

Even if the courts adopted the view that the common law as set out by Donaldson LJ survived the *Crimes Act* provisions, it is doubtful that they could conclude the word 'search' in other statutory provisions (such as the *Drugs, Poisons and Controlled Substances Act 1981* and *Control of Weapons Act 1990*) includes any reference to 'searches involving the removal of clothing or the examination of the body' which is clearly dealt with in the *Crimes Act* definitions of 'Forensic Procedure' and 'Physical Examination'. Further, the *Crimes Act* definition specifically excludes the taking of finger prints from the definition of forensic procedure. By inference, the failure to exclude other physical examinations of the body, and removal of clothing type searches, strongly suggests that the *Crimes Act* provisions cover the field as far as statutory strip searches are concerned.

Given that the dignity, privacy and sanctity of our bodies is our most fundamental and basic human right, then it cannot be presumed that Parliament intended to grant police a power to strip away that human right at their absolute discretion. When it did address the issue in the *Crimes Act*, the Parliament saw fit to provide the power on the basis of a determination by a magistrate in the absence of the informed consent of the suspected citizen.

It is a nonsense to suggest that in relation to trivial offences, Parliament intended police officers to be able to order citizens to strip naked at the absolute and unfettered discretion of the police officer acting on his or her subjective 'reasonable belief'.

The naked abuse of power by Victoria Police at the Tasty Nightclub served to focus attention on the issue of strip searches. The Attorney-General has been quoted as saying she believes that police do not have the power to undertake such searches; the Deputy Ombudsman (Police Complaints) is looking into police procedures pertaining to strip searches; and the police have announced that they are reviewing their procedures. Action should have been taken prior to the Tasty Nightclub raid. That it required the mass abuse of citizens and a great deal of publicity for this issue to be taken seriously by those in authority, demonstrates the extent to which police are a law unto themselves.

Jude McCulloch is a lawyer with the Western Suburbs Legal Service and Greg Connellan is a lawyer with Fitzroy Legal Service.

Reference

1. A version of this paper was published in (1993) 18(1) *Alt.LJ* 31.

JUVENILE JUSTICE

Policies of prevention

AMANDA GRAHAM examines implications of proposed new measures in New South Wales.

The New South Wales Government recently announced a series of new crime prevention measures aimed at juvenile offenders. These include a Juvenile Crime Prevention Advisory Committee, a Juvenile Crime Prevention Division within the NSW Attorney-General's Department, a Taskforce on Persistent Juvenile Offenders and a Local Offender Program.

These are consistent with similar initiatives in other Australian States, and reflect a significant shift in attitudes to crime control. There is a growing, worldwide acknowledgment that a reliance on traditional law enforcement mechanisms, such as the detection, prosecution and punishment/rehabilitation of offenders is of limited effect, especially in relation to those categories of crime where police apprehension of offenders is unlikely.

Where law enforcement is of limited utility, attempts to reduce or control crime rates need to consider those factors which are likely to motivate or influence potential offenders. Identifying such factors and introducing strategies to address them, in the expectation that levels of crime will be reduced is the central objective of 'crime prevention' schemes. Crime prevention strategies generally address opportunities for the commission of crimes, and individual offender motivation, encompassing theories of social disadvantage, situational opportunities and individual behaviours and risk factors.

Evaluation

Many countries have introduced programs with crime prevention potential, but there have been major difficulties in assessing their effectiveness. First, attempts to evaluate their impact have been limited, and there has been a failure to attempt any form of evaluation in many cases. Second, attempts at evaluation have been characterised by poor methodology such as a failure to define program goals adequately or establish control mechanisms. Third, evaluation has been complicated by unintended consequences, including the displacement of criminal activity, a heightened fear of victimisation, and the stigmatising of those participating in some programs as latent criminals. There are also circumstances in which crime prevention programs result in a higher crime rate, at least in the short term, due to an increased public awareness and willingness to report incidents to the police.

Research

In view of the inconclusive results of attempts to evaluate crime prevention programs, it is not surprising that Australian governments have been reluctant to commit funds to such initiatives. This reluctance has been justified by research such as that undertaken by the NSW Bureau of Statistics, which examines criminal career data and suggests that programs which are targeted at more serious recidivist offenders are likely to be more cost-effective. This research highlights the fact that a very small proportion of criminal offenders are apparently responsible for a disproportionately large percentage of criminal offences.

However, the implications of this research for the cost-effectiveness of interventions designed to reduce crime must be contrasted with US research. Long-term studies indicate that effective early intervention programs have a considerable flow-on effect, producing impressive cost savings in criminal justice, health, welfare and education services at a later stage. Such programs are aimed at the well-documented links between social disadvantage and crime, including initiatives such as providing assistance to 'at risk' pre-school children.

Despite the contradictory implications of such research for crime prevention efforts, it is clear that there must be an emphasis on evaluation and the establishment of clear targets and strategies, to ensure that interventions are cost-effective. While this seems somewhat self-evident, the practical implications raise a series of moral and political dilemmas for public policy makers.

Policy considerations

The most significant initial problem involves the setting of priorities and targets for crime prevention schemes. Various potential participants in the decision-making process will express differing views on which categories of crime warrant preventive measures. For example, local shopkeepers may be concerned with graffiti and vandalism, police with car theft or assaults, Members of Parliament with electoral problems, while academics may question the emphasis placed on street crime, particularly juvenile crime, and the reinforcing of popular stereotypes of criminality which follows. Clearly, the structure and location of any decision-making forum will be critical in determining whose priorities prevail.

Once targeted categories of crime or locations are determined for crime prevention programs, further dilemmas arise concerning the approach adopted, as popular perceptions of crime may not reflect statistical evidence. Should efforts be directed at the fear of crime frequently expressed by older people, despite the absence of any evidence of a real threat to their personal safety? Should crime prevention include challenging popular misconceptions about crime and educating the community? Should it be limited to attempts to influence crime rates directly where a crime problem has been statistically identified? To what degree should efforts be constrained by an emphasis on producing effective short-term solutions?

In addition, there are specific problems evident in the criminal justice system which may benefit from a more ambitious approach to crime prevention. One obvious example is the significant over-representation of Aboriginal people in the criminal justice system. Although Aboriginal people comprise less than 2% of the Australian population, young Aboriginal people consistently constitute around 25% of the detention centre population in NSW. While additional government expenditure has been directed at the criminal justice system following the Royal Commission into Aboriginal Deaths in Custody, improving all cell accommodation and custodial practices, the fundamental problem of the over-representation of Aboriginal people in the system remains.

Crime prevention efforts aimed at reducing the number of Aboriginal people entering the criminal justice system in the first place would require multiple strategies. A wide range of initiatives are necessary to address the many factors which are likely to contribute to the existing problem, including social and economic disadvantage, racist stereotypes, discriminatory law enforcement practices and definitions of criminality, and specific local crime problems.

There is a very real danger that well-intentioned crime prevention programs may simply reinforce existing racist stereotypes and conceptualise problems in terms of law and order responses, thereby evading the more difficult social justice and structural issues which arise. Crime prevention schemes may operate as a band-aid response to more fundamental problems, or even obscure the nature of the problem. In South Australia, it has been found that crime prevention funding may be directed at local crime problems created by the inadequate administration or co-ordination of services by government departments. Provision of stop-gap measures will only discourage the search for more constructive, longer-term solutions in such cases.

In addition, the importance of self-determination for Aboriginal people must be recognised. Any crime prevention scheme which is driven by white 'experts' is doomed to failure; it is essential to ensure that Aboriginal people play a central role in decision-making processes at all levels. The real challenge

for crime prevention in this context is to work in partnership with Aboriginal people to produce constructive and significant outcomes whilst avoiding the many potential pitfalls.

Involving the private sector

A partnership approach to crime prevention generally is highly desirable, and should ideally include private sector organisations in addition to government agencies and the community sector. Private sector organisations in NSW, such as the NRMA, have already displayed a willingness to fund crime prevention schemes independently. It would seem that a genuine and productive partnership arrangement should be encouraged to ensure the development of a range of crime prevention strategies which are well-resourced and effective.

Again though, one needs to question the structure and location of proposed decision-making forums as this will be critical in terms of facilitating involvement by the private sector and the community sector. If the process is controlled by a central government agency as has been proposed, there is a possibility that a crime prevention agenda will be influenced by sectional interests or short-term political considerations. It may also foster a perception that the government has retained responsibility for crime prevention, thereby inhibiting the potential for private sector and community participation.

An alternative model which may promote the development of a constructive, active and equal partnership between the community, government and private sectors is the Crime Concern Organisation in the United Kingdom. Crime Concern is an independent organisation which is funded partly by government, partly by private sector contributions, and partly by fees earned for crime prevention consultancy work. The attraction for government with such an arrangement is that the organisation has the potential to become self-funding, and its longer-term survival depends on the efforts of staff to demonstrate the relevance and worth of their work, and actively market their services. The organisation also provides a credible source of alternative advice to government on problems identified through crime prevention analysis, which could have a significant impact in terms of ensuring that government services are efficient and effective.

Critics would no doubt suggest that the organisation would be driven by the need to produce short-term outcomes, generate fees and elicit contributions from the private sector. However, it needs to be asked whether this scenario would be any worse than the prospect of becoming yet another under-resourced government agency which is likely to be driven by short-term political considerations.

It is to be hoped that the Juvenile Crime Prevention Advisory Committee soon to be established by the NSW Attorney-General's Department will have a sufficiently broad mandate to consider alternative ways of delivering and funding crime prevention schemes. The approach taken by the Committee will no doubt reflect the knowledge and interests of those individuals who are appointed as members. The selection of these members is now the most pressing practical dilemma concerning crime prevention facing public policy makers in New South Wales.

Amanda Graham is Executive Officer, Juvenile Justice Advisory Council in NSW.