 1999* as inserted by Section 3 and Schedule 1 [7] of the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*.

<sup>113</sup> Although as noted in an article in the *Policing Issues & Practice Journal*, whilst the provisions which relate to the limitation of courts, when sentencing, in making such orders is not reflected with respect to bail, they “...provide a guide to what are reasonable and appropriate conditions when imposing these bail restrictions.” “Justice Legislation Amendment (Non-Association & Place Restriction) Act 2001”, *Policing Issues & Practice Journal*, July 2002, p 10. It is interesting that Courts and authorised officers (ie Police Officers) who make such orders at the time of granting bail, are not restricted to the same extent as Courts are with respect to making orders at the time of sentencing.

<sup>114</sup> *NSWPD*, 26/10/01.

### *Criticisms of the Act*

There have been concerns expressed about the potential impact of the legislation, in particular that the impact will be felt most strongly by young people and Aboriginal people. The Law Society's Criminal Law Committee and Children's Legal Issues Committee are among those who have expressed such concerns.<sup>115</sup>

A recent article in the *Alternative Law Journal*, cites concerns voiced by the NSW Law Society's Criminal Law Committee and the Children's Legal Issues Committee in relation to the Act:

Notably, there is no statutory limitation under the Act as to the circumstances in which non-association and place restriction may be made (eg, considerations such as place of work/education/ family or kinship connections/place of residence) making the lawyer's role critical in ensuring any such conditions are proportionate and reasonable in all the circumstances. This is particularly so given that breach of an order imposing non-association and place restrictions under the Act is a criminal offence.<sup>116</sup>

The Act has also been criticised by Jane Sanders from the Shopfront Youth Legal Centre who outlined, what she believed to be, problems with the Act:

- The Act is strongly influenced by US research showing that gangs share certain characteristics, including identification with a particular territory.
- However, patterns of crime and gang activity in Australia and the USA are very different. The Act is unlikely to have any significant impact on organised gangs. Instead, it is likely to affect young people who hang around in public spaces or who associate with friends who are seen by police to be "undesirable".
- While it is true that young people may commit offences if they "hang out with the wrong crowd", this problem would be better addressed by giving young people some positive alternatives.
- Young people (particularly if they are homeless or live in a "high-crime" or "undesirable" area) may find it very difficult to abide by these orders. They will then be charged with breaching an order - yet another public order offence. They could end up with a penalty such as a bond with stricter conditions, a fine, or a custodial sentence (which would guarantee exposure to negative peer influences!).

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<sup>115</sup> Currie S, "New powers to restrict association: the Justice Legislation Amendment (Non-association and Place Restriction) Act 2001", *Law Society Journal*, August 2002, pp 62-69; *Alternative Law Journal*, vol. 27 no 4, August 2002, p 193.

<sup>116</sup> *Alternative Law Journal*, vol. 27 no 4, August 2002, p 193.

- The Act contradicts efforts to reduce the over-representation of disadvantaged and vulnerable people, particularly young people and indigenous people, in the criminal justice system.
- The Act contravenes international human rights to freedom of association and peaceful assembly.<sup>117</sup>

### **Gang rape – aggravated sexual assault in company**

A group of people who have perpetrated a gang rape may not fall within the description of “youth gang” as examined in this paper. However, in the sense that some gang rapists may commit the offence more than once, gang rapists may fall within the general definition of a gang as people bound together for the ongoing purpose of committing criminal acts. New laws to increase the penalties for gang rape were introduced through the *Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001*.<sup>118</sup>

### **New gang related offences**

The *Crimes Amendment (Gang and Vehicle Related Offences) Act 2001* which commenced on 14 December 2001<sup>119</sup> amended the *Crimes Act 1900* in relation to the commission of certain offences in company, kidnapping. It creates new offences under the *Crimes Act 1900* relating to car-jacking, threatening witnesses, recruiting children to carry out criminal activity and the stealing, receiving and unlawful possession of motor vehicles and motor vehicle parts and for other purposes.

**Car jacking:** It is an offence to assault a person with intent to take a motor vehicle, and, without the consent of the owner or person in lawful possession of the motor vehicle, to take the vehicle and drive it or take it for the purpose of driving it.<sup>120</sup> It also makes it an offence, without the consent of the owner or person in lawful possession of a motor vehicle, to take the motor vehicle and drive it or take it for the purpose of driving it when a person is in or on it.<sup>121</sup> The maximum penalty for both offences is 10 years imprisonment. A separate offence is committed if the offences are committed in company with another person or persons, or while armed with an offensive weapon or instrument, or if the offender maliciously inflicts actual bodily harm on the

<sup>117</sup> Jane Sanders, Shopfront Youth Legal Centre, in the publication by YAPA and the NSW Youth Justice Coalition, *Youth Justice News*, August 2002.

<sup>118</sup> For more information see: ‘Sentencing ‘Gang Rapists’: The Crimes Amendment (Aggravated Sexual Assault in Company) Bill 2001’, by Rowena Johns, Gareth Griffith and Rachel Simpson, *New South Wales Parliamentary Library Briefing Paper No 12/2001*.

<sup>119</sup> GG No 190 of 14.12.2001, p 9829.

<sup>120</sup> *Crimes Act 1990* (NSW), s 145C(1)(a).

<sup>121</sup> *Crimes Act 1900* (NSW), s 145C(1)(b).

person.<sup>122</sup> This offence attracts a maximum penalty of 14 years imprisonment.

**Recruiting children to engage in criminal activity:** It is an offence for an adult to recruit a child to carry out or assist in carrying out a criminal activity (a serious indictable offence). The maximum penalty for this offence is 10 years imprisonment.<sup>123</sup>

**Threatening or intimidating victims or witnesses:** It is an offence to threaten to do or cause, or to do or cause, any injury or detriment to another person intending to influence a person not to bring material information about an indictable offence to the attention of a police officer or other appropriate authority. The maximum penalty for this offence is 7 years imprisonment.

### **Other legislative changes which deal with gang-related crime**

**Police powers when dealing with vehicles used in connection with the commission of an indictable offence:** The *Police Powers (Vehicles) Amendment Act 2001* (NSW) amends the *Police Powers (Vehicles) Act 1998* (NSW)<sup>124</sup> in order to assist police in investigating and prosecuting gang, and other, offences.<sup>125</sup> The amendments give police powers to stop and search vehicles as well as to question passengers directly as to their identity and the identity of others in the car.<sup>126</sup>

**Car re-birthing:** The *Motor Trade Legislation Amendment Act 2001* amends the *Motor Dealers Act 1974* and the *Motor Vehicle Repairs Act 1980* to deal with three broad areas which includes crime prevention. The amendments made by the Act in this regard include, among other things: tightening entry requirements for licensed dealers and repairers; people convicted of stealing, receiving (stolen) or unlawfully possessing (stolen) cars or car parts will be barred from holding a licence; introducing a rebuttable presumption that a person who sells more than four cars in a year is an unlicensed dealer; and increasing the maximum penalty for unlicensed dealing.<sup>127</sup>

### **Community based and other anti-gang strategies**

A range of community-based strategies can be helpful in preventing or minimising youth involvement in crime, including youth participation/involvement in gangs. These strategies can involve the participation of the community, family and schools.

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<sup>122</sup> *Crimes Act 1900* (NSW), s 145C(2).

<sup>123</sup> *Crimes Act 1900* (NSW), s 351A.

<sup>124</sup> This legislation was introduced following the drive-by shooting of Lakemba police station.

<sup>125</sup> *NSWPD*, 18/9/01, p 16718.

<sup>126</sup> A failure to provide identity information carries a penalty of 12 months imprisonment and/or \$5500 fine.

<sup>127</sup> *NSWPD*, 24/10/01, p 17911.

White, in his paper on *School Strategies to Deal with Gangs*, notes: “International research has determined that the most cost-effective approach to reducing serious youth and adult gang-related crime is to discourage children and young people from joining gangs in the first place”.<sup>128</sup>

### *Sport strategies*

A speech by Dr Adam Graycar, Director of the Australian Institute of Criminology, discusses, among other things, community based programs that can act as a preventative measure in reducing crime among young people. He stated that “Programs that reduce the exposure of young people to violence; increase opportunities for them to contribute to their community and be financially secure; and provide appropriate recreation and leisure options can all contribute to reducing youth violence”.<sup>129</sup>

One such area is sport. He notes that “...evidence is encouraging and suggests that with careful planning sport and physical activity has crime prevention potential, and that young people can personally benefit from these programs”.<sup>130</sup> He further adds:

The potential for sport could be in its long-term benefits of the social development of young people. It may also have immediate outcomes; police and communities may witness an immediate benefit that coincides with the duration of the sporting or physical activity. Indeed, reported levels of assault, malicious damage, receiving or selling stolen goods, shoplifting goods, break and enter, or motor vehicle theft may drop. The benefits of sport and physical activity may vary from one social setting to another. In Australian Aboriginal communities there is strong evidence to support the contention that Aboriginal-organised and operated sporting carnivals produce remarkable behavioural changes and give Aboriginal people a sense of control.<sup>131</sup>

### *School strategies*

The Australian Institute of Criminology, in its *trends & issues* paper on “School Strategies to Deal with Gangs” also notes that schools can be effective in terms of preventing youth involvement in

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<sup>128</sup> White R, “School Strategies to Deal with Gangs”, *trends & issues in crime and criminal justice*, No 240, p 2.

<sup>129</sup> Adam Graycar, Director Australian Institute of Criminology, “Domains of Crime Prevention”, speech presented to the *Crime Prevention Conference Sydney 12 September 2002*. In his speech he discusses the ‘domains of crime prevention’ that focus on the social. He notes “If crime prevention is to succeed it should focus on broad social outcomes, for example reducing social exclusion. Compelling evidence suggests that those who feel excluded from participation in community life are more likely to offend against that community. Addressing this sense of exclusion can reduce the risk of offending.”

<sup>130</sup> Ibid. p 3.

<sup>131</sup> Ibid. p 4.

crime. School involvement in crime prevention strategies for young people is important because:

Analysis of the reasons why young people join or form criminal gangs indicates that gang membership is intimately related to peer interaction. Peer groups come in a wide range of shapes and sizes, and school is an important site for the incubation and sustainment of diverse peer networks. School experiences have long been associated with risk and protective factors pertaining to juvenile crime and gang-related behaviour. Factors such as low school commitment and low academic achievement are directly linked to potential deviancy, whether this be self-destructive behaviour (as with drug abuse) or antisocial group activity (such as gangs). On the other hand, factors such as the encouragement of student participation in school decision-making can help foster pro-social interactions and relationships.<sup>132</sup>

The paper briefly outlines the various anti-gang strategies used within the context of school. These include:

- **Anti-gang education programs** such as one used in the US called the Gang Resistance Education and Training (GREAT) program. This program involves uniformed law enforcement officers playing an active role by teaching a course to students covering areas such as: “crime, victims and rights; cultural sensitivity/prejudice; conflict resolution; meeting basic needs; drugs/neighbourhoods; responsibility; and goal setting”.<sup>133</sup> White notes that the program raises interesting questions about the possible role of police being used in the Australian context in a similar fashion.
- **Programs targeted at violence and bullying.** Examples of such programs are the anti-violence strategies recommended for use in New South Wales’ schools, which involve: mentoring programs; anti-bullying strategies; anti-racism policies; and appointment of community liaison officers.
- **Reducing truancy and exclusion from school.** White notes that “truancy and exclusion from school are closely associated with the likelihood of offending, and provide a fertile ground for gang membership and activity.” Therefore programs should be targeted at reducing truancy and exclusion from school. Retaining students who are disruptive, however, is difficult. It presents a challenge to schools to employ methods that may increase the chances of disruptive students staying at school, such as curriculum change that focuses on offering courses which have a ‘practical’ or ‘vocational’ base.
- **Changing peer relationships** so that gang membership is made less attractive.

An interesting area highlighted in the paper is that expulsion of “trouble-makers” may compound the problem of gang membership or “provide a fertile ground for gang membership”. This presents a challenge to schools to adopt truancy programs that can employ methods to assist

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<sup>132</sup> Preface by Adam Graycar in the paper by White R, “School Strategies to Deal with Gangs”, *trends & issues in crime and criminal justice*, No 240, September 2002.

<sup>133</sup> White R, “School Strategies to Deal with Gangs”, *trends & issues in crime and criminal justice*, No 240, September 2002, p 2. This is available at <http://www.aic.gov.au>

keeping young people in school. As noted by the paper, one such possible way is by changes to the curriculum that include “vocational” and “practical” subjects.

#### *Other community & school strategies*

A Community, Parents and Police Forum was held in NSW on 5 April 2002 to address the social problems affecting schools, including gang activity, and crime prevention in schools.<sup>134</sup> The Communiqué notes that the Forum agreed on a plan of action that includes the following:

- **The permanent establishment of Taskforce VAR**, established by the Minister for Education and Training and the Minister for Police, in order provide an interagency approach to identified problems. The Taskforce will be divided into four subgroups, which are responsible for: physical security; curriculum/programs; transport; and investigations.
- **The establishment of a new Safety and Security Directorate (SSD)** in the schools portfolio of the Department of Education and Training. The SSD will, among other things: develop and implement plans and programs to improve personal safety of students and staff in schools as well as the physical security of schools; provide support for Taskforce VAR and coordinate crime prevention and safety programs; include an Action Response Group, which will be headed or advised by a NSW Police Inspector, and which will provide critical incident advice to schools.
- **A research based audit to be undertaken by BOSCAR and Professor Gonzci**<sup>135</sup> to identify schools and individuals who are most at risk.
- **A “Priority Action” program** to be trialled in public schools who are identified by the audit as having a concentration of ‘at risk’ students.
- **The Department of Transport, NSW Police and school authorities** will determine the transport routes and links worst affected by gangs, violence and criminality. Once these routes and links have been identified, the areas would be subject to increased police presence and other crime prevention measures.
- **A review of the current teaching of crime prevention in schools** by school authorities and NSW Police, with an expansion of the role of police in such teaching being considered.<sup>136</sup>

A second meeting was held in August 2002. One of the results of the forum the Crimes Amendment (School Protection) bill introduced on 31 October 2002. The legislation is aimed at protecting school premises, and other premises which are used for school purposes, from intruders who intend to harm staff or students.<sup>137</sup>

<sup>134</sup> The Hon Michael Costa, MLC, “Forum Delivers Plan for Schools”, *Media Release*, 5/4/92; “Community, Parents and Police Forum April 5, 2002, Governor Macquarie Tower”, *Communiqué*, 5/4/02.

<sup>135</sup> Professor Gonzci is the Dean of Education at the University of Technology.

<sup>136</sup> The Plan of Action has 18 points.

<sup>137</sup> *NSWPD*, 31/10/02, p 6342. The Bill was passed in the Legislative Assembly on 13 November 2002 and in the Legislative Council on 21 November 2002.



## 7. LAW ENFORCEMENT INITIATIVES TO CURB GANG ACTIVITY IN NSW

There has been a recent announcement of the establishment of a new State Crime Command in the NSW Police, headed by Assistant-Commissioner Graeme Morgan. The State Crime Command is an amalgamation of Crime Agencies<sup>138</sup> and the Information Intelligence Centre. It is comprised of 9 specialist investigative units (squads), which includes the Gangs Squad.<sup>139</sup>

As the announcement has only been made recently there is little information publicly available on the Squads<sup>140</sup>. The Gangs Squad, headed by Detective Superintendent Ken McKay, was formerly known as the Gang and Organised Crime Strike Force. The Gangs Squad will focus on Gangs and Organised Crime Networks, which includes outlaw motorcycle gangs (OMCGs).

### **The Gangs Squad (formerly known as the Gang and Organised Crime Strike Force)<sup>141</sup>**

The Premier announced on 29 November 2001 that a new Strike Force, the Gang and Organised Crime Strike Force, was being formed in order to deal with the problem of crime gangs. Detective Superintendent Ken McKay heads the unit.<sup>142</sup>

The Premier stated at the time:

To target all tiers of the gang structure an elite gang and organised crime strike force will be established. The strike force will work alongside existing

<sup>138</sup> Note: Crime Agencies was originally established to replace specialist squads, which existed in the past and were disbanded. The operational section of Crime Agencies were grouped into six areas: Child Protection Enforcement Agency, Commercial Crime Agency, Homicide and Serial Violent Crime Agency, Licensing Agency, Drugs and Organised Crime Strike Force Program, Joint Asian Crime Group. The Gang and Organised Crime Strike Force was added in November 2001. <http://www.police.nsw.gov.au/search/detail.cfm?ObjectID=83&SectionID=nswpolicesql> According to Police News, all investigations which were being conducted by the former Crime Agencies will continue. (see <http://www.police.nsw.gov.au> Police News 7/11/02); *NSWPD* (LC), 13/11/02, p 20.

<sup>139</sup> These are the: Robbery and Serious Crime Squad, Drugs Squad, Gangs Squad, Motor Vehicle Theft/Rebirthing and Property Crime Squad, Child Protection Crime Squad, Homicide Squad, Fraud Squad, Firearms and Regulated Industries Squad, South-East Asian Crime Squad. "Shake-up of crime fighters starts with a name", *The Sydney Morning Herald*, 8/11/02, p 6; "Police open new front in crime war", *The Daily Telegraph*, 8/11/02, p9; <http://www.police.nsw.gov.au/media/detail.cfm?ObjectID=2952&SectionID=media>

<sup>140</sup> As at 12 November 2002, the Police website has not been updated to reflect the new changes.

<sup>141</sup> As per telephone conversation with Ken McKay on 12 November 2002.

<sup>142</sup> "New police squad to bring down state's gangs", *The Sydney Morning Herald*, 30/11/01, p 3. "Gangs 'infiltrating police'", *The Daily Telegraph*, 4/2/02, p 8. "War on gangs in secret", *The Australian*, 4/2/02, p 3.

crime agencies.... The strike force will be the spearhead of police intelligence gathering and anti-gang operations. Some 52 experienced detectives dedicated to gathering intelligence on gangs and leading anti-gang operations will spearhead this activity...

...The strike force will have the capacity to call on police from the region target action group and local area commands. A street sweep or high-visibility police operation would involve hundreds of police—in the way that Operation Streetsafe has—using intelligence gathered by detectives from this new strike force. Crime changes and gang activity changes. That means that anti-gang strategies must change as well. The police must go where the evidence takes them.

Currently in Western Sydney alone the following strike forces are operational: Strike Force Portville, targeting violence in the Greater Hume region, has to date laid 109 charges; Strike Force Scotsville, targeting drug trafficking in Cabramatta, has to date laid 62 charges; Strike Force Tana, targeting the Mr Bigs of the drug trade, has laid 11 charges; and Strike Force Paget, targeting gang-related extortion in Western Sydney, has laid 166 charges. The new gang and organised crime strike force is the next step. The Commissioner of Police and the Minister for Police have made it clear that, in partnership with new laws, new police powers and more police operations, gang members will be targeted more than ever before. We have given police the power and the increased numbers, and we are giving them the benefit of the leadership of the strike force.<sup>143</sup>

The former Police Commissioner, Peter Ryan was reported as saying at the time that the new unit would “consolidate efforts on attacking all levels of gang crime, from locally based youth gangs, to street gangs, to organised criminal and outlaw motorcycle gangs”. It will also “...focus on breaking up criminally active gangs themselves, as distinct from concentrating upon the investigation of particular crimes which gangs may have committed”.<sup>144</sup>

It was reported at the time that the unit would be gathering intelligence on more than 100 Sydney-based gangs who were mostly located in the western suburbs.<sup>145</sup>

The unit is operating on a covert basis so as to prevent criminals identifying the undercover detectives involved in, and other aspects of, the operation.<sup>146</sup> Due to the covert nature of the operation, very little information is publicly available.<sup>147</sup>

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<sup>143</sup> NSWPD, 29/11/01, p 19239.

<sup>144</sup> “New police squad to bring down state’s gangs”, *The Sydney Morning Herald*, 30/11/01

<sup>145</sup> “War on gangs in secret”, *The Australian*, 4/2/02, p 3.

<sup>146</sup> Ibid.

<sup>147</sup> There appears to be little publicly available information on the NSW Police website.

## The Drugs and Organised Crime Strike Force<sup>148</sup>

The Drugs and Organised Crime Strike Force Program has the largest number of investigators within NSW crime agencies<sup>149</sup>. Investigations are divided into four programs, each of which includes a dedicated cell of specialist investigators and analysts:

- 1. South East Asian<sup>150</sup>:** This program covers a range of criminal activities including the traffic in narcotics (mainly heroin) imported from South-East Asia and associated drug related activities. It also covers extortion for protection, and Asian gang activities.
- 2. East Coast:** This program covers established criminal networks concentrated in Sydney. They are a loose network of entrenched organised crime syndicates, which collectively exercise a substantial degree of influence over various forms of criminal activity, at times facilitated by information from corrupt activities. Their activities include murder, armed robberies, drugs, money laundering, and protection.
- 3. Violence and Major Offenders:** This program covers a range of criminal activities including extortion, kidnapping, terrorist offences, bombings, serial armed hold-ups, large property robberies, recidivist and violent offenders.
- 4. Drugs Trafficking:** This program covers the organised cultivation of and traffic in marijuana, the manufacture of and traffic in amphetamines and the traffic in cocaine and designer drugs. It also deals with activities such as chemical diversion of illicit drug manufacture, cannabis plantation eradication and the detection of hydroponic crops. The program is designed to provide intelligence assessments, identification of appropriate strike force operations, liaison and support, and education and training. It is the Service's primary response to chemical seizures and clandestine laboratories, providing specialist equipment and services relating to personal safety.

Investigation Services coordinate, assess and prioritise bids for service using risk assessment criteria. When a case merits full Crime Agencies investigation a dedicated strike force is formed and allocated to one of the programs. Leadership of the investigation remains constant but investigators may work on a number of strike forces simultaneously, or move from one to another. At the conclusion of a strike force, staff are reassigned. A program may have responsibility for one or several investigations at any given point in time. Investigative resources are deployed strategically.

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<sup>148</sup> This information is taken from the NSW Police website at:  
[www.police.nsw.gov.au/search/detail.cfm?ObjectID=88&SectionID=nswpolicesql](http://www.police.nsw.gov.au/search/detail.cfm?ObjectID=88&SectionID=nswpolicesql).

<sup>149</sup> Note: What were formerly known as Crime Agencies, are now part of a new State Crime Command (along with the former Information Intelligence Centre).

<sup>150</sup> South East Asia includes China (including Hong Kong), Singapore, Indonesia, Cambodia, Laos, Malaysia, Thailand and Vietnam.

## The New South Wales Crime Commission

The New South Wales Crime Commission was established in 1986 to combat illegal drug trafficking and organised and other crime in NSW.<sup>151</sup> Among other functions, the Commission is required to investigate matters relating to criminal activities referred to the Commission by the Management Committee, to assemble admissible evidence of relevant offences and to furnish that evidence to the Director of Public Prosecutions.<sup>152</sup> The Commission has conducted several investigations into the criminal activities of OMCGs members in NSW and two ongoing investigations into OMCGs are being conducted by the Commission. In September 1994, the Commission was granted the Zetland Reference to investigate the illegal activities of OMCGs.<sup>153</sup> The Commission is now into its third phase of that reference. The Commission's *Annual Report 2000/2001* states that in that reporting year, 20 arrests and 96 charges had been laid as a result of that investigation and that "[t]he Commission continues to work with officers from the NSW Police Service Crime Agencies, the ABCI and other law enforcement agencies in relation to this subject."<sup>154</sup> The Tacoma Reference was granted to the Commission in March last year to investigate the activities of a member of an OMCG and his associates, who are engaged in serious drug offences and associated money laundering activities. To perform its functions of investigating serious organised crime, the Commission has been given powers that are greater than normal policing powers. These include: the power to conduct hearing in camera at which witnesses may be compelled to give evidence and produce documents; the power to compel the production of documents and things relevant to an investigation and the power to apply for a special search warrants.<sup>155</sup>

## National Crime Authority

In 1995 the National Crime Authority (NCA) established the Panzer Task Force to investigate the organised criminal activities of certain OMCGs in Australia.<sup>156</sup> The Panzer Task Force is a NCA

<sup>151</sup> Under the *New South Wales Crime Commission Act 1985* (NSW).

<sup>152</sup> The principal functions of the Commission are to: investigate matters relating to 'relevant criminal activity'; assemble admissibly evidence for submission to the Director of Public Prosecution; review police inquiries; furnish reports relating to illegal drug trafficking and crime; disseminate investigatory, technological and analytical expertise; and make applications for the restraint and confiscation of property under the *Criminal Assets Recovery Act 1990*. The *Criminal Assets Recovery Act 1990* (NSW) provides for the confiscation of the assets of those involved in serious crime related activity through civil proceedings in the Supreme Court and the Commission has primary responsibility for administering this legislation.

<sup>153</sup> The reference was amended and *Zetland II* was granted in November 1998 and *Zetland III* was granted on 4 September 2000: New South Wales Crime Commission, *Annual Report 1999/2000*, p 15 and New South Wales Crime Commission, *Annual Report 2000/2001*, p 11.

<sup>154</sup> New South Wales Crime Commission, *Annual Report 2000/2001*, p 11.

<sup>155</sup> New South Wales Crime Commission, *Annual Report 2000/2001*, p 11.

<sup>156</sup> The NCA is Australia's sole national law enforcement agency and the only agency with a

national Task Force with representatives of a majority of Australian law enforcement agencies including the NSW Police and the NSW Crime Commission. Since 1998 the NCA has continued the operation and co-ordination of the Panzer Task Force, as a watching brief mechanism, specifically to monitor the organised criminal activities of OMCG members, in particular OMCG involvement in the cultivation and supply of cannabis, the manufacture and supply of amphetamines and organised violence. The NCA has special hearing powers, above those of State police to seize documents and force gang members to give evidence. The NCA reports on the achievements of the Panzer Task Force as follows:

The Task Force has provided a co-operative framework, which has allowed agencies to join together in their fight against OMCG activity. Valuable intelligence, including intelligence which identifies OMCG methodologies and effective law enforcement strategies, has been collected and shared, providing law enforcement with a knowledge base from which it can conduct strategic investigations into the most significant OMCGs. In addition the Task Force has achieved significant qualitative and quantitative results, particularly in the development of criminal intelligence. Numerous charges have been laid in relation to drug trafficking and manufacture, with a number of OMCG identities receiving lengthy custodial sentences.<sup>157</sup>

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specific charter to investigate complex organised crime. Its obligations are to serve the national interest, encompassing the interests of both Commonwealth and State. The NCA is an independent statutory authority established in 1984 in response to concerns about increasing organised criminal activity within Australia. The *National Crime Authority Act 1984* (Cth) is underpinned by legislation in all States and Territories. In NSW the relevant legislation is the *National Crime Authority (State Provisions) Act 1984* (NSW). This legislative framework gives the NCA jurisdiction to investigate 'relevant criminal activities' against Commonwealth, State and Territory laws, including offences perpetrated across State and Territory borders. This information was taken from the NCA web site: [www.nca.gov.au](http://www.nca.gov.au).

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This information was taken from the NCA web site: [www.nca.gov.au](http://www.nca.gov.au)

## 8. US INITIATIVES TO TACKLE YOUTH GANGS

### United States

It must be said at the outset that youth gang problems in countries such as the US far outweigh those experienced in Australia. While the initiatives used in such jurisdictions are interesting, they must be read in light of this fact. They are not easily transposable to the NSW situation.

The following is a brief overview of the range of anti-gang strategies and legislation in the US. The information about legislation in the US is taken from: the National Youth Gang Centre website<sup>158</sup>, which contains detailed information about youth gang statistics, legislation and gang prevention programs; and the US Department of Justice website which outlines the various anti-gang strategies in place.

A range of anti-gang programs have been in operation in the US for more than 50 years. The programs tackle the problem of youth gangs and gang crime from several directions:

- **Prevention programs** (such as early childhood, school-based and after-school initiatives).
- **Intervention programs** (such as boys and girls clubs, and programs which work to create violence-free zones, establish gang summits, and rehabilitate gang members whilst they are in juvenile detention and correctional facilities).
- **Suppression programs** (such as programs which are focused on prosecution, police response, and geomapping and other tracking systems).
- **Strategies using multiple techniques** (such as community policing).
- **Multi-agency initiatives** (which includes local, State, and Federal efforts).
- **Comprehensive approaches to gang problems** (such as the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression).
- **Legislation** (at local, State and Federal levels).<sup>159</sup>

### Anti-gang legislation in the US

A wide range of legislative measures have also been developed in the US to deal with the problem of gang crime.<sup>160</sup> In the US over 70% of all states have enacted some type of gang related legislation.<sup>161</sup> The main mechanism used by law enforcement in the US to prosecute youth and

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<sup>158</sup> <http://www.iir.com/nygc/default.htm>

<sup>159</sup> Office of Juvenile Justice and Delinquency Prevention (OJJDP), *Youth Gang Programs and Strategies*, August 2000, p iii.

<sup>160</sup> [http://www.iir.com/nygc/task2\\_3.htm](http://www.iir.com/nygc/task2_3.htm) This contains comprehensive information about the range of legislation in all jurisdictions. The information can be viewed by state or by subject.

<sup>161</sup> <http://www.iir.com/nygc/gang-legis/analysis.htm>

adult gangs is by arrest for the commission of a substantive criminal offence under State or Federal statute<sup>162</sup>. The laws are designed to address crimes committed by all types of gangs. The measures dealt with most frequently by such legislation relate to: increasing penalties and sentencing for crimes committed in connection with gang activities; drive-by shootings; graffiti; gang activity and forfeiture of items used by criminal gangs to facilitate their activities; and recruitment of gang members.

The legislation addresses many areas. These include:

**Definition of “criminal street gang”:** “Criminal street gangs” are defined in the legislation of many US states. However, the definitions vary among the states. In California, for example, a “criminal street gang” is defined as any ongoing organisation, association, or group of three or more persons, whether formal or informal, having one of its primary activities the commission of one or more certain criminal acts (which are enumerated in the legislation), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a “pattern of criminal gang activity”.

**Increasing penalties for crimes associated with a criminal street gang (sentencing):** Many states in the US have legislation that imposes a harsher penalty where a crime is committed in connection with a criminal gang.<sup>163</sup> As an example, in the state of California, a person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, is to be punished by an additional term of up to three years. In certain cases the penalty can be higher. For example, if the felony is committed on the grounds of (or near) a school, during school hours or when minors are using the premises, the additional penalty is two to four years’ imprisonment.

**Recruiting gang members:** Many states in the US make it an offence to recruit a juvenile into joining a gang<sup>164</sup>. For example, in the state of California it is an offence for a person to use, or threaten to use, physical violence against a person who is under 18 years of age to actively participate in any criminal street gang. The offence is punishable by imprisonment for up to 3 years.

**Participation in a gang:** Several states<sup>165</sup> in the US have legislation that is directed at

<sup>162</sup> Office of Juvenile Justice and Delinquency Prevention (OJJDP), *Youth Gang Programs and Strategies*, August 2000, p 40.

<sup>163</sup> These include: Alaska, Arizona, California, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Minnesota, Missouri, Nevada, New Jersey, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Wisconsin.

<sup>164</sup> These include: Alaska, Arizona, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Massachusetts, New Jersey, Oklahoma, and Wisconsin.

<sup>165</sup> These include: Arizona, California, Georgia, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Missouri, Ohio, and Texas.

participation in, or assisting, a criminal street gang. In this legislation it is not necessary for there to have been the commission of a particular offence. For example, in Arizona assisting a criminal syndicate is deemed to be a felony. In California, it is an offence for a person to actively participate in any criminal street gang with knowledge that its members engage in a pattern of criminal gang activity, and for that person to wilfully promote, further, or assist in any felonious criminal conduct by members of that gang.

**Forfeiture and confiscation:** Property which has been used by criminal street gangs to facilitate their criminal activities, or which has been obtained via such activities, may be confiscated in certain states in the US.<sup>166</sup>

**Drive-by shooting:** Drive-by shootings are a specific offence in several US states.

**School dress:** In a few US States, legislation has been enacted which expressly allows schools to prohibit students from wearing any type of apparel or accessory which indicates that the student is affiliated with a gang.<sup>167</sup>

In addition to the above State legislation, there are other mechanisms that can be used to target gang activity at a local level - through City Ordinances and Court Injunctions. These include: curfew for minors; evictions for gang activity; loitering; juvenile gatherings; and truancy.

**Curfew (including daytime curfew):** In some municipalities in the US curfew restrictions have been imposed for minors. For example, in Los Angeles County, California, it is unlawful for any minor under the age of 18 to be present in a “public place” between the hours of 10:00pm and sunrise of the immediately following day. There are exemptions to the curfew, for example where a minor is accompanied by their parent(s) or legal guardian(s).

**Loitering:** A few municipalities in the US prohibit loitering. For example in Los Angeles, California, juveniles are prohibited from loitering between certain hours of the day when schools are in session. There are exceptions such as when they are accompanied by a parent or guardian who has the care and custody of them. In Los Angeles County, California, persons who are members of a “criminal street gang” are prohibited from loitering in a “public place” under certain circumstances.

**Juvenile gatherings:** In Omaha, Nebraska, a private place or premises within the city, which is used as the site of a juvenile gathering, may be declared to be a public nuisance. Following a declaration, the police department will give notice to the person(s) responsible for the juvenile gathering to abate the nuisance. For the purposes of such a declaration, and notice to abate, a juvenile gathering is defined as where five or more persons under the age of 21 are assembled for

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<sup>166</sup> These include: Alaska, Florida, Georgia, Louisiana, Mississippi, Nevada, and New Mexico.

<sup>167</sup> California, Iowa, New Jersey. In addition, some states have allowed schools to adopt dress codes or school uniform policies.



a social occasion, and alcohol is possessed or consumed by any person under that age.

### **Policing measures in the US**

Police forces in the US use a range of tactics to control and suppress youth gangs. These tactics include, among other things, street sweep operations, police saturation, surveillance, 'zero tolerance', and search and seize operations.<sup>168</sup>

## **9. CONCLUSION**

The problems of definition and the lack of data make it difficult to form any conclusions on the nature and extent of gang, particularly youth gang, activity in NSW. The lack of data on ethnic involvement in crime in NSW also makes it difficult to draw any meaningful conclusions in this area. Much of the current discussion of ethnic involvement in crime is largely anecdotal or speculative in nature. Given the two separate announcements of this year - the formation of the Ozgang Research Network, which will systematically research youth group formations and anti-gang strategies; and that BOCSAR will be collating data on ethnic crime - the information gathered as a result of these studies should shed some light on these areas in the future.

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<sup>168</sup> For more information see: Office of Juvenile Justice and Delinquency Prevention (OJJDP), *Youth Gang Programs and Strategies*, August 2000, pp 22-26 ("Police Response").