Briefs

JUVENILE JUSTICE

Compromise in New South Wales

CHRIS CUNNEEN discusses recommendations of a Green Paper on juvenile justice.

The NSW Minister for Justice released *Future Directions for Juvenile Justice in New South Wales* in February 1993. The Green Paper has been compiled by the Juvenile Justice Advisory Council and a number of working parties under its auspices. The report comes as a further addition to the burgeoning literature discussing the state of juvenile justice in New South Wales. That literature includes the *Kids in Justice Report* prepared by the Youth Justice Coalition in 1990 and the Parliamentary Standing Committee on Social Issues *Report on Juvenile Justice in New South Wales* in 1992.

The process behind the production of the Green Paper is an interesting study in the politics of policy formulation. The Juvenile Justice Advisory Council was established in September 1991 to provide advice to government on juvenile justice policy. It is made up of 12 representatives from key areas including the Commissioner of Police, the Director of the Office of Juvenile Justice, the Senior Children's Magistrate, representatives from school and technical education and a number of representatives from welfare, church and community organisations. In February 1992 the Minister for Justice requested the preparation of a Green Paper on juvenile justice. The Advisory Council established six working parties comprised of 'experts' to prepare chapters on specific areas. There were diverse political and institutional interests represented on various working parties. The working parties prepared 'draft' chapters for the Green Paper which were finalised at a meeting of the Advisory Council.

The Green Paper contains no less than 429 recommendations, many of which would contribute to a progressive change in juvenile justice. There are, however, some recommendations which appear to be the result of political expediency rather than concern with reform. In some cases the recommendations in the Green Paper are in fact the opposite of what the working parties proposed, and appear to be more concerned with satisfying vested interests within the current system.

The Green Paper takes a very weak position in relation to the *Summary Offences Act*, despite the fact that the offensive language provisions have been criticised by groups and individuals as diverse as Amnesty International, the International Commission of Jurists and the President of the New South Wales Law Society. The Green Paper recommends (*Rec.* 100-102) that police instructions be changed to guard against discriminatory use of s.4 of the legislation (applying to offensive behaviour and offensive language) and that monitoring and evaluation take place. To my mind these recommendations are a waste of time. Police instructions are only guidelines; they have no statutory base and are not enforceable in law. We already have adequate empirical data on the use of the *Summary Offences Act* against juveniles. Offensive behaviour/language appearances in the New South Wales Children's Court rose by 255% between 1985-86 and 1989-90 from 336 to 1192. It is hypocritical to talk of diversion, of getting young people out of the juvenile justice system, when large numbers are still brought in on minor offences. It is worth noting that a stronger position was taken in relation to altering the *Summary Offences Act* by the Parliamentary Standing Committee on Social Issues *Report on Juvenile Justice in New South Wales*. That report recommended that there be a review of the applicability of the Act to juveniles. Interestingly enough the Green Paper has a substantially different view from that which was recommended by the Advisory Council's own working party. The working party's recommendation for the Green Paper in the draft chapter on legislative change proposed that s.4(1)(b) of the *Summary Offences Act* be amended to exclude juveniles from the operation of the section.

There are a number of other areas in the Green Paper where there is considerable difference between what the particular working parties recommended and what exists in the final document. For instance, the working party on detention centres recommended that the introduction of a 'Day in Gaol Program' not be supported because such a program would conflict with objectives of custody as a last resort, and because the deterrence assumptions on which such programs are based lack empirical support. However, the Green Paper recommends that such programs be monitored and evaluated for their possible application to New South Wales (*Rec.* 243).

Similarly the working party recommended that home detention not be adopted as a sentencing option in New South Wales. The draft chapter of the working party stated that 'it was agreed that home detention was entirely inappropriate for juveniles because it did not enable juveniles to participate in the community during their formative years or undertake positive programs to enhance their skills'. However, the Green Paper states that 'a consensus was not reached on the value of home detention for juveniles' and recommends that home detention be examined as a sentencing option (*Rec.* 197).

In relation to Community Service Orders (CSOs) the working party recommended an increase in the number of hours available from 100 to 250 with no more than 100 being unpaid community work and the remainder to be used for personal development activities. It also recommended that legislation continue to include the intention that CSOs be a sentencing alternative to detention. That is, that CSOs continue to be placed in the sentencing hierarchy as a direct alternative to a detention order as is currently the case in s.33 of the *Children (Criminal Proceedings) Act*. However, the Green Paper has added an additional option, not recommended by the working party, which would allow CSOs of up to 100 hours to be used as a *general sentencing option*. This sentencing option would change the sentencing hierarchy and allow for a substantial escalation of penalties across the board.

The working party on Aboriginal issues considered a number of proposals specific to the over-representation of Aboriginal young people in the juvenile justice system including the need for community justice councils and a greater utilisation of diversionary mechanisms. In relation to the use of police cautions the working party recommended the introduction of a statutory right to consideration of a caution; that cautioning be mandatory for minor offences; and that cautioning be utilised for repeat offenders. The Green Paper contained a much watered-down recommendation which ignored the need for a legislative basis to cautioning and instead relied on 'a greater acceptance, use and application of cautioning among police through appropriate education and training, performance monitoring and organisational incentives' (*Rec.* 273, p.211).

The working party on Aboriginal issues also considered the issue of racist behaviour by police. The working party recommended that violence, intimidation and harassment by police officers be considered a serious breach of duty and that the penalty for such a breach be dismissal. The penalty of dismissal was deleted from the recommendation in the Green Paper which relied instead on the more general statement of 'a serious breach of duty' (*Rec.* 281). Again a specific recommendation by a working party was watered down for the final version.

Much of the Green Paper's section on police complies with the current wishes of the police to establish a citation notice system. Such a system would enable police to issue a caution for a minor offence, a fixed penalty notice (on-the-spot fine) for a prescribed number of offences and a court attendance notice for other prescribed offences. The offences for which a fixed penalty notice would be used has not been specified. Nor has there been any consideration of the appropriateness of these measures specifically for juveniles. The system itself appears to be one which broadens police discretionary powers at the point of apprehension while at the same time being administratively less resource intensive than current methods.

It is perhaps not surprising that the Green Paper is a compromise document which reflects varied political interests. There are specific recommendations for legislative change which are positive including the proposed amendments to the *Victims Compensation Act*, the *Sentencing Act* and the *Bail Act*. There are other recommendations, or areas where no recommendations were made, which do not reflect the desires of respective working parties but do comply with the wishes of some of the more powerful players in the arena.

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CAMBODIA

The wretched witch of Sisophon

PETER CONDLIFFE writes about the effects of long-term civil war on the Cambodian criminal justice system.

Sisophon is a small town in the north-west of Cambodia. It is a wild dusty place on the edge of disputed territory between government forces and the Khmer Rouge. When I was there in the dry season my clothes and body were constantly coated with a layer of dust. I had visions of cowboys and cattle thundering down the main street in my dreams. But on waking I would discover myself again in late 20th century Cambodia where the cowboys tote AK47s and RPGs (Rocket Propelled Grenades). Every night just after dusk the shooting would begin. I was told it was drunks letting off steam. Every household has a gun in Cambodia. One night the firing was in the next house and my host warned me to be careful as I crept down to the bathroom at the back of the house. Sisophon is the sort of place where you pray for internal conveniences.

It was in Sisophon where I heard the story of the witch. She practised her craft in a nearby village. Unfortunately, the village had experienced some unexpected bad luck which resulted in several deaths and illnesses. The witch was blamed by the relatives of the victims for the misfortune. They decided that the best course of action was to kill her. They approached the Headman of the village with their plan and he approved. The unfortunate witch was killed.

The police were then called in. Rather than arresting the suspects, the police called a meeting of the aggrieved relatives of the witch and the perpetrators. The meeting was held to discuss adequate compensation to the relatives of the witch. This done, the matter was closed. Presumably the police and the Headman both received a share of the proceeds.

No attempt was made to bring the perpetrators of the crime to court. No formal charges were laid. It was as if the State of Cambodia with its panoply of western style laws did not exist. The idea that the State may have an interest in these events was not contemplated or if it were it was of very low priority. The very idea of 'crime' was different here. This was only one of a large number of instances which have come to my attention where Cambodian citizenry and officials have reached their own solutions to problems and conflicts. The desire to engage in 'self-help' or more formalised third-party interventions outside the formal legal system is widespread. The murder of witches in Cambodia appears not to be uncommon as I have come across a number of prisoners in Phnom Penh gaols who are described in the official records as 'witch killers'. The response to the violence visited on the unfortunate witch of Sisophon is typical.