

JUVENILE JUSTICE IN NEW SOUTH WALES AN HISTORICAL PERSPECTIVE AND WHERE WE ARE TODAY

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When considering of matters relating to Juvenile Justice in New South Wales considerations would not be complete without taking into account some matters of historical significance. A real change to the way in which juveniles were to be dealt commenced in the mid nineties when legislation was proposed in an Act specifically aimed at intervening with young offenders to avoid their direct entry into the criminal justice system and to address their offending behaviour.

THE YOUNG OFFENDERS ACT

Originally the legislation was to be named the *Minor Offenders Punishment Act*. To bring about successful implementation of the proposed legislation a committee of representatives from various stakeholders was formed. The committee was chaired by a senior crown prosecutor; other members included representatives of the youth sector, children's court advocates and police. The New South Wales Police had as its representative the senior officer appointed as the Police corporate spokesperson for youth issues. This was the first time the police had engaged with youth groups and advocates in the development of major policy approaches in the policing of the state's young people. Initial relationships of mistrust developed into ones of mutual respect through this process. These relationships continued to prosper over the next 5 years.

Almost immediately the committee convened, the decision was taken to change the name of the legislation to the more appropriate *Young Offenders Act*. This Act was considered ground breaking in its content. For the first time Police as the investigating authority was provided with a range of flexible and non-traditional options in dealing with young offenders. The Act applied to offenders between the age of ten and eighteen years. Briefly the options available to police ranged from a Warning(W), a Police Caution(PC), referral to a Youth Justice Conference(YJC) or Children's Court(CC) appearance. Police were obligated under the Act to consider each of the options prior to conclusion of any action.

POLICING THE ACT

It will be appreciated that this was a huge move away from the traditional police response to offending by young people. Prior to the introduction of the Act, Police invariably charged a young person and placed them before the CC. While there was some discretion available to police, there was very little guidance on how or when it should be used. At the very early stages of developing the Act it was agreed that Ws and PCs would be easy to use and attractive options for operational Police. The referral to YJCs was more problematic and lengthy debate ensued as to who would manage the conferencing process. There was a strong push (from within police) to have the Police manage the process. This was not supported by the majority of stakeholders and the decision quite

rightly was taken that the Department of Juvenile Justice (DJJ) should manage the process with the police being the first point of referral. The YJC directorate was formed within the DJJ.

The introduction of the *Young Offenders Act* was strongly supported at the highest levels of the Policing organisation and by the Government of the day. From a policing perspective it was identified that specially trained Youth Liaison Officers (YLOs) needed to be introduced into the force to act as the conduit for the policing response to the YOA. A state-wide recruitment program was undertaken by the corporate spokesperson and initially 80 YLOs, one for each Local Area Command, were appointed and undertook specialist training.

In the early days of its introduction, the YOA was not readily accepted by “front line” police who by and large considered the Act to be a soft option and to threaten their discretion. A very significant marketing campaign was mounted and slowly there was a change in attitude particularly towards those officers appointed as YLOs. These officers achieved new status in the commands and became an integral component of the command structure. Many commands increased the number of officers appointed as YLOs from within the command.

The roll out of the Act continued to gain momentum and significant success in diverting young offenders away from the criminal justice system were achieved. This is clearly demonstrated by reviewing the trends in juvenile incarceration over the five years from 1998 to 2003. Resistance was identified from within legal circles in relation to the requirement that, before a young person could be dealt with by way of PC or YJC, he or she must admit the offence. Many solicitors representing young people continued to advise them not to admit the offence, particularly those young people represented by the Aboriginal Legal Service. In many cases when those young people appeared before the CC, Magistrates referred matters back for either PC or YJC. The situation regarding legal advice improved significantly with the introduction of the legal advice hotline service, set up specifically to assist young people being considered as eligible to be dealt with under the provisions of the YOA...

At the same time the NSW Police developed a broader strategic approach to policing young people with the development of the first NSW Police Youth Policy Statement in 1997, revised in 2000, to reflect the directions of the YOA and the need to divert low risk offenders from the formal criminal justice system. This was done with wide consultation with youth and advocacy groups and other key government agencies including DJJ, Attorney Generals Department, Crime Prevention Division and Department of Education and Training.

OVERSIGHT

The YOA also established the Youth Justice Advisory Committee as a legislatively based forum to provide ongoing oversight and monitoring of the Act's implementations. The Committee brought together the three main players in the Act, Police, DJJ and Attorney General's Department together with independent community and legal representatives. The Committee met regularly and undertook ongoing analysis of the police and courts response to the Act. As part of this the number of YJCs, PC and Ws were monitored and compared with the court appearances. A marketing strategy was developed as well as good news stories published. Where an unacceptable police response was noted appropriate remedial action was taken by the corporate spokesperson. In addition to the Youth Justice Advisory Committee (YJAC), the Juvenile Justice Advisory Council also had a monitoring role and was in a position to report to the Minister for Juvenile Justice on concerns raised by the council members. It is unfortunate that both these were dissolved in 2006/7 leaving no other oversighting body to monitor juvenile justice related issues.

To pay lip service to the oversight of juvenile justice issues the Young Offenders Advisory Council was formed. It appears that this Council is largely ineffectual with narrow Terms of Reference focussing on referrals from Ministers, a lack of clarity about the ongoing role of the Council and no legislative base to support its operation. The disbanding of the YJAC also resulted in the dissolving of the only forum that provided mandatory oversight of the States chief diversionary strategy, that of the YOA. There is now no requirement for the three partner agencies to be accountable or even meet together on the implementation of the Act.

IS THE YOUNG OFFENDERS ACT EFFECTIVE?

The YOA has been extensively evaluated since its introduction in 1998¹. In particular, I refer you to a review of the operation of the Act, carried out by Professor Janet Chan with her findings outlined in the publication *Reshaping Juvenile Justice: The Young Offenders Act 1997*. This publication outlines the critical success factors and barriers to implementation of the Act as well as discusses the strengths and weaknesses of the Act. There is clear indication that for the Act to succeed, from a Policing point of view, there must be strong support at senior levels with senior level officers within NSW Police willing to champion the Act. Previously that responsibility fell to the corporate

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1999 Hennessy Report "*Review of Gatekeeping Role in Young Offenders Act 1997 (NSW)*")

2000 BOCSAR *Evaluation of Youth Justice Conferencing*

2002 BOCSAR "*Reducing Juvenile Crime: Conferencing versus Court*" (Crime and Justice Bulletin No. 69)

2002 Turner, S., *Young Peoples Experiences of the Young Offenders Act*, Youth Justice Coalition,

2002 Report on Statutory Evaluation completed October 2002 and Tabled in Parliament

2004 Report on the Review of the Young Offenders Act 1997, NSW Attorney-General's Dept.

2006 BOCSAR "*Reoffending among young people cautioned by police or who participated in a youth justice conference*" (Crime and Justice Bulletin No 103)

spokesperson for youth issues who was a senior officer in the police hierarchy with operational credibility.

The Act is clearly a more effective option than putting young people through the court system, it has lower levels of reoffending and has high levels of victim satisfaction from those victims choosing to participate.

MOVING FORWARD OR ARE WE?

There has been a sharp move, politically, away from diversionary and crime prevention strategies such as the Young Offenders Act and these types of initiatives do not appear to sit kindly with the New South Wales Labor Government. There has over a number of years been the development of a “get tough on crime” mentality within the government ranks. There appears to be the misconception that by locking up offenders, particularly young offenders is the answer to reducing the level of crime in this state. There is no evidence to support this case; in fact there is a growing body of evidence to support the opposite.

While there are pockets where local police are working well with young people by using alternative strategies, overwhelmingly the major police strategy employed with young people is that of over policing of low level anti social behaviour and rigid, inflexible enforcement of bail compliance, resulting in the situation described by Don Weatherburn and others in BOCSAR’s recent research. This approach to policing young people comes from the highest level of NSW Police and has been built into the performance measures of local area commanders. It is inevitable that an explosion of unconvicted young people in custody, many on original charges which would not attract a custodial penalty, has resulted. Such an approach is not only condoned but encouraged by the Labor Government and the senior law makers.

There is ample evidence however that diverting people away from the criminal justice system does impact on the level of recidivism, this is particularly the case with young offenders., Early intervention, support for young people from a social development point of view, mentoring by appropriate role models and addressing other risk factors such as mental health and substance abuse can impact positively in diverting young people away from crime.

There is a common misconception among politicians and many police, in particular very senior police, that the only way to deal with young offenders is to put them before the court. It is interesting to note that more enlightened magistrates often refer matters coming before them back to police for either a PC or referral to a YJC. I believe it is the case that overall, more than half of all referrals to YJCs come from the courts and not from police. This is a poor reflection on the decision making of police investigating those matters and senior officers overlooking them. It is also a reflection of the flawed policies regarding young people which exist today in the New South Wales Police Force.

DEPARTMENT OF JUVENILE JUSTICE WHERE SHOULD IT SIT?

DJJ now falls under the umbrella of the Department of Human Services (DHS), the focus on dealing with juvenile offending in a strategic well balanced manner seems to have fallen away from the general thrust in DHS. DJJ seems on the face of it to be the poor cousin. Alliances between DJJ and the Police Community Youth Club for example present as organisations with a clear understanding of the crime prevention and rehabilitation needs of young early in their offending period.

It could be argued that a better focus of DJJ could exist under the Attorney Generals port folio, as currently the Young Offenders Act is the responsibility of the Attorney. This would maintain a justice focus for DJJ as opposed to a welfare focus promulgated under DHS.

Of concern also is the shift in focus away from maintaining the YJC scheme as a separate strategy to incorporating it into general operations area within DJJ. Prior to 2007 YJC was a separate Directorate within DJJ; it now has no separate status but is part of a more general Operations directorate. YJC managers went from reporting to the director YJC to reporting to Area Managers. While a closer working relationship between YJC and DJJ field staff is desirable, the changes have also resulted in a lack of focus and consistency in YJC at the local level as well as delays, backlogs and convenor vacancies.

Over time there has been political tinkering and with the YOA, for example in 2001 the then police minister made amendments to the YOA which invoked a three strikes clause whereby young people who received three PC's were automatically referred to a YJC or placed before the court. Originally his proposal was that there be only one strike. After some negotiation a compromise was reached. The minister's research was clearly flawed as an analysis of intervention under the provisions of the Act clearly showed that there were an almost insignificant number of young offenders who would reach the three strike level.

Despite that demonstrated effectiveness of the YOA as a strategy for dealing with young offenders, its reasonable and practical approach does not appear to suit those politicians and shock jocks who are satisfied with nothing less than locking them up as the only answer. This misapprehension clearly exists with policing circles as well, particularly at the most senior levels. Whilst the YOA may not be the complete or only answer to reducing crime committed by young people, it is clearly worthy of support "it is not broken so why fix it". This type of diversionary action is not only strategically sound it is also socially and financially sound. The cost of incarceration is excessive not only from a financial point view but also from a community well being point of view.

The recent amendments to the Bail Act have seen a sharp rise in young people being incarcerated on remand when around 80% of those young people who are remanded in custody do not receive custodial detention when they appear at CC. This appears to be a clear infringement on the rights of the young person, being imprisoned before they convicted of any wrong doing. After a review of the types of bail conditions placed on young people, like curfews and non association restrictions, for which they are easily breached, it could be argued that some young people are being put into detention centres due to their welfare needs rather than their offending behaviour, in particular when kids are in custody on remand because they have nowhere safe and secure to live. Their needs

should be addressed in a more appropriate way rather than exposing them to further criminalisation.

Clearly rather than taking a more enlightened approach to juvenile justice issues it has become easier to bend to the populist view and charge juveniles without considering their future and that of community safety.

WHEN DIVERSION IS NOT DIVERSION

The Labor Attorney General announced the introduction of the Youth Conduct Order scheme (YCO). Whilst the intention of the scheme may be admirable i.e.: to address the underlying reasons behind why young people may be offending, concerns have been raised about this method of doing so. This strategy appears to bring young people further into the criminal justice system in order to deal with their welfare needs rather than dealing with their offending behaviour. It could be argued that their welfare needs should be able to be addressed without imposing a court order on them.

In relation to YCOs, the idea of bringing multi agencies to the party to intensively case manage these young people where it is needed is a good one. But to link them to court ordered conditions such as curfews, non association and place restrictions in addition to compulsory attendance at particular programs for up to 12 months runs the risk of setting them up to fail. It is well known how often kids are being breached by police on similar bail conditions, leading to an unprecedented increase in the numbers of children in detention on remand. Mr Don Weatherburn's recently released report deals with this issue and points out the results of police enforcement policies on young people and the remand population.

Of real concern is the likelihood that YCOs will dilute and undermine the operation of the YOA in particular YJCs. In a review of the YJCs the victim satisfaction level was a staggering 89%. YCOs will not ensure that the young person will face up the consequences of their actions particularly where they will not come face to face with their victim.

ROLE OF POLICE COMMUNITY YOUTH CLUBS.

It has been suggested that rather than roll out further YCOs, simple amendments to the YOA could be made to reinforce welfare issues as part of outcome plans at YJC eg a young person may be required to become a member of a Police Community Youth Club (PCYC), where there are a large number of programs operating to address offending behaviour including self development programs such as the Blue Star program giving young people an opportunity to make a meaningful contribution to the community. This organisation also has the PENN system designed to allocate a police officer to case manage a young offender. It could also be argued that a closer working relationship between the PCYC command and DJJ would be beneficial to both organisations, this relationship seems to be being resisted by the current hierarchy in the Police Force.

In 2009 PCYC was presented with an Australian Government Crime Prevention Award to the value of \$5000.00 in relation to what has become known as the Walgett Mobile

PCYC. This program has been independently evaluated and is accredited with reducing crime when the mobile is in the town. Street offences have been reduced by 97% when officers operate the mobile in the town. The Police Force under the current hierarchy has withdrawn support of the scheme, so it no longer operates effectively.

When Police withdraw support from a cost effective, proven crime prevention strategy in a remote, high Aboriginal populated area, it begs the question: have we moved forward?

RECOMMENDATIONS:

- 1 That further consideration be given consider the provisions of the Bail Act and its application to young people and consider whether young offenders should be afforded opportunities which are different than those provided for adult offenders, with the view to reducing the numbers of young offenders detained in custody on remand.
- 2 That the decision to disband a legislatively based forum for overseeing juvenile policy and practice, particularly in relation to diversion, be examined considering whether a Juvenile Justice Advisory body should be re-established with legislative oversight powers.
- 3 That a review consider the merits of the Youth Conduct Orders scheme against the benefits of amending the Young Offenders Act to achieve similar outcomes.
- 4 That a comprehensive audit be carried out addressing the current use of the provisions of the Young Offenders Act by New South Wales Police.
- 5 That the Youth Justice Conferencing directorate be re-established in the State Office at the Department of Juvenile Justice with a focus on strengthening Youth Justice Conferencing, removing the management of Youth Justice Conferencing from Regions.
- 6 The consideration be given to realigning DJJ with in the Attorney Generals portfolio to bring a greater focus on justice issues relating to young people.

CONCLUSION:

It is timely that a review of Juvenile Justice is taking place in this State. I am of the view that youth issues are not being given the priority that is required to impact on young peoples offending behaviour. It is time that young offenders are given opportunities to address their offending behaviour in ways other than being incarcerated and that youth policies are developed from the available evidence base.

The New South Wales Police Force has no clear framework to address youth issues. The resources to address the issues are not being provided, if you take into account that somewhere between 30% and 50% of crime is committed by kids and young adults under 25. The allocation of Youth Liaison Officers, PCYC Case Managers and School Liaison Police together make up less than 2% of the New South Wales Police Force, i.e.: only a small amount is allocated to targeted youth engagement and crime prevention. Perhaps if the allocation was greater the figures mentioned above might be reduced.

There is an urgent need to address the rate of incarceration of young people in this state, if others can do it why not here.

Getting tough on crime without proper research, analysis and strategic planning will only make young offenders political pawns in the game of crime and punishment.

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Former Ministerial Appointee Juvenile Justice Advisory Council

Former Ministerial Appointee Juvenile Justice Advisory Committee