Briefs

CHILDREN

'City of Fear'

A recipe for reform: add 2 *Daily Telegraph Mirror* articles on 'the crime wave'; 1 State election; law and order as required and 1 flying bottle. Half-bake and watch it stir. TERESA O'SULLIVAN reports.

The NSW Government and Opposition have gone to extreme lengths to look tough in the lead up to the March 1995 election. In doing so, both sides have bolstered the prevailing myth of the juvenile crime wave.

On 17 November 1994 the *Daily Telegraph Mirror* published a special feature on the 'City of Fear'. The article highlighted the results of a survey on community fear of crime conducted by the NSW Police Service. This set the scene for the Leader of the Opposition, Bob Carr to hold a press conference on 21 November to talk about gang violence. (This time he left out the bit about baseball caps turned back to front being a crime.)

In the middle of Carr's press conference, held on a footpath in Marrickville, someone (a teen gangster according to media reports) threw a bottle from a car causing him to duck for cover. This well-timed display of lawlessness, Carr's get tough media coverage and another *Telegraph Mirror* article on colour gangs on the same day was enough to send the Fahey Government into a frenzy of 'reform'.

Immediately after Carr's press conference Mr Fahey issued a News Release announcing tough new measures to increase powers against juveniles. Mr Fahey said 'the community has the right to demand safety on the streets'. In the same statement he proposed a new law which would give police the power to take young people off the streets. Clearly young people were not part of Mr Fahey's concept of the community. Surely, young people, as part of the community, also have the right to safety in the street even though they do not yet have the right to vote.

Three days later the full implications of the law and order competition between Carr and Fahey were realised. The Premier introduced the *Children (Parental Responsibility) Bill 1994*. The Bill made parents criminally liable for the offences of their children and required a parent to forfeit a sum of money if their child misbehaved. Police were given the power to detain a young person, without charge, for up to 24 hours. No provision was made for access to a court, legal advice or representation. A suspicion that a crime might be committed or that a young person might be at risk was sufficient to enable the police to remove the young person from the public place. This form of *preventative detention* had been denounced by legal and civil liberties groups only

weeks before when it came up in the Government's *Community Protection Bill.*

The announcement of the proposed legislation came as a great disappointment to many who have put time and energy into developing sensible juvenile justice policies. There was certainly no reference to the need for legislation such as this in the Government's White Paper on Juvenile Justice which was released in August 1994. On the contrary, the focus of the White Paper is the diversion of young people from the formal justice system.

Bob Carr would not oppose the Bill for fear of looking as if he was going soft on crime. He has attracted almost as much criticism as the Government. This criticism came from all quarters. The Police Association issued a Press Release expressing its fundamental opposition to the Bill. The Federation of Parents and Citizens (NSW) described the Government's action as 'ham fisted, hysterical and counter-productive'. The Bar Association, the Law Society and the Council of Civil Liberties pointed out the repressive nature of the proposals and the unacceptable extension of police powers.

There were reports of unrest within the Liberal Party and the ALP. Strong dissent was aired in ALP Caucus (see Paola Totaro's article, *Sydney Morning Herald* 15.12.94). Criticisms of the Bill grew every day for two weeks until it seemed that the only people in NSW who wanted it were John Fahey and Bob Carr.

Late on Friday evening, 2 December 1994, the Bill was passed. To its credit, the Opposition introduced some amendments to the Bill before it was passed. Young people detained under the new legislation must now be held in places of refuge, not police stations. The penalties proposed in a cognate bill, the *Summary Offences and Other Legislation (Graffiti) Amendment Bill,* were also weakened by Opposition amendments. The irony of this situation is that despite the tough law-and-order pace Carr set in the lead up to the election, his resolve not to oppose the Bill and his determination not to back down and look weak, he was still criticised for going soft on crime (see Paola Totaro's article, *Sydney Morning Herald* 2.12.94). Would his position have been any different had he not beat up the issue in the first place?

Increase in police powers

The police already have sufficient power to act in circumstances where a young person is at risk. Sections 60 and 61 of the *Children (Care and Protection) Act 1987* provide that a police officer may remove children under 16 years who are in need of care, unsupervised and frequenting a public place.

The new legislation takes us back to the days prior to the legislative package of 1987. One of the notable reforms introduced by the enactment of the *Children (Care and Protection) Act 1987* and the *Children (Criminal Proceedings) Act 1987* was the decriminalisation of welfare issues. Children cannot now be charged with being 'uncontrollable'

or 'neglected' as they could be under the *Child Welfare Act 1939*. The new law, in effect, criminalises children who have done nothing wrong and brings into question the rights of young people to enjoy public space.

There was no need to increase the power to allow police to act on a judgment of potential future action of an anti-social nature. Young people are entitled to the same freedom of movement and association as other members of the community. This should only be restricted at the point when illegal behaviour is occurring. The legislation breaches numerous articles of the UN Convention on the Rights of the Child: the right to freedom of association and freedom of assembly, the right not to be subject to arbitrary interference with privacy, or to arbitrary apprehension, and the right to be treated with dignity.

Police officers will now have the power to approach, question, and detain any young person, who looks 15 years or younger, if they believe that a crime might be about to be committed. The crime may be a young person swearing in a public place (an offence under the *Summary Offences Act).* There will be the added frustration of being constantly stopped, searched and questioned. The new legislation ignores the fact that young people need safeguards, just as adults do, in relation to police conduct.

Young people congregating in a group or just wearing a baseball cap backwards may be sufficient to cause a police officer to act under the new law. Parents can no longer tell their children to 'go outside and play' as there is a danger that their children will be taken into police custody. One possible scenario might be that of a 15 year old, who has no parent at home who walks down to the local shop to meet some friends. He or she may be picked up by the police and kept in police custody for up to 24 hours without access to legal advice or any opportunity to put their side of the story. In this case the child's parents would have no idea where their child was being detained. If the child was taken to a 'prescribed place' and tried to leave they could be fined up to $500.

Differential policing

Numerous reports have documented negative police contact with young people. *Nobody Listens,* a report, produced by the Youth Justice Coalition (NSW) and the Youth Action and Policy Association in 1994, describes police contact with young people as 'vigorous to the point of harassment' perceived by young people as 'unfair and intrusive, generally involving verbal abuse, regularly violent'. The report presents the findings of a survey of 141 young people, aged 12 to 18, from urban and regional areas in New South Wales.

The report paints a picture of differential policing where the rates of police intervention with young people from a non-Anglo background were far higher than the rates of intervention for young Anglo Australians: 'The rates at which young people from Asian, Aboriginal and Pacific Islander backgrounds in our survey were contacted, searched, questioned, fingerprinted and detained by police indicate unacceptably high levels of both institutional and individual racism'.

In February, the Juvenile Justice Advisory Council of NSW released a report titled, 'Aboriginal Over-representation and Discretionary Decisions in the NSW Juvenile Justice System'. The report found that 'Aboriginal young people have a lower chance than non-Aboriginal young people of receiving formal police cautions and court attendance notices. This differential treatment has a compounding effect which can seriously disadvantage Aboriginal young people.'

Such trends in policing highlight the fact that some police regularly abuse the wide powers they already have to intervene where young people occupy a public space. We may very well see an increase in public order offences such as offensive language, resist police and assault police as young people react to what they will consider unjustly broad and arbitrary use of police powers.

Young people may be placed at serious risk

The Police Association have made it very clear that they do not want to do welfare work. While they may be in a position to decide that a child is at risk, they are not trained to handle child welfare issues. Children in need of care should be referred to the Department of Community Services whose officers are trained to assess the risk and negotiate an appropriate course of action.

For the police to pick up and return some young people home will be of questionable value. This action could place some young people at serious risk of abuse. Violence at home is often the reason why they are not at home. Some young people will have no home to be taken to, so police may have to spend possibly hours securing emergency accommodation for them. Most youth refuges will refuse to take children under 15. Many of the larger youth accommodation services have recently announced that they will not co-operate with the legislation because of their opposition to it (see *Sydney Morning Herald* 9.1.95). Using private homes is impractical and raises other issues such as training and screening of 'carers' and their accountability.

Some young people will have been given permission to be out by their parents. It is likely that the police action will be condemned by those parents as an invasion of both civil liberties and privacy. This is exactly what happened in WA when the police introduced a similar scheme last year called 'Operation Sweep'. In Fremantle, in one weekend, 118 young people were picked up for just hanging around. The community was outraged by the police action and held a public meeting to express their anger. The police subsequently called off the operation.

Parents — 24 hours a day supervisors

The Government and courts will again face a range of problems in seeking to make parents more responsible for their children's actions. It is absurd to legislate that parents must monitor their teenage children 24 hours a day. Young people who have offended are more likely not to re-offend if they are encouraged to take full responsibility for the consequences, by the imposition of a fine, community service, facing up to the victim in a conference or some other order.

Young people may become less aware of the seriousness of their actions if parents are involved in the punishment. Again, some young people may be physically or emotionally abused by parents who are upset by being required to share the blame and being drawn into the criminal justice system in this way. There will be other parents who do not have the personal skills or resources to ensure that their children behave more appropriately.

Parents should be brought into the process in a spirit of co-operation to support their children if they possibly can and they should be given every assistance to do so. Fining parents will only increase the financial strain already placed on many parents who are struggling to support their children.

Act to be trialed in Gosford and Orange

On 9 February the Government announced that it would trial parts of the new law in two areas, Gosford and Orange from 13 March. The parts of the Act relating to parents's responsibility for their children's offences would operate throughout the State.

The parts relating to young people in public places would be restricted by the Regulations and Police Instuctions. For the Act to operate in only those areas, the Regulations would then have to list prescribed places of refuge that were located in Gosford and Orange. This is where the Government is running into difficulties because none of the accommodation providers for children and young people will co-operate with the legislation as they are so opposed to it. The Government may have to resort to finding private homes, or even worse, a detention centre located in one of the areas. Imagine the police picking up a young person and taking him or her to a stranger's home, where they could be detained for 24 hours, and then fining them $500 if they felt unsafe or threatened and tried to leave.

On the same day the Police Minister released the Police Service's Youth Policy. The document is based on the White Paper and, like the White Paper, is inconsistent with the approach of the new Act. The police youth policy proposes fair treatment of young people and protection of their rights. Both police and young people in NSW must be receiving some very mixed messages. On the same day they can be citizens with the right to be treated with dignity and potential criminals who must be banned from public places.

By enacting this legislation, the Government and the Opposition have failed to address some of the real issues facing young people and their families. These include domestic violence, homelessness, alienation from the education system and lack of income support. When this cumbersome law is fully proclaimed, NSW will join WA and Tasmania in the international hall of shame for the human rights violations that laws such as this allow.

Teresa O'Sullivan is a solicitor with the National Children's And Youth Law Centre, Sydney.

REFUGEES

A failure of democracy

STUART RUSSELL calls for the release of David Kang.

On 26 January 1994 David Kang, a 24-year-old Macquarie University student, lunged at the Prince of Wales firing a starter's pistol, to dramatise the plight of the boat people in Australia. Before the conclusion of the committal hearing in February 1995 a number of extremely serious charges against him were withdrawn. At that time he was committed to stand trial before a jury in the New South Wales District Court on the charge of affray, which carries a maximum penalty of five year's imprisonment. At the same time as Kang's committal, the Commonwealth Government introduced legislation to make it more difficult for Chinese boat people to seek asylum in Australia, by disallowing refugee claims on the basis of China's one-child policy and to claimants who have been granted protection by another country. Most of the boat people from China were Vietnamese refugees who had been granted asylum in China. The Federal Government has thereby even more firmly shut the door on those powerless refugees fleeing oppression and persecution.

I can fully understand why David Kang lunged at Prince Charles on Invasion Day/Australia Day last year, because we share a few things in common. I, too, started out my career as a political and legal activist at the age of 15 by writing hundreds of letters to the biggest polluters in Canada. I was deeply concerned about the eroding state of our environment, and I was told this was the most effective means to get action. Secondly, like Kang I was passionately involved with refugees in the 1980s, as a refugee lawyer in Canada. And so I can perfectly understand, and even sympathise with, the frustrations that resulted from the all too predictable inaction on the part of government authorities, when his hundreds of pleas for justice fell on deaf ears.

But what exactly is Kang's crime? His misdemeanor was to take the democratic ethos too seriously. He was simply doing what most 'democratic' societies implore us to do when confronted with a problem: *write a letter!* To the editor, to one's MP, to the Prince. But the complete hypocracy of this incantation is that it presumes that action *will* be taken on the complaint, when in fact such pleas usually fall on deaf, bureaucratic, uncaring ears. Of course, one can go further, and pursue a number of other possible avenues of redress, including the courts and political channels, but real justice is an endangered species in those forums these days.

So what does the proverbial 'concerned citizen' do when all the prescribed possibilities for justice have been exhausted? History has shown that governments are congenitally incapable of affecting positive change suggested by its own citizens, except for relatively minor reforms, unless they are forced by massive protests or after major disaster strikes. We must not forget that Kang's cause was not individualistic in nature, but rather he acted purely out of sincere altruism, which is regrettably a rare commodity in Western societies. He acted as a samaratan, solely to advance the welfare of a group of severely disadvantaged people — refugee claimants who have in many cases spent up to four years behind bars simply for the 'crime' of fleeing persecution. The UN, Amnesty International, and many human rights organisations and individuals have strongly condemned the Commonwealth Government's detention policy, and yet the Government sat on its hands, in violation of the legal maxim that justice delayed is justice denied.

The plight of refugee claimants in Australia is a massive international human rights violation. When I practised as a refugee lawyer in Canada, detention was used in only very rare circumstances, and even then only for a few weeks, or months at the most. Most refugee lawyers regarded detention of over a few weeks as scandalous, and frequently writs of habeas corpus would be sought in such circumstances, which were often granted. Once a Tunisian client of mine had been detained in an ordinary prison, rather than an immigration detention centre, for six months, and due to mistreatment he commenced a hunger strike. A short time later he was officially declared to be a refugee and released.

Australia's refugee policy is one of the most regressive and draconian in the world. Even in the United States, notorious for its extreme anti-refugee policies, one does not