

figures and explained the increase with reference to the psychosocial context in which teenagers live. He viewed the 'worrying' increase in offending as a symptom of young people's 'growing wave of alienation and disillusionment'. I agree with his prescription of a 'real commitment to the next generation' but I am troubled by his diagnosis of the statistical signs.

Steve James from the Melbourne University Department of Criminology pointed to an obvious reason for increases in charge rates, namely changes in police practice with respect to the cautioning of children. Children who are cautioned do not appear at Court for the offence. If policing policy reduces the number of those cautioned, and it has by 13% according to Steve James who was drawing on Victoria Police statistics, it follows that more go through to Court, even if they are not found guilty. The statistics of who 'appears' at Children's Court, on which the *Age* article relied, are going to increase as a result. Add that to the almost 250% rise in transit offences reported in the *Age* article, and I think we can come out from behind the barricades.

The *Age* should, however, be given credit where it is due. The centrepiece table to represent increases in young people's offending was accurate to the extent that it actually dealt with proven offences, not merely appearances at court. Yes, the number of young people found to have offended did rise in the listed categories between 1990 and 1994. Did it justify the headline 'Gangland Victoria'? Not according to Professor Bowes nor Steve James who wrote:

But I like the evidence used to justify the wonderful title of 'Gangland Victoria': 'Senior police believe the increases may be due partly to a proliferation of gangs'. Now that's research! [emphasis in the original]

### The editorial

Peddling the truth of its own fabrication, the *Age* then ran a pious editorial calling for 'more consultation' on the issue, saying there was 'a clear need for the Government to inquire into the reasons' behind the purported crime leap. Well, the Government needed to look no further than the unprofessional coverage of the statistics to solve the engineered crisis.

The editorial call 'to shore up or replace services that have been reduced or closed' was valid in its own right. There are many ways in which the availability, range and capacity of services to young people in Victoria warrant improvement in order to address young people's vulnerability to law breaking. Dramatic vilification of young people is a disreputable justification for mustering resources that are required anyway and distorting the statistical picture escalates unwarranted community fears — at a profit to the newspaper.

An editorial line that oozes with concern does not remedy a flawed representation of the data. Having created an unwarranted public perception of law and order under siege, the architects are kidding themselves if they think that their editorial call for resources will be the enduring memory of the issue for their readership. It is difficult to believe they care.

### A different statistical conclusion

In case you still think children are the dangerous ones, have a look at *Table 1* juxtaposing the change over the same period in adult statistics for the offences listed by the *Age*. In each category, more adults are found guilty than children; not terribly surprising given the relative populations. Most damning of the *Age* article is that for four of the six categories cited in its article, the rate of adult increase is greater than for children.

What each category encompasses and how someone comes to be a statistic would take a whole separate article.<sup>2</sup> But one thing is clear: if 'assault in company' is the measure of gangland violence then adults outstrip children. Next headline — 'Grown-Up Gangs'? I don't think so.

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### References

1. See the discussion in ch.5 of White, R. *No Space of Their Own: Young People and Social Control in Australia*, Cambridge University Press, 1990. See also the paper by Stockwell, Charlotte, 'The Role of the Media in the Juvenile Justice Debate in Western Australia' in L. Atkinson and S.A. Gerull (eds), *National Conference on Juvenile Justice*, Australian Institute of Criminology, Canberra, 1993.
2. See White, R. and Alder, C. (eds), *The Police and Young People in Australia*, Cambridge University Press, 1994 and particularly the chapters by David Tait, 'Cautions and Appearances: Statistics About Youth and Police' and Ian O'Connor, 'Young People and Their Rights'.

**Table 1. COMPARISON OF PROVEN OFFENCES**  
Children's Court statistics as reported in the *Age* (19.9.95) compared with Magistrates' Court statistics for adults (17 years and over) for 1990 and 1994

OFFENCE	ADULTS			CHILDREN		
	1990	1994	% inc.	1990	1994	% inc.
Intentionally cause injury	757	1627	115	89	169	90
Indecent assault	128	219	71	10	20	100
Robbery	39	108	177	40	63	58
Unlawful assault	796	1448	82	96	129	34
Assault in company	108	363	236	25	60	140
Assault police	1070	1173	10	29	42	45

Source of figures for 1990 and 1994: Children's Court Statistics and Magistrates' Courts Sentencing Statistics, Department of Justice Victoria (formerly Attorney-General's Department) 1990 and 1994.

## PRISONS

### Preventing HIV

#### MATTHEW GROVES reports on a trial program for the introduction of condoms into New South Wales prisons

In 1994 a group of 50 prisoners in several NSW prisons instituted an action which aimed to force the NSW Department of Corrective Services to reverse its long standing policy against the supply of condoms in prisons. The prisoners sought to challenge the Department's policy under various heads of public law. They also sought relief in negligence, making the argument that the Department's refusal to supply them with condoms constituted a breach of the duty of care it owed to the prisoners held in its custody. The claims in public law were rejected by Dunford J who held that the prisoners could not challenge a policy which had been formulated by the Commissioner for Corrective Services in conjunction with the relevant Minister. The

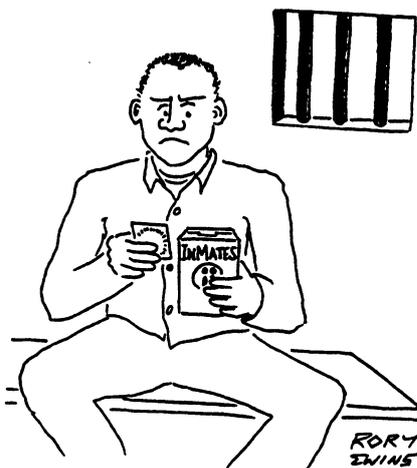
claims in tort law were allowed to proceed on the proviso that, if individual prisoners could demonstrate that a breach of the duty of care owed to them by the Department placed them at risk of contracting HIV or hepatitis, then they could be entitled to some form of relief, possibly even an injunction. However, Dunford J refused to allow all 50 claims to proceed, ordering instead that the prisoners select four people whose cases contained the important elements which were common to all the claims. This decision, which was confirmed by the New South Wales Court of Appeal,<sup>1</sup> seemed to indicate that prisoners were powerless to change an unsatisfactory policy which placed their lives at risk. The only recourse left open to the prisoners, test cases in negligence, are likely to be slow and expensive.

### Government considers reform

The new NSW Government has signalled its willingness to consider reform in this area. On 14 July 1995, the Minister for Corrective Services, Bob Debus, announced that the Department of Corrective Services had commenced negotiations with unions representing prison guards and medical staff with a view to implementing a trial of the distribution of condoms in NSW prisons. The announcement was the first step of the new government to honour an election policy supporting the introduction of condoms into prisons. In a very brief statement the Minister emphasised the widespread support from the medical profession for condom distribution as part of any strategy to control HIV in prisons. The Department was also expected to release a discussion paper to provide greater detail on the proposed trial. The Minister, however, decided in early December 1995 to proceed with the trial without having reached any agreement with the prison officers' union.

The proposal represents a significant advance in the development of a responsible policy for the prevention and management of HIV/AIDS and hepatitis in NSW prisons. It also represents some welcome movement in an area of prison administration that has been stalled. In 1988, the NSW Government made what appeared to be an enlightened decision and introduced, as part of a package of disparate amendments to the *Prisons Act 1952* (NSW), a provision (s.50(1)(j3)) which created a power to make regulations for the use and distribution of condoms in prisons. The provision has remained unproclaimed for several years and in the past the NSW Government has refused to allow the supply or distribution of condoms in prisons. The political reasons for this were obvious: prisons are electorally unpopular. The conservative parties which had governed NSW for several years until early 1995 had opposed liberal reforms in many areas of prison administration.<sup>2</sup> The introduction of condoms to prisons would have been antithetical to this agenda. Prison officers have also opposed the introduction of condoms into prisons. Their main reason has been that condoms could be used by prisoners to secrete prohibited substances within bodily orifices. Officers have also adopted moral objections to condoms by arguing that they encourage 'undesirable' behaviour amongst inmates.<sup>3</sup>

The first Australian conference on HIV/AIDS and prisons in 1990, which drew together a wide range of health and



corrections personnel, issued a communique on this topic. The communique recognised that sexual intercourse was a fact of life in prisons which, almost always, occurred without any form of protection against sexually transmitted disease. The communique concluded that the use of condoms would substantially lower the risk of HIV and other infections from this activity. In a thoughtful paper delivered at the same conference Justice Kirby also endorsed the introduction of condoms into prisons as part of a wide ranging AIDS policy.<sup>4</sup> The idea is also consistent with the Commonwealth Government's National HIV/AIDS Strategy.

### Intravenous drug use

The other main area involving the control of the spread of HIV, which clearly needs reform, is intravenous drug use. The Minister's announcement that the trial introduction of condoms would proceed included a strong rejection of any possibility that an equivalent program involving needles was under consideration. It is submitted that the current position regarding syringes in NSW prisons needs reform. Section 37A of the *Prisons Act 1952* (NSW) creates a statutory prohibition against the introduction of syringes into prisons, except with the authorisation of a medical practitioner or the governor of the prison. Prisoners are also prohibited from possessing any illicit drugs or devices to assist in the smoking or injection of drugs, and from administering such drugs to themselves or any other prisoner: *Prisons (General) Regulation 1995* (NSW), reg.168. The problem presented by these provisions is that the value of any program to distribute condoms can easily be undercut by the widespread use and sharing of unclean needles.

Bleach, which can be used to sterilise syringes, is freely available in NSW prisons. This is clearly important in lowering the possibility that the NSW gaol system will experience the widespread transmission of HIV through needle sharing that has occurred in other prisons. However, this would be bolstered if some kind of needle exchange or medical supervision was made available to IV drug users. Another important move would be to extend methadone programs, which are not currently available in all NSW prisons, to all prisoners. These are sensitive issues but perhaps a successful trial of condoms might point the minds of prison administrators to a reconsideration of other taboos.

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### References

1. The decision at first instance is reported as *Prisoners A to XX inclusive v NSW* (1994) 75 A Crim R 205.
2. See for example Brown, D., 'Putting the Value Back Into Punishment' (1990) 15 *LSB* 239 and 'How not to Run a Prison' [1990] *Aust Soc* 28.
3. *Sydney Morning Herald*, 14 June 1990, p.3. See also Lake, S., 'HIV in Gaol' (1992) 17 *Alt.LJ* 20.
4. Both the communique and Justice Kirby's paper are contained in (1991) 2(3) *Criminology Australia*.