

Report to
The National Youth Affairs Research Scheme

Perceptions of the treatment of juveniles in the legal system

by

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Report summary

Background and method

The interaction between police and young people has been a source of increasing concern in most Australian states and territories. In 1990 the National Youth Affairs Research Scheme (NYARS) commissioned the present study of young people in the justice system which focused on police/youth relations. The study examined four areas: legislation and policy; the relationship between young people and police; police/youth programs; and legal information services for young people. A total of 382 young people, 90 police and 69 youth legal advocates from four states (Queensland, Tasmania, Victoria and Western Australia) were interviewed. Additional information was obtained by questionnaire from Legal Aid Commissions and Community Legal Centres.

The young people who were interviewed were predominantly 16 and 17-year-olds, with roughly equal numbers of young women and young men, and included young people from both Aboriginal/Torres Strait Islander and non-English speaking backgrounds. They were selected from three different locations (schools, shopping centres or malls, and youth hostels and youth service centres). They were asked about their involvement in police-youth programs, the frequency and type of contact with police, their attitudes to and perceptions of police, and their knowledge of legal rights and services.

Police officers from Queensland, Tasmania and Western Australia were interviewed. Most were under the age of 30 and were Australian-born males. They were asked about the frequency and type of contact they had with young people, the groups of young people they found most difficult to deal with, their experience of being abused by young people, their views on the use of force against young people, and their knowledge of young people's rights.

The youth legal advocates were asked about the types of interaction with police which young people reported to them, young people's knowledge of their legal rights, and the adequacy of methods for investigating and resolving complaints against police.

Findings

Legislation and policy

The review of legislation and policy (Chapter 2) revealed a number of areas where there was inconsistency between jurisdictions, or where there has been some erosion of the protection originally intended by legislation or policy. These included: the requirement to have an independent adult present when police question a juvenile; the right to have a lawyer present and the obligation to be informed of that right; notification of parents or guardians about questioning, arrest, charging or cautioning of a young person; restrictions on fingerprinting juveniles; conditions for granting of bail; and mechanisms for dealing with complaints against police. On a more positive note, the review noted a strong policy trend towards the use of procedures such as court attendance notices instead of arrest, and the recognition in legislation of a diversion from court through schemes such as cautions and panels.

Young people's survey

The results of the young people's survey (Chapter 3) indicated that most of the respondents had been involved in some type of police/youth program – most frequently a school visit or a blue light disco. While young people themselves did not think these programs had an effect on their thoughts regarding police, the data suggest involvement in school visits or Neighbourhood Watch is related to more positive perceptions of police. While many young people had attended a blue light disco, there was no significant relationship between involvement in this form of activity and perceptions of police. While participation in school visits was related to perceptions of police for some young people, there was no significant relationship for conventional youth or for youth from non-English speaking backgrounds.

There were no differences in the proportions of young men and young women involved in the different programs. However, marginal youth were less likely to have experienced a school visit, or to be involved in Neighbourhood Watch. Young people who were born

overseas, or who had parents who were born in non-English speaking countries, were less likely than other young people to be involved in the social group activities of blue light discos and police youth clubs. Aboriginal/Torres Strait Islander young people were the group most likely to be involved in these particular types of social programs, but were the least likely to be involved in Neighbourhood Watch.

A third of the respondents had asked the police for help at some time. Most frequently this was for information such as time or directions. Almost as many young people had been to the police as victims of crime or to report a crime. About half of those who had sought assistance were not satisfied with the response they received, in general because they did not think that any follow-up action had taken place. This is a higher level of dissatisfaction than is suggested by studies of the general population.

A high proportion (80%) of the interviewees had been stopped and spoken to by the police. This most frequently occurred on the street or in public buildings (e.g. railway stations) and shopping malls while they were just “hanging out” or “walking” in a group or by themselves. While weekends were frequently nominated as the time when they were most likely to be approached by police, many young people made no distinction between weekends and weekdays when nominating the time that they were most likely to be approached.

Aboriginal youth were more likely than other young people to be stopped; boys were also more likely than girls, and marginal youth were more likely than others. In fact, almost all males (94%), Aboriginal youth (98%) and marginal youth (96%) had been stopped by police.

Half of the young people had been taken to a police station. Few thought that the police had treated them with respect or had treated them fairly. Of the third of the sample who reported being “roughed up” by police, well over half of these (68%) identified a police station as the location where this occurred.

Overall, the description by the young people of their treatment at police stations is cause for grave concern. Not only were half (53%) held in police cells, many also reported being held for eight or more hours and many also reported being held in a cell with adults, or with adults and other young people. The majority (70%) said that they were yelled at or sworn at, just over half (55%) said they were pushed around, and 40% said they were hit.

In general, the majority were not able to avail themselves of their rights as set out in standing orders or legislation: less than a third were told about their rights, were able to make a phone call or believed that the police had attempted to contact a support person. Only a third had an adult (other than the police officers) present while they were being questioned, and over half were fingerprinted.

In general, the findings indicate that the police were

more likely to be heavy-handed in their dealings with young men, Aboriginal youth and marginal youth. These groups were more likely than other youth to be stopped and spoken to by the police, taken to a police station, and to report being roughed up. At the police station these same groups were more likely to report being yelled at or sworn at, being pushed around, and being hit by police.

It was clear from the data that the type and level of formal contact with police had a significant impact on young people’s attitudes to police. In general, young people who have experienced police-initiated contacts are less likely to have positive attitudes towards police than those who have not. Further, the more serious the level of contact, the less likely it is that the young person will have positive attitudes.

While most young people (83%) knew that they did have certain rights when stopped by the police, far fewer knew what these rights were (42%) and most said that they needed more information (82%). Young people tended to think that lawyers were difficult to understand and expensive, and consequently the majority did not think that young people went to lawyers when they needed them. This was probably compounded by the tendency to believe that lawyers were unfair to young people, and that they did not really understand young people.

Across the issues addressed in this section of the research (police program involvement, perceptions of police, formal police experiences, knowledge of rights and access to lawyers), there was no clear pattern of differences between the states.

Police survey

The results of the police survey (Chapter 4) indicated that the majority were involved in activities in the community in which they were stationed, and over half had contact with young people beyond their street contact. However, less than 20% were involved in specific community-based police/youth programs. Very few (3%) had completed tertiary education, although close to 40% were currently enrolled. Most (77%) had no specific training of any sort on issues concerning youth.

Young people made up a significant proportion of the people with whom police dealt. Overall the officers indicated that while working with young people took up a substantial proportion of their time, demands of “paperwork” took up more.

Police officers indicated that most of their contact with young people occurred during afternoon and evening shifts, and they most frequently nominated malls and shopping centres as the areas where the activities of young people were of particular concern.

While three-quarters of the respondents did not find young people in general difficult to deal with, many did specify “street kids” and “gangs” as particularly difficult. Aboriginal youth were the third most frequently nominated difficult youth group, particularly by

Queensland and West Australian police. While slightly more officers nominated 13 to 15-year-olds as more difficult than other age groups, overall no specific age group stood out as especially difficult for most officers.

The most frequently offered explanation for why some youth were particularly difficult was by reference to their general misbehaviour and lack of discipline. Other explanations included family problems and cultural gaps between the officers and the youth (especially in the case of Aboriginal youth).

Most police contact with young people involved such activities as providing information, assistance, warnings and telling young people to move on. The more “serious” aspects of police work, including arrest, undertaking searches and issuing summonses and cautions, involved a much smaller proportion of the types of interactions between young people and police.

The factors most frequently specified by police officers as influencing their decision to deal formally or informally with young people were the degree of cooperation shown by the young person, and the seriousness of the offence. Almost as many officers thought that the young person’s attitude was also an important factor in this decision.

Over half the police officers believed that half or most young people respect the law and its officers. However, that left just under half of the officers who thought that few or very few young people had such respect. The officers’ observations regarding the respect of youth for the law are probably influenced by their experiences of youth attitudes and behaviour towards them as individuals. Virtually all (98%) of the officers said that they had been assaulted or harassed by young people in the course of their work, although just over half of these reported that the harassment did not happen all that often. The kinds of harassment most commonly referred to included verbal taunts, and being shouted and sworn at. Fewer officers reported assaults with a weapon, although a majority (52%) said that at some time they had been punched by a young person. In general, Queensland police were more likely than those in Western Australia or Tasmania to report most forms of abuse.

Most police officers (82%) reported having to apply force to a young person at some time. There was very little difference across the three states on this issue. In almost every case, the use of force was explained as a form of self-defence or as a response to the young person resisting arrest.

Many police officers (57%) felt that too much physical force was sometimes used in dealing with young people. This was most often explained in terms of the attitudes and actions of the young people, the structural conditions of police work, and the personal qualities of the particular police officers involved. However, only 28% of the officers reported that they had had a formal complaint made against them by a young person. Complaints were most often explained as efforts by the young person concerned

to discredit the police or to justify their own behaviour. A few officers also felt that such allegations stemmed from adult pressures on young people to make complaints, or that agencies such as the Aboriginal Legal Service encouraged young people to do so.

Virtually all officers believed that young people had the right to make a phone call and to have a third person present during processing and questioning. However, there was some uncertainty regarding the stage at which young people have the right to legal advice. Only a small proportion of officers felt that most of the young people with whom they came in contact knew their rights, and the majority said that they provided young people who had been arrested with information regarding their legal rights.

Officers identified a wide range of issues which they believed were the main problems in police/youth relations. The issues most frequently raised were the lack of respect by young people for the law, police and the courts, and problems of communication between young people and the police.

Legal advocates surveys

The results of the youth legal advocates, legal aid centres and Legal Aid Commission surveys (Chapter 5) were remarkably consistent across groups and across states. Reports by young people of harassment in public places such as malls, streets and shopping centres were not uncommon. Nearly all lawyers reported that they knew some young people who had been physically or verbally abused in such public spaces.

In relation to police investigation of offences, the lawyers reported that many young people experienced problems prior to formal questioning. These problems included verbal and physical intimidation. They also reported that many young people were denied access to a telephone call or access to legal advice while at the police station.

Lawyers and legal centres indicated their belief that young people were ignorant of their legal rights, and that even where they were aware of their legal rights, they were not in a position to assert them. This was because the power imbalance between police and young people was too great. The abuse of this power imbalance was identified as a major issue in police/youth relations, as was police attitudes to young people (and vice versa). Concern was also expressed about police breaches of their own standing orders in relation to the processing of juveniles. Respondents from the legal centres indicated that there was a need for education of young people about legal rights. They also clearly indicated that there was a need for increased education of police to deal more sensitively and effectively with young people.

Respondents expressed a preference for increased informal processing of young people in the juvenile justice system. They also indicated that very few children

used formal complaints mechanisms to complain about their treatment, and expressed substantial concern as to the independence or perceived independence of complaints bodies, which were considered especially inaccessible to young people.

While only half the respondents had participated in joint programs with police aimed at enhancing police youth relations, respondents were supportive of such programs.

Legal aid is readily available only to young people at the point of appearance at court. Most legal assistance is provided in the form of duty lawyers at Children's Courts. There are still very few specialist children's legal services in Australia. Access to assistance during police questioning is almost nonexistent (save, of course, that available on a full-fee basis). There is limited targeting of young people by Legal Aid Commissions. Community legal education is still provided in an ad hoc manner.

Summary

Police, young people and lawyers agree that contacts between police and young people are fraught with difficulties. In part these may be accounted for by the inadequacy of the police education and training that relates specifically to their interactions with young people. However, evident across the findings of this research is the inadequacy of existing legislation regarding police procedures prior to and during interrogation, and the rights of the suspect during the investigative process. The lack of clear statutory statements of these rights hinders any attempt on the young people's part to assert their rights, and makes it difficult for police to know the limits of their activities. In regard to this general situation, it is also apparent that there are major problems with youth access to legal advice and to complaints mechanisms.

I Introduction and methodology

by Rob White and Christine Alder

Introduction

The relationship between young people and the police, and perceived problems in this relationship, have been the subject of periodic public concern from the time of the hooligan gangs of late Victorian London, the larrikin gangs in Sydney of the 1880s and 1890s, through to the graffiti gangs of today (Grabosky 1977; Pearson 1983; White 1990). Present concerns about the question of “law and order” have once again focused attention on the visible activities of the young, and the responses of the police to perceived increases in youth crime.¹ Fuelled by media and political campaigns about the dangers of young “delinquents” and “layabouts”, much pressure has been put on the police to “clean up the streets” and to ensure that young people do not “get into trouble”. Greater contact between young people and the police, and a more aggressive form of police intervention in their lives, have in turn engendered an increase in the tensions between the two groups.

Until recently, the criminological and social science literature on the relationship between young people and the police has been rather sparse, and even then mainly concerned with “delinquent” young people and their conflicts with the police (Smith, 1975). However, a combination of law and order policies, and the growth in poverty and unemployment among a sizeable proportion of young people, has spurred interest in researching the present relationship between young people and the police.

In recent years in Australia, for example, there has been a growth in literature which documents the violence directed at young people by the police. These studies

include examinations of police/youth interactions in New South Wales (Mohr 1986; Youth Justice Coalition 1990), Victoria (Alder 1991; Alder & Sandor 1990), Queensland (O’Connor 1989; O’Connor & Sweetapple 1988), South Australia (White 1990) and Western Australia (White et al. 1991).

There has also been a concern to investigate the relationship between the police and specific categories of young people, most notably young Aborigines. Studies have provided ample evidence that harassment, discrimination, maltreatment and abuse of legal rights is widespread in police dealings with these young people (Graham 1989; Carrington 1990a; Cunneen 1988, 1989, 1990; Cunneen & Robb 1987; Gale et al. 1990; Gale & Wundersitz 1987).

Another area of recent concern has been that of the legal resources available to young people, and the impact of legislation relating to their public and private activities. For instance, investigations have been undertaken into the knowledge that young people have regarding their legal rights, and the ability of young people to claim their rights in practice (O’Connor & Tilbury 1986, 1987; White 1987; Underwood et al. 1992). Other writers have examined the social impact of changes in legislation which affect young people in particular (Dillon 1987; Carrington 1990b).

Available evidence suggests that there are serious problems in the current relationship between young people and the police. To date, however, there has not been a concerted attempt to provide a national profile of the current situation in Australia. But it is important to do so if we are to determine the nature of the trends in this

¹ A recent example of a “law and order” response to youthful offending is the *Crimes (Serious and Repeat Offenders) Sentencing Act 1992* which was introduced at a special sitting of the West Australian Parliament early this year and came into effect on 9 March. The Act is concerned with the sentencing of repeat offenders, particularly of juveniles who commit offences involving the use of motor vehicles and violent offences. The vigorous debate surrounding this legislation has raised questions about police harassment of potential offenders and official “chase policy”. A Legislative Committee is currently enquiring into the legislation. For comment on the legislation, see Moira Rayner, “Palm Tree Justice – Juvenile Injustice in the West”, *Civil Liberties Newsletter*, April 1992 (forthcoming).

relationship; trends which appear, at least on the surface, to be common across the states. Crucially, such an investigation could also provide insight into how the present, often negative, relationship between young people and the police can be improved.

In 1990 the National Youth Affairs Research Scheme (NYARS) commissioned the present study of the relationship between police and young people. The overall objectives of the study were:

- 1 to provide an overview of state and Commonwealth legislation and policy relating to the treatment of juveniles apprehended by police;
- 2 to investigate positive and negative aspects of the relationship between juveniles and police;
- 3 to critically examine existing models of police/youth programs and legal information services for young people; and
- 4 to develop recommendations for the improvement of relations between police and young people.

This report provides a description of the research project undertaken to meet these objectives, describes the findings of the research, and discusses the implications.

Methodology

The project encompassed four main areas of concern. These were:

- an overview of legislation, policies and standing orders relating to the treatment of juveniles, particularly in relation to their apprehension and detainment by the police;
- a survey/consultation with young people up to 18 years of age regarding their perceptions of the police and their experiences in their interactions with the police and the juvenile justice system generally;
- a survey/consultation with youth legal advocates such as legal aid workers and youth workers on issues pertaining to evidence of harassment of young people by the police and the availability of information and support for those young people questioned or detained by the police;
- a survey/consultation with police officers in order to ascertain police perceptions of juvenile offending, formal and informal processing of juveniles, and ways of improving the relationship between young people and the police.

The project thus consisted of two main components: surveys and consultations, and an overview of relevant legislation and standing orders.

Surveys/consultations

Data were collected in four states – Queensland, Victoria, Tasmania and Western Australia. The researchers' aim was to conduct standardised interviews, using structured

questionnaires, with the three specified populations – young people, police officers and youth legal advocates.

The intended samples for the surveys were 100 young people (most under the age of 18 years), 30 police officers, and 20 youth legal advocates in each state.

Due to a variety of problems such as incomplete questionnaires, the final size of the young people's sample was 383 (97 from Queensland, 86 from Tasmania, 110 from Victoria and 90 from Western Australia). The sampling guidelines for young people called for three different sources: school students (40 in each state), users of malls and shopping centres (30), and users of youth services such as drop-in centres and refuges (30). Attempts were made to ensure a gender balance of males and females, and to have a reasonable cross-section of the youth population in terms of income and family and ethnic background.

School students were drawn from one school in each state. The selection guidelines for the school were that it be an urban school with an ethnic and class mix. Interviewers approached young people in malls and shopping centres identified as those favoured by young people. Services for young people were identified and accessed through youth organisations. Young people using these services were invited to participate either directly by the interviewers or via public notices. Other than the students, young people who were interviewed were paid \$10 each.

In Queensland, Tasmania and Western Australia, 30 police officers were interviewed. In Victoria, permission to undertake the survey/consultations was denied to the researchers by the police department. In each state, efforts were made to interview 20 officers from a wide cross-section of divisions and ranks, plus 10 officers who had a more specific involvement in the juvenile justice area (e.g., truancy patrols, community policing).

Surveys were also undertaken with youth legal advocates in each state. In the main, the sample consisted of lawyers providing direct legal assistance to young people, and youth workers who provided advice and support to young people in their contact with the police and criminal justice system. It was not always possible to achieve the target of 20 youth legal advocates, due to the dearth of specialist youth advocates in some states and the unavailability of active youth legal advocates. In addition, some questionnaires were lost in transit. As a result, the final size of the lawyers and legal advocates sample was 69 (19 from Queensland, 20 each from Tasmania and Victoria, and 10 from Western Australia).

To supplement the information from lawyers and legal advocates, modified survey forms were sent to 61 Community Legal Centres throughout Australia, and to the Legal Aid Commission in each state or territory. Responses were received from 31 of the Community Legal Centres, 26 of which indicated that they provided services to young people in conflict with police or the criminal law. Of the 26 Legal Aid Centres whose responses were

included in this report, eight were from Victoria, five each were from Queensland and South Australia, four were from New South Wales, and two each were from Tasmania and Western Australia. Responses were received from the Legal Aid Commission in each state and territory, with the exception of Western Australia.

Three survey instruments were developed, one for each study population group (young people, police officers, youth legal advocates). Some questions were standardised across the questionnaires, while others were relevant to only one of the groups. The survey questionnaires were developed in consultation with representatives of each group, especially the various police departments. The surveys for each population were standardised, although some modifications were necessary to allow for state differences, e.g. in police procedures such as the “cautioning program” in Victoria. While the survey questionnaires were made up of predominantly fixed response categories, a number of open-ended questions were also asked (see Appendixes).

In almost all instances the questionnaire was administered in a one-to-one situation with the interviewee. The two exceptions were the completion of the young people’s questionnaire by a classroom of students in WA, and the organisation by the Queensland Police Service for the police survey in that state to be done as a written exercise.

All respondents to the questionnaires were briefed on the objectives and nature of the research, and were asked to sign a “consent” form. Where possible, copies of the research findings will be made available to the organisations and individuals involved.

The research procedures were approved by the Human Research Ethics Committee of the University of Melbourne. Protecting the anonymity and confidentiality of participants was a major concern of the research. Provisions for the ethical undertaking of research included:

- subjects will volunteer participation
- subjects will be informed of details of the project
- subjects will be informed that they can refuse to answer any question and can withdraw from the interview at any time
- no names or identifying information will be recorded on questionnaires
- all subjects and interviewers will jointly sign a consent form
- consent forms and questionnaires will be kept in separate locations, with no means available for consent forms to be matched with questionnaires
- payment of \$10 to the young people not in attendance at school at the time of the interview, in recognition of their contribution to the research process.

The findings of the three sets of questionnaires were processed at three different institutions: young people at the University of Melbourne; police officers at Edith Cowan University; and youth legal advocates at the University of Queensland.

Legislative/policy overview

The purpose of this overview was to establish the institutional framework for young people/police relations in each state. It entailed research into the following areas:

- analysis of legislation, policies and standing orders relating to the apprehension and detention of young people by the police in each state
- a review of the existing research and literature concerning changes in the above areas
- an analysis of available statistics regarding the numbers of young people processed by the police.

This information facilitates analysis of existing rules and procedures across the states, and sets the context for any variations or differences in findings in terms of jurisdiction.

2 Legislative & policy overview

by Kate Warner

Introduction

The NYARS terms of reference envisaged an overview of legislation, policies and standing orders relating to the legal treatment of juveniles, particularly in relation to their apprehension and detention by the police. It was suggested that such an analysis should focus on:

- 1 policy trends in recent years;
- 2 the effects of legislation and policy changes on the number of young people who are processed by the legal system, and the outcome of this contact; and
- 3 differences between the states and territories.

In providing this overview, emphasis is placed on the four states surveyed. The position in other Australian jurisdictions is referred to for comparative purposes, but is dealt with less comprehensively. Relevant common law, legislation and police instructions on interrogation, arrest, custody and cautioning are analysed in the context of policy trends, and the legal effect of non-compliance with legal requirements and police instructions is discussed. Existing research is reviewed to gauge compliance with the laws and administrative procedures. Available statistics are referred to in order to obtain the official picture of the way in which young people are dealt with by the police and to attempt to assess the effect of legislation and policy changes on police “processing” of young people. Assessing the effects of legislation and policy changes in the juvenile justice area in Australia is inhibited by deficiencies in official data collection and dissemination (Freiberg et al. 1988, pp.24-32). It follows that conclusive statements about the effect of changes in the institutional framework of juvenile justice cannot be made. The final section of the chapter describes mechanisms for dealing with complaints against the

police, so that the adequacy of such procedures in redressing malpractice in individual cases and addressing deficiencies in longstanding practices can be assessed.

Interrogation

In determining whether an offence has been committed, the police may put questions to any person, whether suspected or not, from whom they consider useful information may be obtained. But at the same time the person questioned has a right to silence. Subject to a number of statutory exceptions, there is no requirement to give any information.¹ The law and police standing orders provide a number of protections of this right: rules in relation to cautioning and the admissibility of confessions, to length of time in custody before being taken to a court and as to the presence of witnesses. Some of these rules are stronger where the suspect is a “child”.

Voluntariness of confessions

A confession is only admissible in evidence in court if it is voluntary: “made in the exercise of a free choice to speak or be silent”.² Doubts as to voluntariness are raised if there is evidence of pressure or inducement which might have overborne a suspect’s will. The onus of proving a confession is voluntary rests with the Crown (Cross, 1991, para.33675). In addition to the voluntariness rule, courts have a discretion to exclude evidence which is voluntary, but improperly or unfairly obtained. These common law rules as to admissibility of evidence (the voluntariness rule and the discretion rule) apply equally to adults and children. But as Seymour has pointed out, when the suspect is a juvenile particular care must be taken in the application of these rules: “If a juvenile has

¹ Where a police officer has reasonable grounds for believing an offence has been committed, the person suspected may be required to state their name and address: e.g. *Police Offences Act 1935* (Tas.) s.55A. In some states such as Western Australia, this power is virtually unrestricted: *Police Act 1892* (W.A.), s.50.

² *R. v. Lee* (1950) 82 C.L.R. 133 at p.149; *McDermott v. The Queen* (1948) 76 C.L.R. 501 at p.511.

made an admission it might sometimes be more difficult for a court to feel satisfied that 'a free choice to speak or be silent' has been made. Similarly, police practices which may seem fair when the suspect is an adult may raise doubts in the mind of a judicial officer if the defendant is a child" (Seymour, 1988, p.193). Confessions of children have been held to be inadmissible on grounds of involuntariness where Aboriginal children aged 13 and 14 who made written statements had earlier witnessed their 11-year-old friend assaulted by the police³ and where it was suggested to a 14-year-old girl that it would be better for her to tell the truth.⁴ The absence of a caution is considered relevant to voluntariness because of the possibility of the child assuming he or she must answer questions.⁵ However the Court of Criminal Appeal of Victoria, in dealing with the interrogation of a 15-year-old girl, rejected the submission that for a confession to be made in the exercise of a free choice, it must be shown that a suspect has knowledge of the right not to answer.⁶

Presence of parents or independent adults

All Australian jurisdictions require the presence of adult witnesses when juvenile suspects are interviewed. This may be required by internal police regulations or, in five jurisdictions (New South Wales, Australian Capital Territory, South Australia, Victoria and the Northern Territory), by legislation. These provisions are by no means uniform. There are differences with respect to the categories of adult required to be present, with regard to the offences to which the provisions apply, the scope of the protection, and the investigative activities covered by the provisions.

Provisions in Victoria, Queensland, Western Australia and Tasmania

In Victoria, the Crimes Act 1958, s.464(E) requires that questioning of a person under the age of 17 who has been arrested, or in respect of whom there is sufficient information to justify an arrest, must not occur without the presence of a parent, guardian or independent adult, unless the questioning is so urgent having regard to the safety of other people that it should not be delayed. In Queensland, General Instruction 4.54A(b) states that a child must be questioned in the presence of a parent, guardian or adult nominated by the child or parent. The Instruction goes on to state that, if no adult is nominated, an independent person, preferably of the same sex and

with whom the child would not be "overborne or oppressed", should be present. New legislation, the Juvenile Justice Bill, is currently being drafted with provisions relating to the admissibility of statements made by a child in the absence of a parent or an independent adult. The West Australian Routine Order 3-2.20 states that confessions made by children under 16 years of age may be ruled inadmissible if the interrogation took place without the presence of another person to whom the child could look for support. Order 3-2.21 provides that where practicable a police officer is to ensure the presence of a parent, guardian, other relative, school teacher or other independent person to whom the child can turn for advice or support. If the officer has exhausted all avenues in attempting to get an independent person, then another police officer more senior than the interrogator and not connected with the case should, where practicable, be present. Tasmanian Standing Order 109.14 provides: "(1) Wherever practicable, a child shall be interviewed at home in the presence of a parent or the guardian, or other responsible person, e.g. a justice of the peace. (2) A child may be interviewed at school, provided the approval of the school principal is obtained. Any such interview shall be conducted in the presence of the school principal or his or her nominee. (3) When a member of the Force has reasonable grounds to believe that a parent or guardian is or may be biased against a child alleged to have committed an offence, the child should be interviewed in the presence of some responsible person other than the parent or guardian."⁷

Other states and territories

In New South Wales, the Children's (Criminal Proceedings) Act 1987, s.13 provides that any statement made or given by a child to a police officer shall not be admissible in proceedings in which the child is a party unless there was present throughout a person responsible for the child or, in the case of a child of or above the age of 16, an adult (other than a police officer) present with the consent of a child. There is a proviso that if there is proper and sufficient reason for the absence of a required adult, the evidence may be admitted. There are also Police Instructions dealing with questioning juveniles.⁸ Legislation in the Northern Territory provides for the presence of a third party if the juvenile is being interviewed in relation to an offence punishable by imprisonment of 12 months or more and for exclusion of evidence.⁹ The

³ *Dixon v. McCarthy* [1975] 1 N.S.W.L.R. 617.

⁴ *Pascoe v. Little* (1978) 24 A.C.T.R. 21.

⁵ *R. v. R. (No. 1)* (1972) 9 C.C.C. (2d) 274 cited with approval in *Dixon v. McCarthy* (*supra*) and *M. v. J.* 1989 Tas.R, Unreported, Serial no. 53 of 1989.

⁶ *Reg. v. Jones* Unreported, 11 October, 1978 referred to in Seymour at p.191.

⁷ The Draft *Judicial Proceedings (Children) Bill*, cl.13, makes statements by a child inadmissible unless there was present a parent or guardian, a person responsible for the child or a legal practitioner.

⁸ Police Instructions 31.18, 31.19, and 35.08 to 35.14.

⁹ *Juvenile Justice Act* 1983 ss.25, 34 and see also General Order c.3.

Australian Capital territory's Children's Services Ordinance 1986, at ss. 30 and 40, contains similar provisions for children suspected of committing a serious offence or an offence against person or property. South Australian legislation, the Summary Offences Act 1953 s.79a, provides that minors apprehended on suspicion of having committed an offence must not be subjected to an interrogation or investigation until a solicitor, relative or friend, or other designated person is present. This does not apply if the offence is not punishable by imprisonment for two years or more and it is not reasonably practicable to secure the attendance of a suitable representative of the child's interests.

Effect of non-compliance

There are three common law rules which are relevant in considering the exclusion of confessions obtained in the absence of parents. First, the fact that no parent or independent person was present when an admission was made may be, at least in part, reason for doubting the voluntariness of the confession.¹⁰ As discussed above, voluntariness is a prerequisite for admission. Second, for reasons of public policy, courts have a discretion to exclude evidence which is unlawfully or improperly obtained.¹¹ Third, evidence may be rejected if in all the circumstances it would be unfair to use it against the accused.¹² The onus is on the defendant to show a case for the exercise of the judge's discretion to reject a voluntary confession. In Western Australia, Queensland and Tasmania the requirement for parental presence is contained in police instructions. The legal status of internal police instructions, variously described as instructions, standing or general orders, is that they are not absolute rules, but guidelines:

...the police standing order has no particular status in this court, but its content is symptomatic of the standard of fairness which ought to be observed during questioning by a police officer of a child.¹³

So while not unlawful, departure from the requirement in standing orders of parental presence may lead to an exercise of discretion according to the principles in *Bunning v. Cross* and *R. v. Lee*, excluding the evidence on the grounds that it was obtained by improper or unfair means. But reported decisions indicate that although

evidence of admissions or confessions may be rejected where police instructions requiring presence of parents were not complied with,¹⁴ in other cases the evidence has been admitted.¹⁵ In Victoria there is a statutory requirement for parental presence during interviewing. Failure to comply with this may lead to the exclusion of evidence obtained, in accordance with the above common law rules, but just as with breach of police instructions, it will not necessarily do so. Confessions and admissions which are voluntary can be admitted although illegally obtained. In New South Wales the relevant statutory provision, the *Children (Criminal Proceedings) Act 1987*, s.13, is stronger in that it makes a confession obtained in the absence of one of the specified persons inadmissible, unless there is sufficient reason for their absence. If there is no such reason, there is no discretion to admit the evidence.

Scope of presence requirements

Seymour says it is accepted that the controls do not apply to preliminary statements; that would deprive police of all power to question a young person until the required adult was present (Seymour 1988, pp.196-7). Certainly the Victorian legislative provision does not apply to preliminary questioning. However, there is now some authority that protection is broader, at least in some jurisdictions. In *M. v. J.*¹⁶ Neasey J. rejected the argument that there was no failure to comply with the standing order because the admission was made in the course of a general inquiry before an "interview" had commenced. He stated:

I do not accept the distinction that an "interview" had not yet commenced. If that distinction were to be made, it would be a simple matter to by-pass the protections of the standing order. The rule should be, in my view, that if a police officer intends to ask any investigatory questions of a child, he should first ensure that the accompanying presence of the parent or substitute adult is obtained.

Seymour also states that the scope of the protection afforded by the rules is eroded by the courts largely condoning the police practice of obtaining an initial confession without a parent or substitute present, and requiring it to be repeated in the presence of a witness (Seymour 1988, pp.196-7).

¹⁰ See *Dixon v. Mc Carthy* [1975] 1 N.S.W.L.R. 617; *Collins v. R.* (1980) 31 A.L.R. 257 at 321 and see Seymour, at pp.204-6.

¹¹ *Bunning v. Cross* (1978) 141 C.L.R. 54; *Cleland v. R.* (1982) 151 C.L.R. 1.

¹² *McDermott v. R.* (1948) 76 C.L.R. 501; *R. v. Lee* (1950) 82 C.L.R. 133.

¹³ *M. v. J.* [1989] Tas.R., Unreported, Serial no.53 of 1989 (at p.13); see also *R. v. Anunga* (1976) 11 A.L.R. 412 at p.415; but see *Laws for the People* at p.73 where the comments of a judge refusing to take judicial notice of Police Routine Orders are quoted.

¹⁴ *T. v. Wayne* (1983) 35 S.A.S.R. 247; *M. v. J.* [1989] Tas.R. Unreported, Serial no.53 of 1989; *Jones* (1978) 2 Crim.L.J. 169; in other cases lack of parental presence was but one of the factors weighing against admission, e.g. *Pratt* (1965) 83 W.N. Pt 1 (N.S.W.) 358; *Dixon v. Mc Carthy* [1975] 1 N.S.W.L.R. 617.

¹⁵ *Frijaf v. The Queen* [1982] W.A.R. 128; *R. v. Crawford* [1985] 2 Qd.R. 22; *Peters v. The Queen* (1987) 23 A.Crim.R. 451.

¹⁶ [1989] Tas.R. Unreported, Serial no.53 of 1989.

Are the rules observed?

Claims have been noted that the practice of obtaining preliminary statements in the absence of adult witnesses is widespread. But for some time there has also been evidence that many investigations are completed without parents or other adult witnesses being present at any stage. In Western Australia the Report of the Legislative Review Committee noted that police rarely adhere to the guidelines, citing a survey in 1988 of young people at Longmore Remand Centre and the Perth Children's Court where it was found that in 86% of interviews no independent adult was present (Legislative Review Committee 1991, p.73). Earlier West Australian studies reported similarly small percentages of parents or other adults being present (McDonald 1981, p.108). The Lucas Committee in Queensland reported that it was estimated that in 90% of cases handled by the Education Liaison Unit, children were interviewed without independent witnesses being present (Committee of Inquiry into the Enforcement of the Criminal Law in Queensland 1977, pp.81-82). In New South Wales a study of 50 remandees reported that nearly half had not had an independent adult present at any stage, and half of those who had had an independent adult present at some time had already been interviewed (Staden 1986). Contrasting figures were produced in a Victorian study where only 5% of a sample of young offenders were interviewed alone (Higgins 1982). The current study provides new evidence of existing practices.

Presence of a solicitor

In most Australian jurisdictions an adult has no statutory or common law right to the presence of a lawyer during interrogation. The exceptions are South Australia and Victoria, where there are statutory provisions for access to a friend or solicitor during interrogation or investigation.¹⁷ In New South Wales, the Australian Capital Territory and the Northern Territory, a legal practitioner may be present during interrogation instead of a parent or guardian or person responsible for the child.¹⁸ In the absence of statutory provisions, police instructions typically provide that if legal advice is requested, reasonable facilities should be granted to obtain that advice. But as explained above, these are merely administrative guidelines, and breach of them may or may not be used by the courts to exclude

confessional evidence.¹⁹ In a number of reported cases refusal of requests for the presence of a solicitor has led to exclusion of evidence. In Spaulding²⁰ Everett J. of the Supreme Court of Tasmania refused to admit the record of interview of a 17-year-old girl charged with burglary and stealing where her solicitor had telephoned the CIB and was not allowed in until the interview had been conducted. Police instructions appear to make no special mention of the presence of solicitors in the case of child suspects. It has been claimed that in Victoria lawyers have been frequently refused access to their clients, and clients have not been allowed to telephone for legal advice (Faine 1988, p.168).

Evaluation of presence requirements

There are judicial statements to the effect that presence of an independent adult during questioning and investigation is important to ensure that statements made are free and voluntary and not obtained by improper means.²¹ Courts, it has been said, should be reluctant for three reasons to receive in evidence an admission statement made in the absence of a parent or responsible adult: first, because questioning in the absence of a parent or responsible adult is always likely to be intimidatory and unsettling; second, if a child's version of the interview differs from that of the police officer, the chances of the child's version being accepted are slight; and finally, the police knowing this may be tempted to invent an admission statement if one is not made.²²

The available evidence suggests that the existing legal position is inadequate to ensure that police instructions and legislative requirements for parental presence are complied with. Statutory provisions, such as the Victorian provision requiring parental presence during interview are stronger than police instructions, but are nevertheless open to the criticism that they do not apply to a preliminary interview and so can be easily circumvented by the police. In addition, statements made in contravention of statutory provisions may be admitted although illegally obtained. Courts will be presented with a difficult choice when confronted with apparently convincing confessional evidence that points to guilt of a serious crime. The New South Wales position of providing that such statements are generally inadmissible is preferable, but is deficient in that it only provides a retrospective control on police questioning. It will be in

¹⁷ *Summary Offences Act* (S.A.)s.79a; *Crimes Act* 1958 (Vic.) s.464C.

¹⁸ *Children (Criminal Proceedings) Act* (N.S.W.) s.13(1)(a)(iv); *Children's Services Ordinance* 1986 (A.C.T.) s.30(1)(d)(iii); *Juvenile Justice Act* 1983 (N.T.) s.21(c)(iv).

¹⁹ See *Driscoll* (1977) 15 A.L.R. 47, where Gibbs J.'s failure to grant access to a solicitor might be a ground for rejecting evidence on grounds of fairness.

²⁰ Unreported Serial No. 48/1981, see also *Borsellino* [1978] Qd.R. 507; *Hart* [1979] Qd.R. 8 and J. Faine, "Just a Phone Call: Privilege or Right", in I. Freckleton and H. Selby (eds), *Police in our Society*, p.168.

²¹ *Dixon v. McCarthy* [1975] N.S.W.L.R. 617 at p.640.

²² *M. v. J.* [1989] Tas.R. Unreported, Serial no.53 of 1989 (at p.14-15.)

only a minority of cases that the issue will be litigated and the court will have the opportunity to exclude evidence obtained in breach of the requirements. As well as a provision for inadmissibility, prospective statutory requirements for presence are needed, with exceptions for occasions when urgency and impracticability demand that ordinary practice is inappropriate. The provisions should be so drafted as to make it clear that they apply to all stages of the investigative process, and cannot be circumvented either by not applying to initial questioning, or by the courts accepting evidence of a repeated admission in the presence of parent or responsible adult which is first obtained without such a witness.

As in South Australia, all suspects, whether adults or children, should have a statutory right to a phone call to a relative or friend and to the presence of a solicitor during interrogation or investigation. Police should be required to go further and inform the suspect of this right.

The issue of the role of parent, responsible adult or solicitor during investigation also needs to be addressed. The presence of a parent or responsible adult can provide protection to the child, ensuring that statements are voluntary and not improperly obtained or manufactured. As well, parental presence can reassure the child. But in addition a child needs advice. Parents or other civilian witnesses may well only be suited to the role of supportive observer, rather than being in a position to advise a child of his or her rights. As one report put it:

Most do not know what kinds of questioning are permissible, so that they do not intervene. They are usually unable to give the basic legal advice which a suspect who is being questioned requires; this includes appropriate responses to leading or unfair questions, indication of the significance of questions about intent, and when appropriate, refusal to answer questions (Youth Justice Coalition 1990, p.251).

Some parents may see their role as being to assist the police to put pressure on the child to confess. Parental presence is not enough to protect a young suspect's interests. Access to legal advice is also required. A lawyer is clearly appropriate for a more active role. Calls for a statutory right of suspects to legal advice have been many. In addition, substance should be given to this right by a requirement to inform suspects of this right and the establishment of publicly funded duty solicitors to ensure availability of legal advice. Legislation should also clarify the role of a lawyer during interrogation (Seymour 1988, pp.201-04; Youth Justice Coalition 1990, pp.250-53; Legislative Review Committee 1991, pp.73-5).

Arrest and custody

Arrest

Early in the investigative process a decision is made as to whether a suspect should be arrested. In theory, the arrest of a young suspect should not preclude release without prosecution. The decision to prosecute or to act informally by way of caution or panel will be discussed below. Common law powers of arrest have been considerably enlarged by statute. In all jurisdictions it may be open to the police to proceed by way of summons, and the policy trend is to encourage alternatives to arrest wherever appropriate. This trend is accentuated in the case of young offenders, and restrictions are placed on the power of arrest of children by police instructions or by statute in all jurisdictions. In New South Wales and Western Australia the alternative procedures include an attendance notice, a simple oral or written direction requiring a young offender to appear in court at a specified time.

Provisions in Victoria, Western Australia, Queensland and Tasmania

In Victoria the power to arrest children is governed by police standing orders and legislative restraints. By Standing Order 4.12, permission of a commissioned officer is required, if practicable, before arresting an offender under 17 years. Otherwise authorisation must be obtained before a juvenile is lodged in custody. Permission should be given only in extreme cases where it is thought that a summons would not meet the case. The Children and Young Persons Act 1989 s.128(1) provides that on the filing of a charge against a child, a registrar must not issue in the first instance a warrant to arrest unless satisfied by evidence on oath or affidavit that the circumstances are exceptional.

The practice in Western Australia was in the past heavily weighted in favour of arrest. In 1989 it was reported that some 74% of young people brought before Children's Courts in Western Australia were subjected to arrest (Lipscombe 1989, p.35), largely because of the time and resource consuming nature of issuing and serving summonses (Legislative Review Committee 1991, p.75). The solution proposed and ultimately adopted was the introduction of court attendance notices, which can be issued on the spot as an attractive alternative to arrest or summons.²³ It is police policy to promote the arrest option as one of final resort among a number of alternative strategies of oral warnings, written cautions, panel procedures and if prosecution is necessary, notices to attend court or summons. Departmental policy reserves arrest for serious offences where loss or destruction of

²³ *Child Welfare Act 1947 s.33(1).*

²⁴ The Fourth Schedule to the *Child Welfare Act 1947* lists serious crimes.

evidence is likely if the child is not arrested; to prevent a continuation or repetition of the offence; where it is necessary to ensure appearance in court and his or her identity is in doubt; or for Fourth Schedule offences.²⁴ The Legislative Review Committee had also recommended that the legislation should include provisions similar to the *Crimes Act 1914* (Cth), s.8A, that custody should be utilised only where there is good reason to believe that alternative mechanisms will not be appropriate (Legislative Review Committee 1991, p.76). The Committee also supported the suggestion of the Report of the Interim Inquiry into Aboriginal Deaths in Custody that police be required to provide the court with written reasons why it was necessary to proceed by way of arrest rather than summons or attendance notice. Neither of these recommendations were adopted.

In Queensland, *General Instruction 1.23* exhorts police to refrain from exercising the power of arrest where procedure by way of complaint and summons would suffice. Policy instructions issued by the Juvenile Aid Bureau refer to this and stress that summons should be used instead of arrest where possible, and particularly in the case of public order offences.²⁵ To discourage the use of arrest, the *Juvenile Justice Bill* will include, as well as a legislative direction that arrest is a measure of last resort, the alternative of an attendance notice.

There are no legislative constraints on the power of the police to arrest children in Tasmania, although in the Draft *Judicial Proceedings (Children) Bill*, clauses 9 and 12 contain restrictions. *Standing Order 109.4* currently provides:

- 1 Although police may have authority to arrest a child in a particular case, such shall be exercised only in extreme cases of delinquency or where it is believed that proceedings against the child by summons would be ineffective.
- 2 Where a child is arrested, the district supervision inspector or the division inspector shall immediately be informed of the circumstances by the arresting member.

This provision must, however, be read in the light of s. 27(9) of the *Criminal Code* which provides that the police have a duty to arrest in cases where they have the power to do so. In other words, in such cases they have no discretion in the matter.

Other states and territories

In the Australian Capital territory, lists of factors justifying arrest are included in the police general instructions and in the Children's Services Ordinance 1986 s.31. Section

34 provides that a police officer shall not charge a child with an offence at the police station unless satisfied that procedure by summons would not be effective. In New South Wales, proceedings against children must be by way of summons or attendance notice rather than arrest. Ordinary charge is only deemed appropriate if a serious offence is involved or if the violent behaviour of the child or the violent nature of the offence indicates that the child should not be allowed to remain at liberty.²⁶ This is in addition to the guidance in *Police Regulation Act 1899* rule 56b that arrest powers should only be used for minor offenders when it is clear that a summons will be insufficient to ensure the suspect's attendance at court. The *Juvenile Justice Act 1983*, (NT) s.26, provides that the Commissioner of Police may issue guidelines in relation to the arrest of juveniles, and s.29 states that a child is not to be charged at a police station unless procedure by summons will not be effective. In South Australia, Police General Orders require that permission of a commissioned officer be obtained before a child is arrested; if this cannot be done, the officer must be informed of the reasons for arrest.

Arrest rates of children

The arguments that favour procedures which avoid arrest of children are persuasive. Arrest and custody are inconsistent with the currently accepted aim of minimising stigma and reducing children's penetration into the juvenile justice system (Seymour 1988, p.215). In some jurisdictions, arrest can even result in circumvention of screening processes. How effective are internal police instructions and legislative measures in achieving the objective of encouraging reliance on procedures other than arrest? Evidence summarised by Seymour indicates that Australian police forces have "varied greatly" in their use of alternatives to arrest. In Victoria and South Australia, most Children's Court cases were initiated by summons rather than arrest, but in Queensland and Western Australia the reverse was the case (Seymour 1988, pp.216-17). Recent statistics from Queensland show the position has not altered much in that state, for in 1990-91, 90% of children prosecuted were the result of arrests.²⁷ In Tasmania no statistics are collected on arrest rates. More recent national comparative data show that Western Australia has the second highest juvenile arrest rate of all Australian states and territories and is exceeded only by the Northern Territory (Freiberg et al. 1988). In New South Wales there is some evidence of disparity in the use of court attendance notices between different areas (Youth Justice Coalition 1990, p.246). There appears to be some substance in the suggestion that it is entrenched police behaviour rather

²⁵ Juvenile Aid Bureau, Information Bulletin, 4/88.

²⁶ *Children's (Criminal Proceedings) Act 1987* s.8.

²⁷ Queensland Police Service, Information Bureau, Breakdown of Juvenile Involvement in Offences, 1990-91 (note: offences against good order not included).

than policy directives which determines juvenile arrest rates. Arrest is seen by the police as an important way of dealing with the situation, by establishing police authority and providing a deterrent (Seymour 1988, p.217; Youth Justice Coalition 1990, p.246). If this is so, it will be no easy matter to reverse the situation in such states as Queensland and Western Australia. It remains to be seen if the West Australian initiatives will achieve their aim.

Parental notification of arrest and proceedings

The importance of parental presence during police questioning, and the right of suspects to a phone call, have been discussed above. But there is also the issue of notification of parents of apprehension and possible proceedings. Even where it is impracticable or inappropriate for parents to be present during questioning, this should not remove responsibility from police for informing parents of interviewing, arrest and possible proceedings. The point was well put by the Legislative Review Committee (1991, p.75):

The principle of parental responsibility requires that parents be informed and involved at all stages of the justice process, otherwise parents become disempowered by a system that removes responsibility for their children from them, rather than constructively supporting their role.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1986 (the "Beijing Rules") require the notification as soon as possible of parents or guardians of the apprehension of a juvenile. What is the position in Australia?

Provisions in Victoria, Queensland, Western Australia and Tasmania

In Victoria there is a statutory requirement that a parent or guardian, if available, be present during any questioning or investigation of a young person where there is sufficient information to justify an arrest. Cautioning procedures require parental presence or notification of parents, but if the parent or guardian is unavailable and the matter is to be prosecuted, there is no requirement that parents be notified forthwith. When a child is taken into custody in Queensland, *General Instruction 9.167(a)* requires that in all instances the parent or guardian must, if practicable, be notified, and the *Children's Services Act 1965-1980* makes notification of court date mandatory. Routine Order 3-2.51 for the West Australian Police Force states that the parents or adult relatives of a child should be notified as soon as practicable after the child has been charged with an offence. The recommendation of the Legislative Review Committee that this be included in the legislation has not been adopted to date (Legislative

Review Committee, 1991, p.76). In Tasmania, Standing Order 109.5 (1) provides: "Where a child commits or is charged with an offence, both parents, if available, shall be informed of the fact and that proceedings may be taken against the child. Where neither of the parents is available, the guardian of the child shall be so informed." The *Child Welfare Act 1960* (Tas.), s.16(7) requires that a parent or guardian be warned to attend the court before which a child will appear.

Other states and territories

The most detailed provisions are to be found in the Australian Capital Territory, where the *Children's Services Ordinance 1986*, s.32 provides that a police officer who places a child under restraint shall take all reasonable steps to cause a parent of the child to be notified whether the parent resides in the territory or not, and to notify an "authorised officer". Section 35 requires parents to be informed of charges laid at a police station. In the Northern Territory there are similar provisions in the *Juvenile Justice Act 1983* s.30. In New South Wales *Police Instructions 31.18* requires steps to be taken immediately to notify a parent or guardian when a juvenile is taken to or attends a police station to be questioned.

Fingerprinting

In all jurisdictions, statutory provisions authorise the taking of a person's fingerprints after arrest. The provisions differ in detail and as to the time fingerprints may be taken. Restrictions on the fingerprinting of juvenile offenders may be imposed by legislation or by police instructions.

Provisions in Victoria, Queensland, Western Australia and Tasmania

In Victoria the legislative provisions are the most restrictive. The *Crimes Act 1958* s.464 (proclaimed on 1/1/90) provides that taking the fingerprints of a young person requires an order of a Children's Court, which must be satisfied inter alia that a fingerprint has been found, that there are reasonable grounds to believe that taking of the fingerprint would tend to confirm or disprove the young person's involvement, or that there is doubt concerning the young person's identity and the taking of fingerprints would dispel such doubt. A member of the police force must not take fingerprints of a child under 10 years, which is the age of criminal responsibility in Victoria. In Tasmania, the *Criminal Process (Identification and Search) Act 1976* s.3(1) merely provides that the power to fingerprint and photograph a person arrested and charged with certain specified offences does not apply to persons under 17 years of age. Queensland and Western Australia currently place no legislative restrictions on the statutory power to fingerprint. In Queensland, *General Instruction 4.80* states that fingerprints and interdigital prints of any child under

²⁸ Legislative restrictions are planned for the *Juvenile Justice Bill*.

17 are not to be taken unless the child is from 14 to 16 years of age and is in custody, charged with an indictable offence. In addition, if the child is under 14, he or she must be considered to be likely to “lapse into a career of vice and crime” and approval must be obtained from the commissioned officer in charge of the District, station or branch.²⁸ In Western Australia, police routine orders simply state that children of “tender years” may not be fingerprinted unless their offences are serious.

Other states and territories

Fingerprinting and photographing are legislatively controlled in the Australian Capital Territory and the Northern Territory. The *Children's Services Ordinance* 1986 (ACT), s.36 requires magisterial approval before a child's fingerprints are taken. The *Juvenile Justice Act* 1983 (NT), s.31 has a similar provision, but a member of the Northern Territory Police may also take the fingerprints of any juvenile in lawful custody who appears to have reached the age of 14 years, without magisterial approval. The same rules apply to photographing. In New South Wales, charging can only be accompanied by fingerprinting and photographing in the case of juveniles under 14 years after applying for an authorising order to the Children's Court, or when this cannot be done within 72 hours, to a justice.²⁹ The prints or photographs must be for purposes of identification. In South Australia the position is regulated by police general orders which require the approval of a commissioned officer in all cases where a suspect is under 16 years.³⁰

Police practice

Seymour stated that fingerprinting of arrested children was common in Queensland, the Australian Capital Territory and Western Australia (Seymour 1988, p.217). No recent published data on the incidence of fingerprinting and photographing were found, but the incidence of fingerprinting was explored in the current survey of young people.

Custody or release after arrest

In most states and territories there are provisions relating to the release or detention of children who are arrested. Normally detention should be in institutions administered by welfare departments.

Provisions in Victoria, Queensland, Western Australia and Tasmania

In Victoria, every person taken into custody for an offence must be released, granted bail, or taken before a justice or magistrate's court.³¹ The *Bail Act* 1977 applies to an application for bail by a child.³² If a member of the police force inquires into a case under s.10 of the *Bail Act* 1977, a parent or guardian of the child in custody or an independent person must be present.³³ Bail must not be refused on the sole ground that a child does not have any or adequate accommodation.³⁴ If the child does not have the capacity or understanding to enter into a bail undertaking, the child may be released on bail if the child's parent enters into an undertaking to produce the child.³⁵ If a child is remanded in custody by a court or bail justice, the child must be placed in a remand centre.³⁶

The custody, release and detention of children in Queensland prior to first court appearance is currently dealt with in the *Children's Services Act* 1965-1980 and the *Bail Act* 1980. Section 26(1) provides that until dealt with by a court or justice, a child may be released on police bail, and if not so released, the person having charge of the case shall arrange for his or her care. Grounds on which police may refuse bail to adults also apply to young people. In addition, bail may be refused to a person under 17 years when police are satisfied that the young person should remain in custody for his or her protection or welfare.³⁷ Pending initial appearance before a court or justice, the Director of Family Services may detain the child who is not released on bail, and may nominate a place where the child shall be kept until the child is dealt with, but unless safe custody cannot otherwise be provided for, the child shall not be detained in a prison or police lock-up.³⁸ In practice, in the metropolitan area at least, the arresting officer seeks authorisation from the Department of Family Services or Crisis Care to have the child detained at a centre such as John Oxley or Wilson, pending court appearance. Considerable concern has been expressed that young people are being detained in police watch-houses or lock-ups. For many police the demands of the job do not allow time to transport young persons to custodial centres for young people, particularly if they are arrested outside the metropolitan area of Brisbane. In such cases, refusal of bail on the grounds of their protection or welfare are

²⁹ *Crimes Act* 1900 s.353AA.

³⁰ South Australia Police General Order 3360/7.

³¹ *Crimes Act*, s.464A.

³² Children and Young Persons Act 1989 s.129(5)

³³ *Ibid.*, 1989 s.129(6).

³⁴ *Ibid.*, 1989 s.129(7).

³⁵ *Ibid.*, 1989 s.129(8).

³⁶ *Ibid.*, 1989 s.130.

³⁷ *Children's Services Act* 1965-1988 s.18(1)(b). This provision has been criticised by the Queensland Law Reform Commission, 1991, p.18.

³⁸ *Ibid.*, s.26(1)(a)(iii); see also *General Instruction*, 9.167(b).

self-defeating. Prohibition of detention in police facilities and abolition of the exclusion of a young person from bail on welfare grounds have been recommended, as have bail conditions for the release of young people that respond to the circumstances of the young (Queensland Law Reform Commission 1991, pp.19-21).

The position in Western Australia is governed by the *Bail Act* 1982, and under clause 2 of Part B of the Schedule a “child” has a qualified right to release on bail which includes the right to be released by a police officer. If a child is arrested for an offence and the child is eligible to be dealt with by a children’s panel, the child shall be released as soon as practicable or may be bailed until it is ascertained if the child is eligible.³⁹ If a child who is in custody is refused bail under the *Bail Act* 1982, or is not released on bail, then subject to a right to remand for observation, the child must be placed in a detention centre.⁴⁰

Special rules are provided for the release of young people in Tasmania. In addition to the general power of the police to release suspects arrested for a simple offence under the *Justices Act* 1959 s.34(1), the *Child Welfare Act* 1960 (Tas.), s.19(2) provides that if a child is not released or brought before a court or justice within 24 hours and it is not practicable to do so, a police officer may release a child on a recognisance. Section 19(5) states that relevant criteria to be considered by a police officer or justice include not only the securing of safe custody of the child but also the child’s interests in being removed from bad associations. Police *Standing Order* 109.8(4) also provides that in releasing a child on bail, arrangements shall be made for a parent or guardian to be present to take charge of the child on release, that the child shall be bailed and released into the custody of the parent or guardian concerned, and that the parent or guardian shall endorse an acknowledgment on the bail form and sign such an acknowledgment. Detention before first court appearance is governed by the *Child Welfare Act* 1960 s.19(7). A child arrested and not released by a police officer or justice may be placed in custody in such institution as the director may appoint, or in the charge of a person willing to receive him or her, unless it is certified that it is impracticable to do so or that, having regard to the serious nature of the charge or to other circumstances of the case, securing of custody is of first importance. A certificate under s.19(7) must be produced to the court before which the child is brought.⁴¹

³⁹ *Child Welfare Act* 1947 s.73(5),(6).

⁴⁰ *Ibid.*, 1947 s.33(3).

⁴¹ *Child Welfare Act* 1960 s.19(9).

⁴² (1986) 161 C.L.R. 278.

⁴³ *Crimes Act* 1958 s.464A(2).

⁴⁴ *Child Welfare Act* 1960 s.19.

⁴⁵ *Children’s Services Act* 1965-1980 s.26(1).

Duration of custody before first court appearance

The High Court in *Williams v. The Queen*⁴² has made it clear that at common law the police have no authority to detain suspects for questioning. Once arrested, a person must be taken before a justice as soon as practicable unless police bail is granted or there is a statutory right to detain for questioning. In most states and territories, Children’s Court legislation specifically requires the police to bring a child who has been arrested promptly before a justice or Children’s Court. In some places, time limits are set by legislation.

Provisions in Victoria, Queensland, Western Australia and Tasmania

In Victoria, police have statutory authority to question a person in custody or carry out investigations to determine their involvement within a “reasonable time” before taking the suspect before a justice.⁴³ In the case of a child, a reasonable time cannot exceed 24 hours. The *Children and Young Person’s Act*, s.129 provides that a child taken into custody must be released or brought before the court or a bail justice within a reasonable time, but not later than 24 hours after being taken into custody. In Tasmania there is no statutory power to detain a suspect for questioning, nor is there any absolute limit on the duration of custody of an adult before the first court appearance. A child must be brought before a court “as soon as practicable” and if it is not practicable to do so within 24 hours, the child must be brought before a justice. If this is not practicable within 24 hours, certain police officers have the power to release the child on a recognisance.⁴⁴ Neither Queensland nor Western Australia has a power to detain for questioning. In Queensland a child taken into custody must be brought as soon as practicable before a Children’s Court or justice.⁴⁵

Police practice

Information is sparse on how the power to release or detain children prior to their first court appearance is exercised. In Western Australia studies have reported that significant numbers of arrested young people are held in custody (Department for Community Services, Western Australia 1986, p.22; McDonald 1981). The current study provided an opportunity to explore the extent to which young people are held in police cells.

Police cautions and panels

Informal cautions

On the spot cautions are a regular feature of police activity. In most Australian jurisdictions they do not appear to be regulated in any way by police instructions or legislation. Nor do they find their way into official statistics. In New South Wales Police Instructions state

that an informal caution can be given in the case of trivial offences, either “on the run”, or at a station. Informal cautions are strictly limited by the specific exclusion of violent offences (including minor assaults), dishonesty and vandalism (Youth Justice Coalition 1990, p.242). Only in Western Australia are informal warnings sanctioned by legislation. The Child Welfare Act 1947, s.33(1)(a) allows a police officer to orally warn a child who is reasonably believed to have committed any offence other than a Fourth Schedule offence. The police policy statement indicates that informal verbal warnings may be administered on the street, on patrol or at the station. Informal cautioning is intended for minor offences, parents need not be informed and there is no formal recording mechanism. In contrast, in Tasmania informal cautioning appears to be outlawed by a provision in standing orders that a child shall not be cautioned for an offence unless such caution is first authorised by the division inspector.⁴⁶

Formal cautions and panels

Formal cautions are typically administered at a police station and authorised by a senior police officer. They normally result in a centralised record. They are regulated by standing orders or police instructions.

Provisions in Victoria, Queensland, Western Australia and Tasmania

In Victoria, whether or not a young person is arrested for an offence, a formal caution may be administered. A revised system of cautioning came into effect in 1991, replacing the Child Cautioning Program and the Shop Stealing Program. The new program is regulated by Force Circular Memo No. 90-11 cancelling Standing Order 5.3. Unless there are exceptional circumstances, the criteria to be satisfied are:

- sufficient admissible evidence to establish the offence;
- an admission of the offence;
- generally, no prior criminal history;
- the offender and the parent or guardian must consent;
- full circumstances of the offence must be known and any co-offender interviewed;
- no more than five victims or five separate incidents against one victim; and
- no more than one prior caution.

Second cautions can be given only in exceptional circumstances, and the length of time since the first caution must be considered. Only a station commander or an officer of or above the rank of sergeant can authorise or give a caution. A caution is to be administered on the

day of the interview if possible, and at a police station if practicable. A parent or guardian must be present and should be contacted to attend the station. The circumstances of the offence should be explained to the parent or guardian, the reasons for the offence discussed, and the formal caution read. A referral to a local Community Policing Squad or other agency may be made. If the parent or guardian cannot attend or be contacted, a notice to the parent must be handed to the child, advising the parent to contact the station within 24 hours to make an appointment to discuss the matter. If no contact is made, efforts should be made to arrange an appointment for a caution. Computer records of particulars of cautions are required to be kept.

In Queensland there is a cautioning program and, particularly in Brisbane, a dominant role is played by a specialist unit, the Juvenile Aid Bureau. Detailed instructions have been issued in relation to cautions. A first offender should normally be cautioned but cautions are not limited to first offenders. An admission of the offence is a prerequisite.⁴⁷ Outside the Brisbane, South Brisbane and Fortitude Valley Districts, the decision to caution is the responsibility of the officer in charge of each Police Station, but the matter may be delegated to the Juvenile Aid Bureau if there is one at the Station, or to the local Criminal Investigation Branch. In Brisbane, South Brisbane and Fortitude Valley either the officer in charge of the Police Station or the Juvenile Aid Bureau may make the decision to caution or prosecute. It is policy that where possible the actual cautioning or counselling be handled by Juvenile Aid Bureau staff. After initial contact with the child, it is imperative immediately to contact the parents to inform them of the circumstances if they are not already involved. The police officer should then obtain the facts about the offence and all available information about the child. Every endeavour is to be made to ensure the presence of a parent or guardian at the cautioning session or interview, and if they cannot be present, they must be notified. The interview should generally be held at police premises. An interview in three stages is advised: first, with the parents alone, then with the child alone, and finally with the parents and child together when the formal caution is administered. Records of cautions are kept.⁴⁸

The procedure for formal cautions in Tasmania is governed by Standing Orders which indicate that the purpose of cautions is to give effect to the principles in s.4 of the *Child Welfare Act 1960* by providing an alternative to court proceedings in appropriate cases; by giving proper and timely guidance and achieving a reduction in incidents of child offending; by providing support, encouragement, guidance and advice; and by establishing good relationships between the police and the child and his or her family.⁴⁹ Cautioning requires the authorisation of the division inspector.⁵⁰ The criteria to be addressed in the decision to caution or prosecute are

⁴⁶ *Standing Orders*, 109.6(4).

⁴⁷ Queensland Police Service, *General Instructions*, 9.500.

⁴⁸ See *General Instructions*, 9.504-9.505.

⁴⁹ Tasmania Police, *Standing Orders*, 109.6(3).

addressed by the standing order. *Standing Order* 109(5) provides that unless there are special circumstances a child shall not be cautioned where any of eight specified factors are involved: the offence is serious; the child was arrested; the child has previously committed an offence or been cautioned; guilt is in dispute; the child would benefit more from formal supervision by a child welfare officer; the child or parents will not cooperate with the cautioning process; proceedings would be in the best interests of the child, the community or the victim; or restitution of property is not made, or compensation of victims cannot if sought be obtained, other than through a court appearance by the child. *Standing Order* 109(6) provides that unless otherwise provided by this Order, or special circumstances exist to the contrary, a child, particularly one of tender years who has committed a minor offence and is a first offender, should be cautioned. Cautions are to be administered by an inspector in the presence of a parent, or where possible both parents.⁵¹

Western Australia combines the systems of cautions and panels. The Children's (Suspended Proceedings) Panel is governed by the *Child Welfare Act* 1947, ss.70-78. Children's panels consisting of a retired or serving police officer and an officer of the Department for Community Services have jurisdiction to deal with first offenders over the age of 10 years who are charged with certain less serious offences which are admitted, and which the child or parent elects to have dealt with by the Panel. The Panel may dismiss the complaint, order supervision for up to six months, or refer the matter to court.⁵² It is required, in dealing with the child, to have regard to the future welfare of the child.⁵³ Legislation for a system of police cautioning was introduced in December 1990 by the *Child Welfare Amendment Act* No. 2, 1990 and was proclaimed in August 1991. The new section 33(1)(a)(i) of the *Child Welfare Act* 1947 gives a police officer a discretion to give either an oral or a written caution. A written or formal caution may be given for any offence other than those in the Fourth Schedule of the *Child Welfare Act* 1947. Formal cautions are not limited to first offenders, and the policy statement indicates that police may caution more than once when there is a lapse of time between offences, the current or previous offence is minor or different, or the record of the child is not serious. In such cases two or three cautions are envisaged before a different course is taken. No admission of guilt is necessary, nor is compensation or restitution necessary before a caution may be administered. The

formal caution involves a verbal warning and the completion and distribution of a written form. The verbal warning can be administered at a police station, at the child's home, or on patrol but it is desirable to have parents present. A formal caution notice is handed to the child and a copy handed or sent to the parent or guardian as soon as possible. The Report of the Legislative Review Committee recommended the abolition of the Panel system on the grounds that a dual diversionary system is confusing and undesirable and that the Panel system alone, by diverting only 15% of offenders from court, had resulted in the formal justice system being used to deal with juvenile offending at a much higher rate than in other states in Australia, and thus it had not achieved its diversionary objectives (Legislative Review Committee 1991, pp.68-71). But the dual system has been retained, with legislative recognition of cautions and policy directives encouraging them.

Other states and territories

In New South Wales, the Northern Territory and the Australian Capital Territory procedures for issuing cautions are provided in police instructions. In the territories, cautioning is the subject of limited legislative controls.⁵⁴ In New South Wales there is no statewide system of panels for the diversion of young offenders from court, but there is at least one Community Aid Panel.⁵⁵ In South Australia there is both a system of police cautioning and panels. Before a complaint is laid against an offender, the matter must be referred to a screening panel.⁵⁶ The screening panel may refer the matter to the Children's Court, to a Children's Aid Panel, or may decide that no formal action need be taken, in which case there may be a recommendation for a caution by a police officer.⁵⁷

Practice

There has been a policy trend in Australia towards the diversion of young offenders from the courts by means of cautioning schemes and panels. There were two objectives behind such schemes: first, to deal simply and quickly with offenders whose behaviour did not justify court action; and second, to provide early remedial intervention for troublesome but "pre-delinquent" children (Seymour 1988, pp.224-7). It is not an easy task to determine whether either of these objectives have been achieved. Statistics of the number of children formally cautioned and referred to panels are available. However, such statistics

⁵⁰ Ibid., 109.6(4).

⁵¹ Ibid., 109.6(7).

⁵² *Child Welfare Act* 1947 s.74.

⁵³ Ibid., 1947 s.70(4). For a detailed description of Panels see Seymour (1988) at p.248.

⁵⁴ *Children's Services Ordinance* 1986 (A.C.T.) s.33; *Juvenile Justice Act* 1983 (N.T.) s.28(1).

⁵⁵ The report of the Youth Justice Coalition recommended against the extension of the panel system in New South Wales (1990, p.244).

⁵⁶ The system is governed by the *Children's Protection and Young Offenders Act* 1979.

⁵⁷ *Children's Protection and Young Offenders Act* 1979 s.28 (2a).

Complaints mechanisms

How effective are complaints mechanisms as a means of redressing malpractice in dealing with young people in individual cases and of addressing deficiencies in longstanding police practices? To be effective, complaints mechanisms must be accessible, impartial, expeditious, just to the police and the public, and effective. The need for an independent element at the receipt, investigation and determination stages of complaints has long been recognised (Australian Law Reform Commission 1975, 1978). Neutral territory for the receipt of complaints is clearly necessary, particularly for a young person who is perhaps more likely than an adult to have reservations through fear or scepticism about making a complaint to the police themselves. Community awareness of complaint mechanisms is also an important part of an effective scheme. The current study provided an opportunity to examine the extent of recourse to complaints mechanisms by young people who allege mistreatment by the police.

Provisions in Victoria, Queensland, Western Australia and Tasmania

Procedures for complaints against the police in Victoria are governed by the *Police Regulations Act 1958*. It provides that a complaint by a member of the public about the conduct of a member of the force may be made to another member of the force or to the Deputy Ombudsman. If made to a member of the force⁵⁹ the complainant must be advised that the complaint may be made to Deputy Ombudsman, and the Chief Commissioner must investigate the complaint unless it is considered trivial, vexatious or not made in good faith. Details of all complaints must be given to the Deputy Ombudsman in writing. If the complaint is made to the Deputy Ombudsman⁶⁰ it must, subject to a number of exceptions, be referred to the Chief Commissioner if it warrants investigation. Complaints that must be investigated by the Deputy Ombudsman include cases where the Deputy Ombudsman considers it in the public interest to investigate them himself, or when the conduct complained of is in accordance with established practices or procedures of the force and the Deputy Ombudsman considers that these practices or procedures should be reviewed. So primary responsibility for investigation of complaints lies with the Chief Commissioner and the work is usually done by the police internal investigation department. The Deputy Ombudsman has an overseeing role; as well as being informed of complaints made, he may request reports in writing on the progress of an investigation, must be given written reports of the results of the

do not necessarily indicate the proportion of offenders who, but for the introduction of cautioning schemes or panels, would have been referred to court. It may be that as a result of the use being made of official cautions and panels, cases are being officially processed which would not previously have entered the system (Seymour 1988, pp. 261-70). Similarly, a large proportion of cautions or panel disposals does not necessarily indicate low formal intervention rates. It is clear that care must be taken in interpreting rates of cautioning and panel disposal, and in comparing jurisdictions.

The New South Wales Youth Justice Coalition has reported that in Victoria some 60%⁵⁸ of young suspects are cautioned and in Queensland the figure is nearly 70%, while in New South Wales only 20% are formally cautioned. In New South Wales there is evidence of a use of cautioning that is arbitrary and uneven between different areas (Youth Justice Coalition 1990, pp.130, 243, 244). Statistics supplied by Tasmania Police indicate that in Tasmania only about 5% of young suspects are formally cautioned. Cautioning data should be looked at in the context of formal intervention rates. Up-to-date data are not available but, relying on Freiberg, Fox and Hogan's data, the following can be stated: Victoria and New South Wales have similar formal intervention rates, but despite increasing reliance on cautions in New South Wales, an offender is much more likely to end up in court than one in Victoria. Queensland has somewhat higher total intervention rates, but this is because of higher rates for cautions rather than for court appearances, which are similar to Victoria's and lower than New South Wales'. Western Australia has had a very high formal intervention rate and high rates of court appearances. It remains to be seen whether the diversion rate will increase as a result of the new cautioning scheme. Preliminary indications are encouraging, indicating that there has been a drop in the arrest rate and panel referrals, while the summons rate has remained static. Tasmania has had a relatively low intervention rate, but a very low cautioning rate.

There are strong arguments in favour of the recommendations of the Youth Justice Coalition for promotion of diversion by police through statutory recognition of informal and formal cautioning, policy endorsement, training and state-wide monitoring (1990, p.244). The criteria to be employed should be outlined in the legislation to assist principled and consistent decision making (Seymour 1988, p.278). Arrest should not preclude the use of a formal caution, and any ambiguity in this regard should be clarified.

⁵⁸ Data from the Information Bureau for 1990-91 showed 66% of juveniles dealt with were cautioned.

⁵⁹ *Police Regulations Act 1958* (Vic.) ss. 86L, 86M.

⁶⁰ *Ibid.*, s.86N.

investigation,⁶¹ and can then request further investigation of a complaint or conduct independent investigations.⁶² Disagreement between the Chief Commissioner and the Deputy Ombudsman can be referred to the Minister.⁶³ Disciplinary offences are heard either by the Chief Commissioner or the Police Discipline Board, comprising a magistrate, the Assistant Commissioner and a member of the public nominated by the Minister.

Queensland has a new system for dealing with complaints against the police. The monitoring of complaints was the responsibility of a police-specific body, the Police Complaints Tribunal, but this has been replaced by the Criminal Justice Commission with duties which include the investigation of complaints of misconduct by the police. A complaint may be made to the Complaints Section of the Criminal Justice Commission or, if it is made to the police, it must be referred to the Complaints Section.⁶⁴ The Complaints Section assesses all complaints, and recommendations as to investigation are made to the Director of Official Misconduct.⁶⁵ Investigations are either done by investigators of the Official Misconduct Division (police officers on secondment and civilian investigators), or may be referred to the Commissioner of Police for investigation by police officers. Reports of investigations must be submitted to the Chairman of the Criminal Justice Commission.⁶⁶

In Western Australia, complaints against the police may be made to the police, or to the "Parliamentary Commissioner" or Ombudsman. Primary responsibility for the investigation of complaints lies with the police and all complaints are referred to the Internal Investigations Unit. The Ombudsman has power to investigate a complaint against the police only after the Commissioner of Police has had reasonable opportunity to investigate the matter.⁶⁷ "Reasonable opportunity" is specified as 42 days.⁶⁸ As a matter of administrative arrangement, the Commissioner of Police sends a summary of all complaints to the Ombudsman and a report of the investigation. As a matter of practice, the Ombudsman may request the Commissioner to re-investigate a matter, to obtain more evidence, or to comment on a particular police procedure. On occasions the Ombudsman has made a report to the Commissioner on particular police procedures, interviewing of young suspects being an example.

The Tasmanian position is largely one of administrative arrangement rather than legislation. Under the *Ombudsman Act 1978* (Tas.), the jurisdiction of the Ombudsman is confined to matters of administration⁶⁹

and complaints of persons detained in custody.⁷⁰ Investigations of external complaints are primarily the responsibility of the police, and procedures are set out in a Procedures Manual. All complaints are referred to the Deputy Commissioner who informs the complainant in writing of receipt of the complaint and that the complaint will be investigated. The Deputy Commissioner decides whether the matter should be investigated at District level (in the case of minor complaints) or by the Internal Investigation Unit (serious complaints). All reports of investigations are forwarded to the Deputy Commissioner. A Central Complaints Register is kept of details of all complaints against police. The Ombudsman has no general power to oversee the investigation and reports of complaints. Although in theory the ombudsman's power to investigate complaints against the police is restricted, in practice some complaints are investigated. A flexible approach is adopted. In some cases complainants are referred to the Internal Investigations Unit, in others the complaint is made to the Unit on the complainant's behalf and a copy of the report is requested. On receipt of the report the Ombudsman may request the police to investigate the matter further, or may tell the complainant that the matter may be further investigated by the Ombudsman if required. On some occasions joint investigations have been conducted and separate reports written. The Ombudsman is also prepared to conduct a review into particular and accepted police practices.

Comment

Critics of investigations by internal investigation units point out the lack of persistence in investigations by internal units, delays and premature disclosure of charges, dissatisfaction with the lack of or quality of the reporting of findings, and lack of objectivity (Freckleton & Selby 1989, pp.16-20). External review has been criticised for the adoption of a purely casework-review response rather than a review of the policy implications of practices and procedures which may, in fact, have given rise to the dissatisfaction underlying individual complaints (ibid., p.29).

Reform of complaints mechanisms is a rather blunt instrument for achieving change in the treatment of young people by the police. Nevertheless improvements to review mechanisms could not only lead to increased satisfaction in individual cases of alleged police malpractice and an increase in public confidence, but also could result in external review becoming an informed and effective instrument of change of police practices and procedures. There is some indication that this is beginning to happen

⁶¹ Ibid., s.86O.

⁶² Ibid., s.86R.

⁶³ Ibid., s.86S.

⁶⁴ *Criminal Justice Act 1989* (Qd) s.2.28(2).

⁶⁵ Ibid., s.2.29

⁶⁶ Ibid., s.2.24.

⁶⁷ *Parliamentary Commissioner's Act 1971* (W.A.) s.14 (1a).

⁶⁸ Ibid., s.14(1b).

⁶⁹ *Ombudsman Act 1978* (Tas.) s.12.

⁷⁰ Ibid., s.18.

in some states. While there is some force in the argument that primary responsibility for investigating external complaints against the police should rest with the police, the Ombudsman, as an external review body, should be responsible for receiving, reviewing and where necessary investigating complaints. Where complaints reveal a problem with police practices and procedures, re-investigation, with a view to identifying and assessing those practices and procedures, should take place. To this end, legislation which clarifies the roles, responsibilities and powers of internal inquiry and external review bodies have been recommended (ibid., pp.26-34).

Summary and conclusion

The review of the institutional framework for young people/police relations revealed the following main issues:

On the subject of the police questioning of young suspects, all Australian jurisdictions were found to require the presence of adult witnesses, either by internal police regulations or by legislation. But considerable differences were found with respect to the categories of adult required to be present, the offences to which the provisions apply, and most importantly the investigative activities covered by the provisions. Claims were noted of non-compliance with the presence requirements, and of a widespread practice of obtaining preliminary statements in the absence of a parent or responsible adult. While courts are reluctant to admit admissibility evidence obtained in the absence of a parent or responsible adult (and it may be excluded on grounds it was involuntary, unfairly or improperly obtained), in the absence of a legislative provision of inadmissibility, it may be admitted. It has also been claimed that protection afforded by the rules is eroded by courts condoning the practice of requiring initial confessions to be repeated in the presence of a responsible adult. In any event, it is insufficient to rely only upon retrospective control of police questioning by exclusionary rules. Prospective statutory requirements for presence, drafted to cover preliminary questioning would appear to be necessary. The adequacy of existing provisions to ensure compliance with presence requirements is explored further in the discussion of the survey results.

Differences between jurisdictions in terms of the existence of a legal right to the presence of a lawyer were noted. Allegations that lawyers have been refused access to their clients and that clients have been refused the right to telephone a lawyer were referred to. It appears that a statutory right to the presence of a lawyer is necessary, as well as a statutory obligation to inform a person in custody of such a right. The issue of access to legal advice is explored in the current surveys.

There is a strong policy trend to discourage arrest and encourage alternative procedures, particularly in the case of young suspects. To this end court attendance notices have been introduced in a number of jurisdictions, exhortations have been made in legislation or police instructions to reserve arrest as a measure of last resort, and criteria for arrest have been stipulated. Recent statistical data on the effect of such changes on arrest rates were sought but were unavailable.

Requirements that parents or guardians be notified at least in relation to some aspects of police/youth encounters exist in each of the four states. However the requirements vary between jurisdictions, and the ideal of a clear requirement of parental notification of questioning, arrest, charge and caution is not met in all states.

Restrictions on the fingerprinting of young suspects exist in some jurisdictions. They are strongest in Victoria. The effect of such restrictions on police practice is considered in the discussion of the survey results.

Most jurisdictions have some special provisions relating to the granting of bail by the police to young offenders, and for their detention outside police facilities. Some jurisdictions have legislative restrictions on the duration of custody before first court appearance. The adequacy of existing provisions has been questioned, and recommendations made for a prohibition on detention in police facilities and for bail conditions which distinguish between young and adult offenders but which do not allow bail to be denied on welfare grounds. While Victorian legislation provides that bail cannot be refused because a young person has no or inadequate accommodation, the Queensland Law Reform Commission has recommended legislation which would go further.

Another strong policy trend in Australia has been to reduce court appearances for young people by diverting them to cautioning schemes and panels, but particularly to the former. Even "on the spot" oral cautions have received legislative recognition in Western Australia. There is also a clear and welcome trend towards articulating the criteria to be employed in principled and consistent decision making. Careful monitoring of such developments is necessary to determine whether policy objectives are being achieved.

The differences between mechanisms for dealing with complaints against the police in Victoria, Western Australia, Queensland and Tasmania have been described. The effectiveness of existing complaints mechanisms as a means of redressing malpractice in individual cases of police treatment of young people is questioned, and the possibility canvassed of further encouraging independent assessment of police practices and procedures with a view to achieving appropriate changes in the treatment of young offenders by the police.

3 The young people

by Christine Alder

Background

The NYARS terms of reference for this research called for a survey of juveniles covering four areas:

- 1 perceptions of police;
- 2 knowledge of legal rights in relation to apprehension and detention by police;
- 3 experiences of police/youth liaison programs and youth legal information services;
- 4 experiences of apprehension by police.

To this end a total of 383 young people were interviewed: 120 were approached and interviewed on the street or in public places (e.g. shopping malls); 115 in youth hostels and 148 in Year 11 classes in high schools. Similar numbers of young people were interviewed in each state: 97 in Queensland, 86 in Tasmania, 110 in Victoria and 90 in Western Australia.

The group consisted of roughly equal numbers of young women (46%) and young men (54%) who were predominantly 16 (41%) or 17 (30%) years of age. Almost 60% of the group were Australian-born with parents of an English speaking background. However, efforts were made to include young people from a diversity of backgrounds. Consequently 14% of the group were Australian-born with parents from non-English speaking backgrounds, 13% were Aboriginal or Torres Strait Islanders and the remaining 15% were born overseas. For the purposes of analysis in this report, these groups were collapsed into three categories:

- 1 Australian/English – young people who were born in Australia of parents with an English speaking background (n=228);
- 2 Aboriginal/Torres Strait Islander – young people who identified themselves as such (n=50); and
- 3 Born O/S or NESB – young people who were born overseas or whose parents were from a non-English speaking background (n=105).

In terms of their current circumstances, just over half (56%) were in full-time school, and close to a third (32%) were unemployed. While 11% were employed part-time,

very few (n=5, 1%) of the young people in this study were employed full-time. For the purposes of analysis, young people were divided into: “marginal” – those young people who were in neither full-time work nor full-time schooling (n=114); and “other” – all other young people (n=269).

In terms of their fathers’ employment, the young people in the sample came from a diversity of backgrounds; fathers of 25% were unemployed, 12% were in unskilled jobs, 27% were in skilled/semi-skilled jobs and 22% were in professional or managerial positions. A further 14% of the young people did not answer the question. The young people who were interviewed on the streets were slightly more likely (30%) than the other young people in the study (21% – youth hostel, 24% – school) to have a father who was unemployed. The young people in school were more likely to have fathers who were in professional or managerial positions (schools – 27%, hostels – 23%, streets – 14%). Close to half the mothers in all three groups of young people were not currently in paid employment (47% – street, 44% – hostel, 48% – school) and there was very little difference in the employment levels of those who were working. Overall, while there was a tendency towards the young people in schools being the most advantaged and those not in school being the least, the differences between the three groups in terms of parents’ employment and occupational status were not great.

Program involvement

Overall, 76% of the young people had had some type of involvement with police/youth programs. Fifty per cent had experienced a school visit by a police officer and 41% had been to a blue light disco. Young people in Queensland and Western Australia were more likely to be involved in these programs than young people in other states. Less than 10% of young people in Victoria had been to a police youth club compared to close to a quarter in Western Australia and over 30% in the other two states (Table 3.1).

Of those young people who had been involved in some way in a police program, 60% felt that the programs had not affected their thoughts about police officers. Twenty-five per cent thought that their involvement had resulted in more positive thoughts about police or had helped their understanding of police work. Only a very small proportion (1%) of young people felt that these experiences had led to more negative attitudes about police. The remaining respondents felt that there had been some effect on their attitudes, but were not sure about the nature of the change.

There were no statistically significant differences in program involvement for males and females (Table 3.2). As might be anticipated from their circumstances, marginal youth were less likely to have experienced a school visit or to be involved in Neighbourhood Watch. There were also statistically significant differences in the rates of participation

in police programs of young people from different cultural backgrounds. Young people who were born overseas, or who had parents who were born in non-English speaking countries, were less likely than other young people to be involved in the social group activities of blue light discos and police youth clubs. Aboriginal/Torres Strait Islander young people were the most likely to be involved in these programs, but the least likely to be involved in Neighbourhood Watch (Table 3.2).

Police contact

Overview

Just over a third (36%) of the young people in the study had asked the police for help at some time. Most (80%) had been stopped and spoken to by the police at some time, fewer (50%) had been taken to a police station, almost one-quarter had been “officially cautioned”, and a third of the young people claimed that they had been “roughed up” by police (Table 3.3). Of those taken to a police station, just over half (53%) were held in police cells.

Overall there does not appear to be any significant pattern of difference in the level and types of police contact across the states. Although the differences are not great, young people in Tasmania tend to be somewhat more likely to be stopped by police, and to be taken back to a police station. Again, while the differences are marginal, the young people in

Table 3.1: Per cent of young people in each state who had participated in specific police programs

Type of program	Qld (%) n=97	Tas (%) n=86	Vic (%) n=110	WA (%) n=90	All states (%) n=383
Blue light discos	51	28	27	61	41
BBQ/social events	8	6	6	3	6
Police/youth club	35	37	7	24	25
School visit	59	44	34	67	50
Neighbourhood Watch	20	6	17	23	17
Other	5	7	7	2	6

Any involvement n=292

NB: Percentages do not add to 100% since young people could be involved in more than one type of program.

Table 3.2: Per cent of specific groups (gender, cultural background, marginality) of young people who had participated in specific police programs

Type of program	Females (%) n=178	Males (%) n=204	Aust/English (%) n=228	Aboriginal Torres Strait Islander (%) n=50	/Born O/S or NESB (%) n=105	Marginal (%) n=114	Other (%) n=269
Blue light discos	40	42	42	60	29 *	37	43
BBQ/social event	7	5	5	4	9	6	6
Police youth club	21	29	28	44	11 *	22	26
School visit	53	48	54	54	41	30	56 *
Neighbourhood Watch	19	14	17	2	24 *	6	21 *
Other	5	6	6	-	8	6	5

* Chi-square (Pearson) significant below 0.05.

Queensland tend to have slightly higher levels of official cautioning, and lower levels of being held in police cells and of being roughed up by police (Table 3.3).

In general, the findings indicate that the police were more likely to be “heavy-handed” in their dealings with young men, Aboriginal youth and marginal youth. These groups were more likely than other youth to be stopped and spoken to by police, taken to a police station, strip searched or asked to remove pieces of clothing, and to report being “roughed up” (Table 3.4). This pattern is also evident in reported behaviours at the police station: boys, Aboriginal and marginal youths are more likely than other youths to report being yelled or sworn at, pushed around and hit by police (see Table 3.9).

Seeking assistance

The majority of the interviewees (64%) had never asked the police for help. While a somewhat smaller proportion of Aboriginal youth had asked for police help, there were no statistically significant differences on this variable in terms of gender, cultural background or marginality (Table 3.4). For those who had gone to the police for help, the reason most frequently (43%) given for seeking such assistance was a request for information regarding such things as the time or directions. However a third (32%) had gone to the police as victims of crime, and 35% to report a crime (Table 3.5).

Of those who had sought help, approximately half (53%) were satisfied with the assistance offered to them. On

the other hand, this means that almost half were not satisfied: this dissatisfaction was most often (56%) due to the perception that the police had not taken any action in response to the request (Table 3.6). Almost a third (30%) were dissatisfied because of the nature of the police response to them personally, that is, they felt that the police “didn’t respond nicely” to their efforts to call upon the police for help.

The questions from which these data are drawn were taken from a national survey of 2745 persons aged 14 years and over which was carried out for the Australian Institute of Criminology (AIC) (1988). The

Table 3.3: Per cent of young people in each state who reported specific types of police contact

Type of contact	Qld (%) n=97	Tas (%) n=86	Vic (%) n=110	WA (%) n=90	All states (%) n=383
Asked police for help	38	34	35	40	36
Stopped/spoken to by police	74	91	77	82	80
Officially cautioned	35	27	16	17	24
Roughed up	26	42	34	30	33
Taken to police station	56	66	39	42	50
If yes (n=192)					
Held in police cells	46	59	54	50	53 (n=192)
Total n=383					

NB: Percentages do not add to 100% as respondents could have reported more than one type of contact.

Table 3.4: Per cent of specific groups (gender, cultural background, marginality) of young people who reported specific types of police contact

Type of contact	Females (%) n=178	Males (%) n=204	Aust/ English (%) n=228	Aboriginal/ Torres Strait Islander (%) n=50	Born O/S or NESB (%) n=105	Marginal (%) n=114	Other (%) n=269
Asked for help	38	34	39	22	38	39	35
Stopped/spoken to	66	94 *	82	98	69 *	96	74 *
Police officially cautioned	16	30 *	25	34	15 *	30	21
Taken to police station	43	57 *	52	80	31 *	78	38 *
Held in police cells (n=192)	45	58	55	65	30 *	70	38 *
Strip searched/asked to undress	14	28 *	24	37	11 *	41	14 *
Roughed up	17	49 *	33	56	21 *	56	23 *

* Chi-square (Pearson) significant below 0.05.

proportion of young people in the AIC population is not reported, but the data can be presumed to contain a mixed-age range. A comparison of the findings of the AIC survey with the present study indicates that approximately equivalent proportions of people in the general population and in the youth survey have been to the police for help (30-40%). However, the youth respondents in the present survey were somewhat less likely (53%) to be satisfied with the help they received than was the general population (64-81%).

Stopped by police

A high proportion (80%) of the interviewees had been stopped and spoken to by the police (Table 3.3). Of these, all but 17% said that they had been stopped on the street (Table 3.7). While almost a third (31%) said this had happened once or twice, another third (33%) said this had happened "lots".

Less than 10% said they had been stopped in either their home, while in a car, in a hostel/refuge/squat, on public transport, or in a park/garden/beach area. Slightly higher proportions indicated that they had been stopped while in a public building such as a railway station (25%), or in a shopping mall (23%).

Consistent with being stopped on the street, a higher proportion (76%) of young people indicated that they were just "hanging out" when approached by police than referred to any other activity; 37% also indicated they were just "walking" when stopped. Another activity which 41% of the interviewees indicated they were involved in at the time of the police contact was drinking (Table 3.8).

Weekends were most frequently (38%) nominated as the time when young people were most likely to be approached. However, while only 17% specified weekdays, virtually a quarter (24%) made no distinction between weekends and weekdays.

Table 3.6: Per cent of young people who agreed with specific reasons for dissatisfaction with police response

<i>Reason</i>	<i>Agree (%)</i>
Took no action	56
Took wrong action	11
Didn't keep informed	13
Gave wrong information	0
Didn't respond nicely	30
Other	21

Total n=66 (those having sought help who were dissatisfied with police response).

NB: Percentages do not add to 100% as respondents could have specified more than one reason for dissatisfaction.

Table 3.5: Per cent of young people seeking police assistance for specific reasons

<i>Reason</i>	<i>Per cent of total sample (%) (n=383)</i>	<i>Per cent of those seeking assistance (%) (n=139)</i>
Never asked for assistance	64	-
Time/direction/information	16	43
As crime victim	12	32
To report crime	13	35
Other	8	23

NB: Percentages do not add to 100% as respondents could have specified more than one reason for seeking assistance.

Close to half (42%) of the interviewees reported that they were in a group when they were stopped by police. While only 11% specified that they were by themselves, just over a quarter (26%) did not distinguish between being by themselves or being in a group when they were most usually approached.

Some young people were more likely than others to be stopped by police: more boys (94%) than girls (66%), and more marginal youths (96%) than others (74%). Aboriginal youth were more likely than other young people to have been stopped, and young people from non-English speaking backgrounds were the least likely (Table 3.4). Almost all males (94%) and marginal youth (96%) had been stopped by police.

Taken to the police station

Half of the young people had been taken to a police station (Table 3.3). In general, of those young people who had been taken to police stations, few thought that the police had spoken nicely to them, tried to make them comfortable or in general treated them fairly (Table 3.9). On the other hand, the majority (70%) said that they were yelled or sworn at, and just over half (55%) said that they were pushed around, while 40% said that they were hit. Just over 40% also reported that they were asked to remove items of clothing.

Of the young people who were taken to police stations, half (53%, n=101) were held in police cells. One quarter of these young people said they were held for one to three hours, 11% for four to seven hours, 23% for eight hours, and 42% said they were held for more than eight hours. Close to half (48%, n=48) of these young people who were held in cells were held with other people, and of these young people almost half (n=25) were held in cells either with adults or with adults and other young people.

A third (33%) of the young people in this study reported that they had been "roughed up" by police at

some point and the majority of these young people (68%) identified a police station as the place where this had occurred. A similar proportion (67%) reported that they had been roughed up “on the street”, while a quarter (26%) said that it occurred in a police van. Less than 20% confirmed that this had happened to them in either a house or in another public building.

While a third of the young people who had had this experience with police did not tell anyone about the incident, 40% did tell their friends and 25% told an adult (most often a family member). Nevertheless, in most cases (85%) no formal complaint was made about the behaviour.

While over half (57%) of the young people who had been taken to a police station felt that the police had explained what was happening to them, in general the majority of these young people either did not have their rights protected by standing orders or legislation in their state, or were unable to avail themselves of these rights (Table 3.9). Less than 30% were told about their rights or were able to make a phone call, or believed that the police had attempted to contact a support person. Only one-third (35%) had an adult (other than the police officers) present while they were being questioned. Over half were fingerprinted (53%), and of these 22% had not been arrested. Marginal youth in particular had difficulties in this area. They were significantly less likely than other youths to report that the police tried to get a support person, and consequently they were less likely to have another person present while being questioned (Table 3.9).

Table 3.7: Per cent of young people who reported being stopped by police in specific locations

<i>Location</i>	<i>Never</i> (%)	<i>1-2 times</i> (%)	<i>3-5 (few) times</i> (%)	<i>5+ (lots) times</i> (%)	<i>Total</i>
In home	95	[5]	[8]	[2]	100%
Street	17	31	20	33	101%
Public building	75	9	7	9	100%
Car	93	4	[5]	[6]	100%
Hostel/refuge/squat	97	[1]	[3]	[3]	100%
Public transport	98	[2]	[1]	[3]	100%
Mall	77	7	5	11	100%
Park/garden/beach	92	3	[7]	[7]	100%
Total n=308					

NB: Figures in [] are frequencies, not percentages.

Perceptions of police

There were very few differences of opinion between the young people in each state in terms of their perceptions of police. Three-quarters of young people agreed that police need better training, that they use unfair methods to convict, and that they tend to believe parents rather than their children (Table 3.10). The only clear difference was that a higher proportion of the young people in Tasmania (64%) than those in other states (Qld – 48%, Vic – 44%, WA – 36%) agreed that the police should leave young people alone.

Overall, the young people did not have very strong feelings regarding either their level of respect for the way the police do their job (59% had either “mixed feelings” or “no opinion”), or the level of honesty of police compared to other people (66% had either “no opinion” or thought police were about as honest as other people). There were no significant differences across the states on these factors.

There were some differences between the findings of the present survey and those of the AIC (1988). While over half (54%) of the general population had great respect for the police, this was true for only 13% of the all-youth population in the present survey. Consistently, while the majority (79-84%) of the general population thought police were about as honest as most people, this was true for only 49% of the youth survey sample.

Another indication of attitudes or perceptions of police and their role was the response to questions regarding whether or not young people would go to police in circumstances when one might expect that they would, that is, when attacked by a stranger. In such circumstances

Table 3-8: Per cent of young people who reported specific activities when approached by police

<i>Activity</i>	<i>Never</i> (%)	<i>Sometimes</i> (%)	<i>Often</i> (%)	<i>Total</i>
Hanging out	24	39	37	100%
Fighting	77	20	3	100%
Drinking	59	25	16	100%
Graffiti	87	11	[6]	100%
Sport	86	9	4	99%
Walking	63	25	12	100%
Other	81	18	1	100%
Total n=308				

NB: Figures in [] are frequencies, not percentages.

young people most frequently (58%) indicated that they would first of all seek help from parents, relatives or friends: 18% said they would go to the nearest person and 12% to the police. Again there was very little difference between the responses of young people in different states (except, interestingly, that more young people in Tasmania said they would go to their friends first and fewer to their parents, than did young people in other states). These responses are probably reasonable given the age of the young people. Of more concern is the finding that when asked whether or not they would eventually report the attack to the police, 35% said that they would not.

Program involvement and attitudes towards police

The issue for this section of the research was whether or not there was any indication that involvement in programs or

social events organised by police facilitated more positive attitudes towards, and perceptions of, police. For this purpose, responses to the questions regarding attitudes towards police were scored and then summed to create an index with values ranging from 0 to 13, with a 0 score indicating the least positive, or most negative, attitudes and 13 the most positive. The index was then dichotomised into two categories on the basis of the distribution, to indicate those young people who, relative to the overall sample, had “less” and “more” positive attitudes towards police.

There was a statistically significant relationship between having experienced a police visit to a school or being involved in a Neighbourhood Watch program, and more positive attitudes towards police (Table 3.11). Of those who had had a school visit, a larger proportion (58%) expressed more positive attitudes towards police than those who had not (39%). An even higher proportion of young people involved in Neighbourhood Watch programs (75%) expressed more positive attitudes towards police than those who had not (43%). There was no

Table 3.9: Per cent of specific groups (gender, cultural background, marginality) of young people who reported specific experiences when taken to a police station.

<i>Experience</i>	<i>Females (%) n=76</i>	<i>Males (%) n=116</i>	<i>Aust/ English (%) n=119</i>	<i>Aboriginal/ Torres Strait Islander (%) n=40</i>	<i>Born O/S or NESB (%) n=33</i>	<i>Marginal (%) n=89</i>	<i>Other (%) n=103</i>	<i>All (%) n=192</i>
<i>Positive</i>								
Spoken to nicely	38	21*	29	15	36	20	34*	28
Try to make comfortable	29	17	21	20	27	19	24	22
Overall treated fairly	47	30*	40	20	48*	25	48*	37
<i>Rights</i>								
Told about rights	32	25	26	32	27	22	32	28
Explained what happening	58	56	58	50	61	40	71*	57
Police tried to get support person	29	28	28	22	39	20	36*	29
Could make phone call	25	18	25	10	21	19	23	21
Other person present while questioning	32	37	35	28	42	25	44*	35
Fingerprinted	46	58	49	70	48	71	38	53
Fingerprinted and not arrested	(n=35) 29	(n=67) 19	(n=58) 26	(n=28) 14	(n=16) 25	(n=63) 19	(n=39) 28	(n=102) 22
Held in police cells	45	58	55	65	30*	70	38	53
<i>Negative</i>								
Police yelled/swore	58	78*	66	85	64	79	62*	70
Police hit	22	52*	40	52	24*	57	25*	40
Police pushed around	34	69*	54	65	48	64	48*	55
Asked to remove pieces of clothing	34	47	45	40	30	49	35*	42

* Chi-square (Pearson) significant below 0.05.

Table 3.9a: Per cent of young people in each state who reported specific experiences when taken to a police station

<i>Experience</i>	<i>Qld (%) n=54</i>	<i>Tas (%) n=57</i>	<i>Vic (%) n=43</i>	<i>WA (%) n=38</i>	<i>All states (%) n=192</i>
<i>Positive</i>					
Spoken to nicely	43	19	16	32*	28
Try to make comfortable	28	16	23	21	22
Overall treated fairly	48	30	33	37	37
<i>Rights</i>					
Told about rights	28	33	21	26	28
Explained what happening	63	65	35	60*	57
Police tried to get support person	37	21	30	26	29
Could make phone call	20	23	14	28	21
Other person present during questioning	41	38	35	24	35
Fingerprinted	54	45	63	55	53
Fingerprinted (n=102) and not arrested	21 (n=29)	24 (n=25)	30 (n=27)	14 (n=21)	22 (n=102)
Held in police cells	46	60	54	50	53
<i>Negative</i>					
Police yelled/swore	65	67	81	68	70
Police hit	24	40	58	42*	40
Police pushed around	44	61	65	50	55
Asked to remove pieces of clothing	26	42	51	53*	42

* Chi square (Pearson) significant below 0.05.

Table 3.10: Per cent of young people in each state who agreed with specific statements about police

<i>Statement about police</i>	<i>Qld (%)</i>	<i>Tas (%)</i>	<i>Vic (%)</i>	<i>WA (%)</i>	<i>All states (%)</i>
Need better training	87	93	82	72	83
Use unfair methods to convict	78	81	76	79	78
Believe young people	22	26	22	24	23
Believe parents	76	84	67	72	74
Should leave young people alone	48	64	44	36	48
Total n=383					

relationship between having been to a blue light disco or to a barbecue or social event and the development of more positive attitudes towards police.

The impact of school visits on perceptions of the police appears to vary with the type of young people involved (Table 3.12). Such visits do not have a statistically significant impact for young people who are in school or who are now employed full-time. However, in the case of marginal young people, if they had experienced a police visit when they were in school, they were more likely (41%) than those who did not experience such a visit (17%) to have more positive attitudes towards police.

There was also a statistically significant relationship between a police school visit and perceptions of police for young people who were both born in Australia and had parents from an English-speaking background, and for Aboriginal youth.

Table 3.11: Participation in specific programs and young people's attitude towards police

Program		Attitude towards Police		Total
		Less positive (%)	More positive (%)	
Blue Light	NO	52	48	100% n=218
	YES	51	49	100% n=154
Discos	NO	51	49	100% n=349
	YES	59	41	100% n=22
BBQ's/ social events	NO	52	48	100% n=279
	YES	50	50	100% n=93
Police youth club	NO	61	39 *	100% n=184
	YES	42	58	100% n=187
Visit to school	NO	57	43 *	100% n=308
	YES	25	75	100% n=63

* = Chi-square (Pearson) significant below 0.05.

Table 3.12: Police school visits and attitudes of specific groups (cultural background, marginality) of young people towards police

Youth group	Attitude towards policr	Police – School Visit	
		No (%)	Yes (%)
Marginal	Less positive	83	59
	More positive	17	41
	Total	100% (n=72)	100% (n=39)
Chi-square=7.96, df=1, sig=0.003			
Non-marginal	Less positive	47	38
	More positive	53	62
	Total	100% (n=112)	100% (n=148)
Chi-square=2.35, df=1, sig=0.12			
Aust/Eng	Less positive	72	39
	More positive	28	61
	Total	100% (n=112)	100% (n=148)
Chi-square=23.75, df=1, sig=0.00			
Aboriginal	Less positive	83	54
	More positive	17	46
	Total	100% (n=23)	100% (n=26)
Chi-square=7.96, df=1, sig=0.003			
Born O/S or NESB	Less positive	37	45
	More positive	63	55
	Total	100% (n=62)	100% (n=42)
Chi-square=0.69, df=1, sig=0.4			

However, for young people who were either born overseas or who have parents from a non-English speaking background, the experience of a police visit does not have any significant impact on their perceptions of police. In general then, it appears that school visits have the greatest impact on perceptions of police for marginal young people once they have left school, for young people with Australian or English-speaking backgrounds, and for Aboriginal youth. They make least difference with the most conventional youth or youth from non-English speaking backgrounds.

Formal police contact and attitudes towards police

It is clear from the data that the type and level of formal contact with police has a significant impact on young people's attitudes towards police. In general, young

people who have experienced police-initiated contacts are less likely than those who have not, to express positive attitudes towards police (Table 3.13). For example, 27% of those who have been taken to a police station, expressed "more positive" attitudes, compared with 71% of those who have not. Similarly, 13% of those who had been taken to the police station and then held in cells express "more positive" attitudes to police, compared with 42% of those who had not been held in police cells. It also appears that the more serious the level of contact, the less likely it is that the young person will have positive attitudes: 42% of those who had been stopped expressed more positive attitudes, compared with 27% of those who were taken to the station and 13% of those who were held in cells.

The relationship between the type of contact and the level of positive attitudes towards police holds true for young people regardless of whether or not they are marginal. That is, when the figures in Table 3.13 were controlled for the marginality variable, the relationship

Table 3.13: Specific types of police contact and young people's attitudes towards police type of contact

		<i>Attitude towards police</i>		<i>Total</i>
		<i>Less positive (%)</i>	<i>More positive (%)</i>	
Asked for help	NO	57	43	100% n=235
	YES	41	59	100% n=136
		Chi-square=9.13, df=1, sig<0.005		
Stopped/ spoken to	NO	26	74	100% n=73
	YES	58	42	100% n=298
		Chi-square=24.09, df=1, sig=0.00		
Taken to station	NO	29	71	100% n=184
	YES	73	27	100% n=188
		Chi-square=72.27, df=1, sig=0.00		
Held in cells	NO	58	42	100% n=87
	YES	87	13	100% n=101
		Chi-square=21.06, df=1, sig=0.00		
Strip searched/ remove clothes	NO	43	57	100% n=285
	YES	82	18	100% n=82
		Chi-square=38.38, df=1, sig=0.00		
Officially cautioned	NO	45	55	100% n=282
	YES	75	25	100% n=88
		Chi-square=24.69, df=1, sig=0.00		
Roughed up	NO	34	66	100% n=247
	YES	86	14	100% n=125
		Chi-square=91.22, df=1, sig=0.00		

NB: Not all interviewees answered all questions.

between type of contact and attitude towards police remained significant. However, problems with the number of cases made it difficult to make such broad statements with respect to the cultural background of the young person. For example, of the 50 Aboriginal youth, over 60% had low opinions of the police, only one had not been stopped, and 80% had been taken to a police station. This meant that the number of cases in individual cells was too small to test for significance, or to establish a relationship for Aboriginal youths between level of contact and attitudes towards police. Overall, with respect to Aboriginal youth, one would have to conclude both that there is a high level of contact, and that in general their attitudes towards police are less, rather than more, positive. Conceptually this is consistent with the overall trend and pattern of findings that the greater the level of formal police contact, the less positive the attitude towards police.

There are also some interesting findings in regard to the relationship between type of contact and attitudes for young people who were either born overseas or who have parents from non-English speaking backgrounds. The relationship between whether or not they had asked police for help and their opinion of police is not as significant as it is for the total population. Young people with this type of background are just as likely to hold a high opinion of police whether or not they had ever asked the police for help. The proportion of this group of young people was significantly smaller than those with other cultural backgrounds who were taken back to the police station. Consequently, when looking at the impact on

attitude towards police of experiences at the police station, the number of cases was too small to establish patterns of significance. The combination of low levels of police contact and the generally high proportion of young people in this group with more positive attitudes towards police meant that the nature of the relationship between specific types of police contact and attitudes could not be tested statistically. However, the general pattern of less police contact and more positive attitudes that was evident in the initial Table 3.13 is again supported by the pattern of findings in this group.

Knowledge of legal rights and access to legal representation

While the majority of young people in this study (83%) knew that they had certain rights when stopped by the police, only a third (32%) said that they had ever tried to assert their rights. This is probably to some extent the result of their uncertainty about the exact nature of their rights: while 42% said they knew their rights, 82% said they needed more information (Table 3.14).

In this society the claiming and assertion of legal rights most often entails access to lawyers or legal representation. Only 27% of the young people in this study said that they knew of legal services for young people, and only 22% could name such a service (Table 3.14). However, most (87%) of the young people who had been to court (35% of the study group had been to court) had some form of legal representation: most often legal aid (59%) or the duty lawyer (20%). Nevertheless, most (74%) did not think that young people went to lawyers when they needed them. This is consistent with the belief of most of the young people (72%) that lawyers were difficult to understand and expensive (71%). A certain ambivalence to lawyers and their relationship to young people was also indicated by the mixed responses to questions regarding lawyers and young people: 59% felt that lawyers were unfair to young people; and 55% believed that lawyers didn't really understand young people (Table 3.14).

There were very few differences in the responses to these questions between young people from the different states. Clear differences were evident on only two items: fewer Tasmanian young people (52%) than those in other states (Qld – 79%, Vic – 74%, WA – 76%) agreed that lawyers cost a lot of money; Tasmanian youth were also more likely (73%) to agree that lawyers were unfair to young people (Qld – 49%, Vic – 56%, WA – 58%). However, these differences were not great, and did not appear to be part of any major pattern of state differences across the issue of access to legal rights.

Table 3.14: Percent of young people with knowledge of legal rights and services, and in agreement with specific statements about lawyers

	<i>Agreement with/ knowledge of (%)</i>
<i>Legal rights</i>	
Young people have rights when stopped by police	83
I know my rights	42
Need more information regarding legal rights	82
<i>Legal services</i>	
Know of legal services for young people	27
Can name legal services for young people	22
<i>Lawyers</i>	
Can people see lawyer free/cheaply?	67 (29% not sure)
Lawyers cost a lot of money	71
Lawyers difficult to understand	72
Lawyers unfair to young people	59
Lawyers don't understand young people	55
Young people don't go to lawyers when need	74

Total n=383

Summary and conclusion

Most of the respondents had been involved in some type of police/youth program – most frequently a school visit or a blue light disco. While young people themselves did not think these programs had an effect on their thoughts regarding police, the data suggest that involvement in school visits or Neighbourhood Watch is related to more positive perceptions of police. While many young had attended a blue light disco, there was no significant relationship between involvement in this form of activity and improved perceptions of police. Further, participation in school visits was only related to perceptions of police for some young people – for marginal young people after they had left school, for Australian-born/English speaking youth and for Aboriginal youth. This relationship was not significant for conventional youth or for youth from non-English speaking backgrounds.

There were no differences in the proportions of young men and young women involved in the different programs. However, as might be anticipated from their circumstances, marginal youth were less likely to have experienced a school visit, or to be involved in Neighbourhood Watch. Further, young people who were born overseas, or who had parents who were born in non-English speaking countries, were less likely than other young people to be involved in the social group activities of blue light discos and police youth clubs. Interestingly, Aboriginal/Torres Strait Islander young people were the group most likely to be involved in these particular types of social programs, but were the least likely to be involved in Neighbourhood Watch.

A third of the respondents had asked the police for help at some time. Most frequently this was for information such as time or directions. However, almost as many young people had been to the police as victims of crime or to report a crime. About half of those who had sought assistance were not satisfied with the response they received, in general because they did not think that any follow up action had taken place. This is a higher level of dissatisfaction than is suggested by studies of the general population.

A high proportion (80%) of the interviewees had been stopped and spoken to by the police. This most frequently occurred on the street or in public buildings (such as railway stations) and shopping malls. Consistent with the location of their contact with police, young people tended to report that they were just “hanging out” or “walking” when this occurred. They also reported that they were likely to be in a group, although many young people were by themselves. While weekends were frequently nominated as the time when they were most likely to be approached by police, many young people made no distinction between weekends and weekdays when nominating the time when they were most likely to be approached.

Aboriginal youth were more likely than other young people to be stopped, as boys were more likely than girls, and

marginal youth were more likely than others to be stopped. In fact, almost all males (94%), Aboriginal youth (98%) and marginal youth (96%) had been stopped by police.

Half of the young people had been taken to a police station. Few thought that the police had treated them with respect or had treated them fairly. In fact, of the third of the sample who reported being “roughed up” by police, well over half of these (68%) identified a police station as the location where this occurred. In most cases (85%) no formal complaint was lodged.

Overall, the description by the young people of their treatment at police stations is cause for grave concern. Not only were half (53%) held in police cells, many were held for eight or more hours and many were also held in a cell with adults, or with adults and other young people. The majority (70%) said that they were yelled or sworn at, just over half (55%) said they were pushed around, and 40% said they were hit.

In general, the majority were not able to avail themselves of their rights as set out in standing orders or legislation: less than a third were told about their rights, were able to make a phone call or believed that the police had attempted to contact a support person. Only a third had an adult (other than the police officers) present while they were being questioned, and over half were fingerprinted.

In general, the findings indicate that the police were more likely to be heavy-handed in their dealings with young men, Aboriginal youth and marginal youth. These groups were more likely than other youth to be stopped and spoken to by the police, taken to a police station, and to report being roughed up. At the police station these same groups were more likely to report being yelled or sworn at, being pushed around, and being hit by police.

It was clear from the data that the type and level of formal contact with police had a significant impact on young people’s attitudes to police. In general, young people who have experienced police-initiated contacts are less likely than those who have not, to have positive attitudes towards police. Further, the more serious the level of contact, the less likely it is that the young person will have positive attitudes.

While most young people (83%) knew that they did have certain rights when stopped by the police, many fewer knew what these rights were (42%) and most said that they needed more information (82%). Young people tended to think that lawyers were difficult to understand and expensive, and consequently the majority did not think that young people went to lawyers when they needed them. This was probably compounded by the tendency to believe that lawyers were unfair to young people, and that they did not really understand young people.

Across the issues addressed in this section of the research, (police program involvement, perceptions of police, formal police experiences, knowledge of rights and access to lawyers), there was no clear pattern of differences between the states.

4 The police

by Rob White

Introduction

The NYARS terms of reference identified the following four issues for consideration in the survey of police officers:

- 1 juvenile offending and problems for the police in dealing with these offences;
- 2 formal and informal procedures for apprehending juveniles and how these influence the relationship between police and juveniles;
- 3 police accountability for alleged harassment;
- 4 ways of improving relationships between police and young people.

This chapter presents the findings from a survey of 90 police officers – 30 each from Queensland, Tasmania and Western Australia. The police officers were individually interviewed using a standardised questionnaire (see Appendix 2). Permission to interview/survey police officers in Victoria was denied the researchers; the findings presented in this chapter therefore do not include data from that state.

The purpose of this part of the research was to speak with police officers in the different states about their opinions and experiences in dealing with young people. While a considerable body of Australian literature has been developed in recent years on the experiences of young people in their relationship with the police and the juvenile justice system generally (see Chapter 1), there have been very few occasions when the police themselves have been approached to participate in a study of this nature (an exception is the work of Cowie 1991). When studies have been undertaken, such as a recent survey of over 400 police officers in Western Australia (McNamara 1990), there is no guarantee that the findings will be released to the general public.

The dearth of research involving the police stems partly from the general reluctance of police departments to release material or provide interviews which may possibly evoke a negative reaction in the media or politically. Indeed, as the Fitzgerald Commission Report

into Possible Illegal Activities and Associated Police Misconduct in Queensland makes clear, the activities of the police are often bound by the constraints of “police culture”. As the Fitzgerald Report (1989, p.202) points out, an unwritten police code is an integral element of police culture: “Under the code it is impermissible to criticise other police....Any criticism which does occur is kept under the control of those who have authority and influence within the Force.” Generally speaking, those who do have influence and authority include not only senior department officials but also union representatives.

The defensiveness of many police in relation to “outsiders” asking them questions or probing into their activities is not only tied to adherence to the police code. It is also due to the fact that on the one hand, many police “enter an insular environment where they work and socialise almost exclusively with their colleagues” (ibid., p.201), and, on the other hand, “the community has unfavourable perceptions of police behaviour, attitudes, efficiency and competence” (ibid., p.210). In other words, there are often major tensions between the police and the wider community, stemming in large measure from the nature of police work itself.

From the point of view of the police, they are often powerless in the face of perceived public apathy and court reluctance to “enforce the law”, they are subject to problems of an undervalued status (both monetarily and in terms of public esteem), and they are constantly exposed to the pressures associated with the exercise of authority in stressful situations. In response, the police generally form tightly-knit networks among themselves as a means of social and psychological protection. This makes research into their affairs doubly difficult; first, in gaining the requisite permission to access and to speak with police officers, and second, in ensuring that what is said in the course of interview does in fact accurately reflect the attitudes and behaviour of the police officers involved. Given the amount of “bad press” regarding the police in recent years, it is understandable that certain kinds of information may not be forthcoming in situations

where such data could yet again be used to fuel public criticism.

Despite the limitations of research in such circumstances, it is important to recognise that for many police officers the chance to speak confidentially about their work, and in this case about their relationships with and perceptions of young people, is not one to let go begging. It gives them an opportunity to provide their side of the story, to indicate their problems and dilemmas, and to express their ideas on what could be done to improve the present situation. As the press report of the West Australian survey indicated, while some 40% of the respondents felt they had not been given sufficient training to work effectively with young people, and while most police officers believed young people did not respect authority, 88% of the officers nevertheless believed that it was important for the Police Department to try to improve youth relations (McNamara 1990). Overall, the survey indicated strong support for more positive and ongoing involvement with young people in the police officer's day-to-day duties.

The sample

Of the 90 police officers interviewed, 76 were male and 14 were female. Over 31% were under the age of 25, over 54% were under the age of 30, and approximately 22% were over the age of 40. They were thus predominantly young males.

Most of the officers (84%) were born in Australia, with 12% born in England and only 3% being born in non-English speaking countries. Approximately 73% of the officers had mothers or fathers born in Australia, 20% had

mothers or fathers born in England, and 7% had a mother or father born in a non-English speaking country.

A majority (62%) of the officers had been in the police service for over five years, 29% had served for between two and five years, and only 9% had been in the occupation for less than two years. Most of the respondents (70%) were constables, with 37% at the constable rank, 16% constables first class, and 22% senior constables. The rest of the sample included 9% sergeants, 14% detectives and 2% superintendents. The biggest areas of activity were in general duties (46%) and juvenile aid (19%), with the other officers involved in areas such as traffic, licensing, criminal investigation and community liaison.

Over half (56%) of the police officers were involved in activities for young people beyond that of street contact (see Table 4.1). Less than 20% of officers were involved in each of the specified police/youth programs (e.g. blue light discos, police/youth club). However, approximately the same proportion of officers was involved in each type of program.

Education and training

The survey attempted to ascertain the formal education and training, both pre-service and in-service, completed by the respondents. Very few (3%) of the officers had completed tertiary education courses, but a substantial proportion (38%) were currently enrolled in tertiary education programs of some kind. A few (10%) of the officers had undertaken trade courses or short training programs in recreation-associated areas such as boxing or swimming (Table 4.2).

A small proportion of the officers (14%) had had specific training in the areas of young people in conflict with the law, or young people at risk. A slightly higher percentage (23%) had completed some kind of in-service training on working with young people in general. However the majority (77%) of officers had no training in this specific area. Nevertheless, 64% of the respondents replied that there was not any specific information or

Table 4.1: Per cent of police involved in specific programs for young people

<i>Involvement</i>	<i>(%)</i>
Any involvement	56
Type of involvement	
Blue Light Disco	16
Police Youth Club	13
Neighbourhood Watch	13
Schools liaison	16
Other	17
Total n=90	

NB: Percentages do not add to 56% as officers could have been involved in more than one type of program.

Table 4.2: Education level of police officers

<i>Education Level</i>	<i>(%)</i>
Did not complete Year 12	20
Completed Year 12	29
Partially Completed Tertiary	38
Completed Tertiary	3
Other	10
Total n=90	100

training which they would like to have in regard to working with young people.

With the introduction of various Police Studies or Justice Studies programs at tertiary level around the country and the greater emphasis on qualifications and in some instances promotion-by-merit within police departments, it can be anticipated that more serving police officers will enter into or continue with their education and training. The content of this education and training, therefore, becomes a significant variable in terms of how they perceive their roles and perform their various work tasks.

General duties

Most (59%) of the officers who were interviewed worked in low and middle income inner city suburbs, with the remainder being located in low to middle income outer suburbs. Only 21% of the officers had no involvement in the communities where their stations were located. A majority of the police officers (62%) spent social time in these communities, 39% attended or were involved in sporting activity, almost a quarter (24%) lived in the local area, and 12% attended church or engaged in other activities in the suburbs within which they worked.

The survey was concerned with describing the general involvement that the police officers have with young people. Table 4.3 shows the proportion of people the police deal with who are aged 10 to 17 years. It is clear from this table that young people make up a significant proportion of the police clientele. For over a third of the officers (37%) young people make up more than half of the people they deal with and for a further 32% they make up between a quarter and a half.

However, when it comes to the proportion of their time spent in direct contact with young people, the figures suggest that administrative and other tasks make greater demands. Just over 40% of officers said that young

people take up less than 25% of their time, whereas only 20% of officers said that "paperwork" took up less than a quarter of their time (Table 4.4). Overall, the officers indicated that while working with young people took up substantial proportions of their time, other demands of "paperwork" took up more.

Contact with young people tends to be concentrated in particular periods. Most contact is during the afternoon (50%) and evening shifts (41%), that is, during school hours and the periods shortly after, and in the early to middle parts of the night (Table 4.5).

In terms of the locations where young people were thought by police to be of particular concern, the most frequently specified were malls (53% of officers) and shopping centres (60% of officers) (Table 4.6). These are places where young people are especially visible to the general public, as well as to business people and consumers generally.

Table 4.4: Proportion of time spent with young people and on "paperwork": police response

<i>Proportion of time</i>	<i>Young people (%)</i>	<i>Paperwork (%)</i>
None	4	-
Less than 25%	41	20
Between 25 and 50%	29	42
Between 50 and 75%	18	26
Over 75%	7	11
Total n=90	99	99

Table 4.3: 10 to 17-year-olds as a proportion of people dealt with by police

<i>Proportion of 10 to 17-year-olds</i>	<i>Police reporting (%)</i>
None	1
Less than 25%	30
Between 25 and 50%	32
Between 50 and 75%	19
Over 75%	18
Total n=90	100

Table 4.5: Per cent of police who reported particular shifts as more likely to involve contact with young people

<i>Shift</i>	<i>(%)</i>
Morning	10
Afternoon	50
Evening	41
Night	26
Late Night	9
Total n=90	

NB: Percentages do not add to 100% as officers could have reported more than one shift.

Table 4.6: Per cent of police who nominated specific areas as those where young people are of particular concern

Area	(%)
Pubs	32
Malls	53
Shopping centres	60
Beaches	9
Public housing estates	21
Discos	21
Football/cricket grounds	17
Other	29
Total n=90	

NB: Percentages do not add to 100% as officers could nominate more than one area.

Table 4.7: Per cent of police in each state who nominated specific groups of young people as more difficult

Group	State			All states n=90 (%)
	Qld n=30 (%)	WA n=30 (%)	Tas n=30 (%)	
Aborigines/TSI	47	37	10	31
Street kids	47	57	37	47
Young men	30	3	17	17
Young women	7	0	10	6
School kids	3	3	7	4
Gangs	57	47	7	37
Other	23	7	10	13

NB: Percentages do not add to 100% as officers could nominate more than one group.

Police/youth relations

Three-quarters of the respondents did not find young people in general particularly difficult to deal with. However, a similar proportion (76%) did single out specific groups of young people as being more difficult to deal with than others: "Street kids" were specified by almost half (47%) of the police and almost 40% nominated gangs. Aboriginal and Torres Strait Islander youth were the third most frequently specified group with almost a third (31%) of officers nominating them (Table 4.7). All three of these groups are particularly "visible" in the public domain of the streets, and each in its own way is portrayed in the media and in popular culture as being in some way or another "threatening" to the mainstream society. Queensland and West Australian police were more likely than Tasmanian police to specify Aboriginal youth and gangs as difficult.

In terms of age, 39% of the police replied that young people between 13 and 15 years were more difficult than others to deal with, and 29% pointed to the 16 to 18-year-old age group. A further 29% did not nominate any one particular age group of young people as being of particular concern.

Asked why they thought some young people were particularly difficult to deal with, 43% of the police officers referred to general misbehaviour and lack of discipline, 13% spoke of family problems such as lack of discipline and no control over offspring, and a small number of officers made reference to cultural gaps between themselves and the young people, particularly Aboriginal

Table 4.8: Police use of specific activity options in dealing with young people: police responses

Activity	Use with less than 25% of young people (%)	Use with 25% or more of young people (%)	Total n=90 (%)
Information	54	46	100
Assistance	46	54	100
Warning	38	62	100
Move on	50	50	100
Take name	45	55	100
Take home	80	20	100
Send home	71	29	100
Informal questioning	30	70	100
Station	70	30	100
* Formal caution (n=60)	67	33	100
Summons	75	25	100
Arrest	65	35	100
Search	70	30	100

* W.A. sample not included as formal caution option not available to police at the time of the study.

young people. Almost 29% of the respondents did not provide an explanation.

Police engage in a wide range of activities in their dealings with young people, from providing information through to arrest. A considerable proportion of police work involving young people is of a "routine" nature. That is, it is concerned with providing information, assistance, warnings and telling young people to move

on (Table 4.8). By way of contrast, the more “serious” aspects of police work, including arrest, undertaking searches and issuing summonses and cautions involved a much smaller proportion of the contacts between young people and the police. This finding is important in terms of the relationship between media “moral panics” regarding youth crime, and the actual interactions between the majority of young people and the police.

Table 4.9 explores the factors which influence police officers’ decisions to deal informally with young people. The information provided on this question establishes that administrative considerations (e.g., amount of paperwork), the social background of the young people (e.g., coming from a “good home”) and aspects of the administration of criminal justice (e.g., court decisions and processes) are perceived by the police as having little influence in their decisions to deal formally or informally with young people. The two factors which were considered by virtually all officers to be very important or crucial to their decision were the degree of cooperation shown by the young people (96%), and the seriousness of the offence (97%). Almost as many officers (89%) also thought a young person’s attitude was an important factor in this decision. In other words, police use of discretion is not only a product of the nature of the offence but is also very much influenced by the nature of the direct interaction between young people and themselves.

The interactions between young people and the police are in turn shaped by the general attitudes of young people towards the police officers. In response to a question on the proportion of young people who have respect for authority and the police in general, 44% of the officers replied that a few or very few did show such respect. However, 32% felt that about half the young people did have respect for authority and the police, while a further 24% thought that most or nearly all young people did respect the law and its officers. There was very little difference between the perceptions of

Table 4.9: Importance of specific factors in police decision to deal informally with young people: police responses

Factor	Importance of factor		Total n=90 (%)
	None/little (%)	Very/crucial (%)	
<i>Young person</i>			
Degree of cooperation	4	96	100
Attitude	11	89	100
Good home	76	24	100
Previous involvement	24	76	100
<i>Offence</i>			
Seriousness	3	97	100
No. of young people involved	66	34	100
<i>Administrative</i>			
Paperwork	89	11	100
Dissatisfaction with court	69	31	100
Other	83	17	100

Table 4.10: Police perceptions of the number of young people who have respect for authority and the police, by the number of young people dealt with by officer

Number of young people believed to have respect for authority & police	Police contact		All police (%)
	Less than 50 young people (%)	More than 50 young people (%)	
Very few	46	42	44
About half	27	35	32
Most	27	23	24
Total	100%	100%	100%
	n=33	n=57	n=90

officers with different levels of contact with young people (Table 4.10). The respect shown by young people in their interaction with the police will influence the nature of that interaction and the response of the police to the activities and behaviour of the young people.

The behaviour of young people towards police will also have some impact on police responses. Most of the police (98%) said that they had been assaulted or harassed by young people in the course of their work. While close to half (46%) of the officers who reported harassment said this happened “often” or “some of the time”, just over half (55%) reported that it happened “not very often” or “hardly ever”. The kinds of harassment most commonly referred to included verbal taunts (73%), being shouted at

Table 4.11: Per cent of police in each state who reported specific types of abuse by young people

Type of abuse	State			All states n=90 (%)
	Qld n=30 (%)	WA n=30 (%)	Tas n=30 (%)	
Verbal taunts	73	80	67	73
Shouted at	80	63	60	68
Swearing	80	73	33	62
Kicked	43	30	33	36
Punched	67	43	47	52
Thrown object	57	27	0	27
Assault weapon	33	7	7	16

NB: Percentages do not add to 100% as officers could have reported more than one type of abuse.

Table 4.12: Police use of force with young people: police responses

	State			All states n=90 (%)
	Qld n=30 (%)	WA n=30 (%)	Tas n=30 (%)	
Personal use of force	77	83	87	82
Too much force used by some officers	57	47	67	57

(68%), and swearing (62%). Fewer officers reported being assaulted with a weapon (16%), having an object thrown at them (27%) or being kicked (36%), although a majority (52%) did say that at some time they had been punched by a young person (Table 4.11). In general, Queensland police were more likely than those in the other two states to report most forms of abuse. The relatively minor forms of verbal harassment reported by police in all states would seem to relate to the fact that youth/police interactions frequently take place “on the street” where young people are more likely to congregate in groups and to be both visible and anonymous at the same time.

Given the nature of arrest and apprehension, and of the general relationship between young people and respect for authority, it is not surprising therefore that 82% of the police reported having to apply force to a young person at some stage. There was little difference

across the states on this issue (Table 4.12). In almost every case, the officer explained that the use of such force was for self-defense or in response to resisting arrest. Interestingly, a small number of officers also responded by saying that they also applied force in order to restrain the young people from hurting themselves.

While usually denying personal involvement, a majority of the police officers (57%) did agree that too much physical force was sometimes used in dealing with young people. While the WA police tended to be less likely to consider too much force had been used, overall there was very little difference between the states on this dimension (Table 4.12). This was generally explained in terms of the attitudes and actions of the young people (e.g., openly defiant, drunk, under pressure from peers); the structural conditions pertaining to

police work (e.g., stress and frustration, lack of human resources, instructions from above to clean up the streets); and the personal qualities of the particular police officers involved (e.g., inability to relate to young people, racism, inexperience). By and large such “over-stepping of the bounds” was explained in the context of the use of justified force as part and parcel of normal or routine police work.

Only 28% of the officers reported that they had had a formal complaint made against them by a young person. In instances where young people have made allegations of too much or unjustified force, the police felt that this was mainly a problem relating to the young people, rather than something for which they were responsible. For example, many officers reported that such allegations were made by young people as a means to discredit the police, because they were not aware of how much force can be used legally in contact situations, or that it was simply an attempt to justify the bad behaviour on the part of the offender. A couple of officers also mentioned they felt that such allegations stemmed from adult pressure on young people to make a complaint, or that agencies such as the Aboriginal Legal Service encouraged young people to do so. Rarely did any police officer refer to the substantive claims being made, or to the possible “guilt” of the police officers against whom such a claim had been made.

After contact, and in cases where the police have had to intervene officially, there are a number of rules and procedures guiding the police in the processing of the young person at the station. The majority of the police (82%) believed that the young people had the right to make a phone call, and 98% agreed that they had the right to have a third person present during processing or questioning. In most instances in the previous work week, a third person, usually a parent or justice of the

Table 4.13: Stage at which young people have the right to legal advice: police responses

Stage	(%)
Before questions asked	26
After arrival at station	12
After formal charge	20
After police interview	3
After parents contacted	18
Other, e.g. at any time	20
Total n=90	99

Table 4.14: Police perceptions of the number of young people with whom they have contact who know their legal rights, by state

Number of young people who know their rights	Police response			
	Qld (%)	WA (%)	Tas (%)	All states (%)
Very few	10	23	10	15
A few	23	13	50	29
About half	13	23	37	24
Most	47	33	3	28
Nearly all	7	7	0	4
Totals	100 n=30	100 n=30	100 n=30	100 n=90

There was a wide variety of responses to the question regarding what each police officer saw as the main issues or problems in police/youth relations today. The two largest sets of responses related to the lack of respect by young people for the law, police and the courts (28%), and problems of communication between young people and the police (24%), especially in relation to there not being enough time available for police officers to talk with young people in a non-threatening atmosphere. A further 16% of police officers commented that problems stemmed from lack of parental discipline and control over children. The officers also spoke of problems relating to the police force itself (9%), including such things as lack of police powers and training, and a lack of understanding by the police on how to handle situations involving young people. The justice system, in particular the failure of the courts to provide strong enough punishment of offenders, featured in the replies of 8% of the officers. Other answers provided by the respondents included such things as youth unemployment, young people having nowhere to go, alcohol, lack of discipline in the education system and the impact of government “hand-outs” on the behaviour and attitudes of young people.

There was similarly a wide range of responses to the question regarding what could be done to improve the relationship between young people and the police. The biggest response by far (33%) was for further initiatives in the area of “community policing”. This included setting up “police in schools” programs, blue light discos, youth clubs, regular networking with non-government agencies and the Department for Community Services, and encouraging greater community involvement in youth centres and programs. Other officers focused on parents as the main area where more work was needed, particularly with respect to discipline (13%). Suggestions were also made regarding police work (13%), with the main concerns being to ensure that the more experienced police officers deal with young people, and that police training relating to young people be offered and include areas such as interpersonal skills, listening skills and conflict resolution. Other suggestions for improving the relationship between police and young people included raising the drinking age, making more police available and increasing their powers, providing better legal education for young people, and demanding that the courts make juveniles more accountable for their actions.

peace, was reported to be present during questioning of the young person.

As Table 4.13 shows, however, there was some uncertainty regarding the stage at which young people have the right to legal advice in their interaction with the police. The diversity of the answers to this question appears to indicate either confusion regarding the actual legal answer to the question, or different interpretations of such terms as use of discretion, type of questioning involved and so on.

In terms of police perceptions of the legal knowledge of young people, 68% of respondents felt that about half or less of the young people with whom they came into contact did know their legal rights. Only 32% of the police officers felt that most or nearly all of the young people knew their legal rights (Table 4.14). Nevertheless, most officers (80%) said they provided young people who had been arrested with information regarding their legal rights.

Summary of findings

Most of the police officers interviewed for this research were under the age of 30 and were Australian-born males. The majority of these officers were involved in activities in the community in which they were stationed, and over half had contact with young people beyond their street contact. However, fewer than 20% were involved in specific community-based police youth programs. Very few (3%) had completed tertiary education, although close to 40% were currently enrolled. Most (77%) had no specific training of any sort on issues concerning youth.

Young people made up a significant proportion of the people with whom police dealt. Overall the officers indicated that while working with young people took up a substantial proportion of their time, demands of “paperwork” took up more.

Police officers indicated that most of their contact with young people occurred during afternoon and evening shifts, and they most frequently nominated malls and shopping centres as the areas where the activities of young people were of particular concern.

While three-quarters of the respondents did not find young people in general difficult to deal with, many did specify “street kids” and “gangs” as particularly difficult. Aboriginal youth were the third most frequently nominated difficult youth group, particularly by Queensland and West Australian police. While slightly more officers nominated 13 to 15-year-olds as more difficult than other age groups, overall no specific age group stood out as especially difficult for most officers.

The most frequently offered explanation for why some youth were particularly difficult was by reference to the young person’s general misbehaviour and lack of discipline. Other explanations included family problems and cultural gaps between the officers and the youth (especially in the case of Aboriginal youth).

Most police contact with young people involved such activities as providing information, assistance, warnings and telling young people to move on. The more “serious” aspects of police work, including arrest, undertaking searches and issuing summonses and cautions, involved a much smaller proportion of the interactions between young people and police.

The factors most frequently specified by police officers as influencing their decision to deal formally or informally with young people were the degree of cooperation shown by the young person, and the seriousness of the offence. Almost as many officers thought that the young person’s attitude was also an important factor in this decision.

Over half the police officers believed that about half or most young people respect the law and its officers.

However, that left just under half of the officers who thought that few or very few young people had such respect. The officers’ observations regarding the respect of youth for the law is probably influenced by their experiences of youth attitudes and behaviour towards them as individuals. Virtually all (98%) of the officers said that they had been assaulted or harassed by young people in the course of their work, although just over half of these reported that the harassment did not happen all that often. The kinds of harassment most commonly referred to included verbal taunts, and being shouted and sworn at. Fewer officers reported assaults with a weapon, although a majority (52%) said that at some time they had been punched by a young person. In general, Queensland police were more likely than those in the other two states to report most forms of abuse.

Most police officers (82%) reported having to apply force to a young person at some time. There was very little difference across the states on this issue. In almost every case, the use of force was explained as a form of self-defence or as a response to the young person resisting arrest.

Many police officers (57%) felt that too much physical force was sometimes used in dealing with young people. This was most often explained in terms of the attitudes and actions of the young people, the structural conditions of police work, and the personal qualities of the particular police officers involved. However, only 28% of the officers reported that they had had a formal complaint made against them by a young person. Complaints were most often explained as an effort by the young person concerned to discredit the police or to justify their own behaviour. A few officers also felt that such allegations stemmed from adult pressures on young people to make complaints, or that agencies such as the Aboriginal Legal Service encouraged young people to do so.

Virtually all officers believed that young people had the right to make a phone call and to have a third person present during processing and questioning. However, there was some uncertainty regarding the stage at which young people have the right to legal advice. Only a small proportion of officers felt that most of the young people with whom they came in contact knew their rights, and the majority said that they provided young people who had been arrested with information regarding their legal rights.

Officers identified a wide range of issues which they believed were the main problems in police/youth relations. The issues most frequently raised were the lack of respect by young people for the law, police and the courts, and problems of communication between young people and the police.

5 Lawyers, legal advocates & legal services

by Ian O'Connor

Introduction

The NYARS terms of reference identified the following three issues for consideration in the legal advocates survey:

- 1 perception of police procedures for apprehending young people, including evidence of harassment of young people by police;
- 2 availability of information and support for young people who are questioned or detained by police;
- 3 attitudes to existing police youth liaison programs.

To this end three surveys were conducted. The first survey was of lawyers and legal advocates, the second was of community legal centres, and the third was of Legal Aid Commissions.

This chapter reports the results of these surveys. The lawyer/legal advocate survey examined lawyers' perceptions of the treatment of youth in the legal system. It specifically considered their perceptions of police/youth relations, the investigation of offences involving juveniles, the adequacy and effectiveness of existing legal rights and the availability of legal aid. The involvement of lawyers/legal advocates in police programs and the perceived success of these programs is reported. Suggestions for alternative means of conflict resolution, for improvement of police youth relations, and for the protection of legal rights are detailed.

The surveys of legal aid services examined the availability of legal services for youth, the involvement of services in programs with police to enhance the legal knowledge of youth, and recommendations to enhance police/youth relationships.

Methodology

Lawyer/legal advocate survey

In each state lawyers and legal advocates who had considerable experience with children in conflict with police and the criminal law were interviewed. (The

interview schedule is attached as Appendix 3.) Seventy-nine lawyers and legal advocates were interviewed. Sixty-nine interviews are included in this analysis. (Ten interviews of legal advocates in Western Australia were lost in transit between Western Australia and Queensland where they were to be processed.) All but six of the 69 respondents included in the analysis were lawyers. The six non-lawyers were youth workers with extensive involvement with youth in conflict with the police and criminal justice system.

Of the 63 lawyers interviewed, the majority (29) were in private practice. (Most of the private practitioners appeared as duty lawyers in the Children's Court.) There were 19 salaried Legal Aid Commission lawyers, nine community legal centre lawyers and four specialist young people's lawyers. Forty-five of the respondents were female.

Those interviewed had extensive experience with youth clients. Over half (53%) of the respondents indicated that at least a quarter of their practice was concerned with people under 18 years of age, and 31% of respondents indicated that at least 50% of their practice was concerned with young people.

Community Legal Centres

Sixty community legal centres throughout Australia were forwarded a survey on the services provided to youth and their perception of police/youth issues. Thirty-one responses were received. The survey is included as Appendix 4.

Legal Aid Commissions

A survey was forwarded to each state body responsible for the delivery of legal aid. Responses from each Commission (except Western Australia) were received. The survey is included as Appendix 5.

Lawyers and legal advocates

Respondents were asked a series of questions that focused on their knowledge of young people's experience with

police in three situations. These situations were: seeking assistance from the police; contact with police in public places; and contact with police during investigation of an offence or alleged offence.

Police assisting young people

More than half of those interviewed were unable to respond to the questions which focused on police assisting young people (Table 5.1). No doubt this is mainly due to the fact that lawyers' contact with young people is primarily related to their conflicts with police and the criminal law. Of those who did respond, more than half had some experience with young people reporting being assisted after family abuse or after an assault by a non-family member. With regard to questions concerning help with family or peer conflict, and help to find emergency accommodation, all responses fell in the 0-25% category. Within these three categories, over 65% reported that they knew no or very few young people reporting such assistance from police.

Police contact with youth in public places

Sixty-four per cent of the lawyers/legal advocates responded that more than a quarter of the young people with whom they

had contact reported regular harassment of young people by the police in public places such as street corners, malls, concerts, and other public venues (Table 5.2). Twenty-seven per cent reported that this was the experience of over half their youth clients. Verbal abuse of young people in public places was also widely reported. Ninety-two per cent of lawyers indicated that at least some of their young clients reported incidents of being physically assaulted in public places. (Sixty-four per cent of lawyers stated that between 6% and 25% of young people they had assisted had experienced physical assault in a public place.) Being subject to a strip search was not unknown, but was far less common than reported harassment, assaults or abuse. Consistent with general questions about police assistance, 62% of the lawyers/legal advocates indicated they knew of no or very few young people having been assisted with a problem by the police.

Police investigations

The lawyers responded that only a small minority of young people reported being well treated by the police (Table 5.3). Sixty-nine per cent of respondents indicated that less than a quarter of the youth they had contact with reported being well treated. A third (35%) of the respondents reported that at least half the young people they had assisted had not

Table 5.1: Per cent of lawyers to whom proportions of youth reported specific types of police assistance

Type of police assistance	Proportion of youth reporting					Total (%)	n
	0% (%)	5-25% (%)	26-50% (%)	51-75% (%)	75+% (%)		
Helped after family abuse	32	39	16	3	10	100%	n=31
Helped after non-family assault	43	51	-	3	3	100%	n=35
Helped to solve family conflict	66	34	-	-	-	100%	n=32
Helped to solve peer conflict	88	12	-	-	-	100%	n=33
Helped to find emergency accommodation	67	33	-	-	-	100%	n=33

Table 5.2: Per cent of lawyers to whom proportions of youth reported specific types of police contact in public places

Type of police contact	Proportion of youth reporting					Total (%)	n
	0% (%)	5-25% (%)	26-50% (%)	51-75% (%)	75+% (%)		
Regular harassment	2	34	37	21	6	100%	n=67
Verbally abused	5	29	30	26	11	100%	n=66
Physically assaulted	7	68	24	3	1	100%	n=68
Being strip searched	54	42	3	-	1	100%	n=65
Assisted with a problem	63	33	3	1	-	100%	n=67

Table 5.3: Per cent of lawyers to whom proportions of youth reported specific experiences during police investigations

Experience	Proportion of youth reporting					Total	
	0% (%)	5-25% (%)	26-50% (%)	51-75% (%)	75+% (%)		
Being well treated	17	53	21	6	3	100%	n=66
Not warned of right to remain silent	19	38	8	14	21	100%	n=63
Denied access to legal advice in questioning	10	29	16	21	24	100%	n=58
Denied access to parents/guardian	20	30	24	14	12	100%	n=59
Verbally abused prior to formal questioning	-	33	27	30	10	100%	n=67
Physically abused prior to formal questioning	13	53	26	6	2	100%	n=68
Verbal abuse during formal questioning	34	38	13	15	-	100%	n=61
Physical abuse during formal questioning	53	30	12	3	2	100%	n=64
Verbal intimidation prior/during questioning	3	21	25	29	22	100%	n=68
Threatened with physical violence prior/during questioning	17	38	29	11	6	100%	n=66
Being verballed	20	43	21	8	8	100%	n=65
Held overly long prior to questioning	23	23	21	27	6	100%	n=66
Admitting to offence not committed	14	44	20	16	6	100%	n=64
Questioned without independent person present	21	32	9	16	22	100%	n=63
Being denied access to phone call	22	25	10	8	35	100%	n=60
Proportion of young people who know their rights	14	61	20	6	-	100%	n=66

been warned of the right to remain silent.

Almost half of the respondents (45%) reported that the majority of the young people they had contact with were denied access to legal advice during police questioning. In fact, 24% of respondents said that more than three-quarters of the youth they had assisted had been denied access to legal advice during questioning. The denial of access to parents or guardians occurred far less frequently (Table 5.3).

The respondents stated that many young people they assisted were verbally abused prior to formal questioning. Sixty-seven per cent indicated that less than a quarter of the youth they had assisted did not report being verbally abused prior to formal questioning. In addition, the majority of the respondents indicated that most young people they had had contact with reported experiencing verbal intimidation prior to or during questioning. Seventy-six per cent of the respondents reported that less than a quarter of the young people they had assisted had not been verbally intimidated.

While approximately 20% of lawyers responded that none of the young people they assisted had been denied a phone call, 43% said that this was the case for over half of the young people they had contact with.

Knowledge of legal rights

When questioned as to the proportion of young people who know their legal rights, most lawyers and legal advocates reported that the majority of young people do not know their legal rights. Nearly three-quarters (74%) of the respondents indicated that less than a quarter of the youth they had contact with knew their legal rights (Table 5.3).

Use of rights in police questioning

The majority of lawyers and legal advocates indicated that they did not think that young people were in a position to make use of their rights in police questioning even if they know their rights (Table 5.4). The reason proffered by a third of the respondents was that this was due to the power imbalance between the police and youth. As one West Australian lawyer expressed it: "The prisoner has really only one 'right' – that of remaining silent. It's very difficult to maintain that right even as an adult, young people are far more vulnerable."

A very small minority believed that young people were able to make use of their rights during police questioning. Many respondents did, however, recognise the complexity of factors that affected the decision to

Table 5.4: Can young people assert their rights during questioning? Lawyers' responses by state

	<i>Qld</i> (%)	<i>Tas</i> (%)	<i>Vic</i> (%)	<i>WA</i> (%)	<i>Total</i> (%)
No	63	10	5	4	37
No – power imbalance is too great	11	55	28	40	33
Depends if a lawyer/independent person present	21	20	-	10	12
Depends on individual (confident/astute)	5	-	33	10	13
Other	-	-	11	-	3
Depends on police	-	15	17	-	9
Yes	-	-	6	-	2
	n=19 100%	n=20 100%	n=18 100%	n=10 100%	n=67 100%

Table 5.5: Knowledge of negative consequences for young people who asserted their rights. Lawyers' responses by state

<i>Consequences</i>	<i>Qld</i> (%)	<i>Tas</i> (%)	<i>Vic</i> (%)	<i>WA</i> (%)	<i>Total</i> %
No	63	50	-	10	34
Yes – no details given	5	5	56	40	39
Yes – physical abuse	16	5	39	40	22
Yes – charges increased	5	-	17	10	8
Yes – verbal abuses/threats	11	25	28	50	25
Yes – bail not granted	5	5	6	-	5
Yes – get hassled/denied access to phone	11	15	33	10	18
Other	-	5	11	10	6
	n=19	n=20	n=18	n=10	n=67

NB: Percentages do not add to 100% as lawyers could report more than one consequence.

exercise formal rights in interactions with police. One Victorian lawyer commented: “Most just play the game to save getting assaulted or having additional charges laid against them.” A West Australian respondent said: “Those who try and assert their rights are seen as a smart alec and ‘uncooperative’.”

Negative consequences for asserting rights

A third of respondents indicated that they knew of no incidents where a child had experienced negative consequences for asserting their rights during police questioning (Table 5.5). However, the majority of those interviewed did indicate that they knew of some instances of negative consequences. The negative consequences most frequently reported were verbal abuse and threats, followed closely by physical abuse. Other responses included increasing the number of

charges faced by the offender and preventing the young person from receiving bail. One Queensland respondent commented that when young people assert their rights “...they get threatened more by the police and more force is used to get the results”. In Western Australia a legal centre reported that when young people do not make statements: “...they are verbally and/or physically abused, held for long periods of time, denied access to legal advice – this happens all the time.”

Improving young people’s knowledge of their legal rights and responsibilities

Despite the difficulties noted above in asserting rights, the majority of lawyers and legal advocates responded that education may improve young people’s knowledge and understanding of their legal rights and responsibilities

(Table 5.6). Three approaches to education were suggested: first, that this should occur through the school system – the majority indicated this; second, it should occur through the media, i.e. TV, radio, leaflets; and third through police/community programs. One Victorian respondent cautioned: “Knowing their rights and being able to exercise them are two different things.” In Tasmania a legal centre worker suggested that in order to have any impact on police procedures it was necessary to “amend the Child Welfare Act to say that failure to comply with Police Standing Orders renders evidence inadmissible”.

Police processes

Eighty-three per cent of respondents believed that the right to silence was not adequately protected by existing laws and procedures.

Most lawyers and legal advocates (77%) expressed a preference for increased informal processing of young offenders by programs such as cautioning or aid panels. Indeed, 29% indicated that cautioning or aid panels should be used by police nearly all the time.

Consistent with a preference for the least intrusive processing, more than 50% of the lawyers responded that young people’s attendance at court should be secured by way of summons rather than arrest. A further 25.6% indicated that the summons procedure should be used more frequently than it currently is. No respondents thought that attendance at court should be secured by way of summons (rather than arrest) less often than it is at present.

Vulnerable groups

Sixty-eight of the 69 persons interviewed indicated that they believed that some young people were treated more harshly by the police than others (Table 5.7). The two

groups of youth who were most frequently nominated were: first, street kids or homeless youth; and second, regular offenders, or those known to the police. However, respondents in Western Australia indicated that Aboriginal and Torres Strait Islander youth were treated more harshly by police than any other group. Youth from disadvantaged backgrounds and those who were unemployed were also nominated as experiencing harsh treatment.

The major reasons suggested for the harsh treatment by the police of certain young people was that the police have lower regard for them, less respect for them, or a negative attitude (Table 5.8). A respondent in Western Australia commented that “the police perceive these people have been ‘slapped on the wrist’ by the courts, and they need to be ‘taught a lesson’ “. The second predominant reason suggested for the harsher treatment was that some young people are easier to take advantage of, or there is less likelihood of there being a reaction/repercussion against the police. A fifth of respondents noted that in the dynamic of police/youth interaction some young people provoke police. A similar number suggested that police overreact to young people’s behaviour.

Complaints against police

Despite the problems identified above, the lawyers and legal advocates reported that in their experiences with young people only a small minority of young people who were inappropriately treated by the police lodge complaints. Ninety-eight per cent of the respondents indicated that less than a quarter of youth who have been maltreated formally complained.

Most respondents indicated that they did not think that the complaints mechanisms for dealing with young people’s problems with the police were adequate (Table 5.9). The predominant issue raised was the need for an

Table 5.6: Strategies to improve young people’s knowledge of their rights. Lawyers’ responses by state

Strategy	Qld (%)	Tas (%)	Vic (%)	WA (%)	Total (%)
No answer	-	15	-	-	4
Education	42	15	25	30	28
Education in schools	47	70	35	50	51
Education by police/community program	21	5	10	20	13
Education through media/TV/radio/leaflet	5	30	20	50	23
Rights should be applied in 1st instance	-	5	25	20	12
Racism	-	-	-	-	-
Independent person should help	16	-	-	10	16
Education/Drop in Centre/Welfare agencies	-	5	-	-	2
Other	-	10	40	10	16
	n=19	n=20	n=20	n=10	n=69

NB: Percentages do not add to 100% as lawyers could suggest more than one strategy.

independent body, rather than having the police investigate the police. A Tasmanian legal centre worker responded that “the complaints procedure...is still inaccessible to a lay person other than on the basis of trusting the police to carry out their own inquiry, assess evidence found by them, and acting appropriately”. The second major response was that the present system was too intimidating and alienating. Eleven per cent believed that the present complaints mechanism was adequate.

Most lawyers recommended that the provision of an independent body would improve the present complaints procedures (Table 5.10). (It is notable however that half the lawyers in Queensland made such a recommendation despite the existence of an independent complaints body.)

The second most frequently suggested improvement was that the investigations, and information about the process, be made more public and easier/quicker to access. One Victorian respondent commented that it was necessary to have “a dramatic overhaul. Needs to be a process that everyone can understand”.

In considering alternatives to a formal complaints system to resolve police youth conflicts, 40% recommended improved police training (Table 5.11). Others suggested that there was a need for education of both police and young people. A Queensland legal centre worker commented that “a change in attitude...more in line with the Juvenile Aid Bureau” was necessary. The second most popular suggestion was the need for more

Table 5.7: Are some young people treated more harshly by police than others? Lawyers' responses by state

	<i>Qld</i> (%)	<i>Tas</i> (%)	<i>Vic</i> (%)	<i>WA</i> (%)	<i>Total</i> (%)
No	-	-	5	-	1
Yes street kids/homeless youth	16	60	35	50	39
Yes Aboriginal and TSI	26	10	10	80	25
Yes NESB youth	-	-	25	10	9
Yes lower SES youth/unemployed	26	20	20	10	22
Yes unusual looking ones/stand out	11	5	25	-	12
Yes regular offenders/known to police	43	45	20	20	35
Yes ones with behaviour problems	5	10	-	-	4
Other	5	15	10	10	10
No answer	-	-	-	-	-
	n=19	n=20	n=20	n=10	n=69

NB: Percentages do not add to 100% as lawyers could name more than one group.

Table 5.8: Reasons suggested why some young people are treated more harshly. Lawyers' responses by state

<i>Reason</i>	<i>Qld</i> (%)	<i>Tas</i> (%)	<i>Vic</i> (%)	<i>WA</i> (%)	<i>Total</i> (%)
No answer	-	-	-	-	-
Discrimination/racism	21	5	12	20	14
Easier to take advantage of	21	30	24	50	29
They tempt/induce police to react	26	30	18	10	22
Police frustration at juvenile system	11	-	-	20	6
Police have lower regard/respect	11	40	71	40	39
Overreaction by police/as known	11	30	24	20	21
Don't know	5	-	-	-	2
Inadequate parental models/uncaring	11	5	-	10	6
	n=19	n=20	n=17	n=10	n=66

NB: Percentages do not add to 100% as lawyers could suggest more than one reason.

community projects or involvement between parents, youth and the police.

The main issues in police/youth relations

Almost half the lawyers and legal advocates indicated that they believed the main issue in police/youth relations was the arrogant, power abusive and petty attitude of the police (Table 5.12). The second most frequent response was the “us and them” attitude on both sides, where no respect or communication existed between the two groups. Two other major areas of response, which were closely linked, were the issues of police not understanding young people, and the need for better police training. A

Tasmanian respondent commented that “the police need more educating and understanding of young people’s lives...many police have no comprehension of what it’s like to survive on the street”.

As previously indicated, the majority of respondents suggested that better police training may improve police/youth relations (Table 5.13). One Victorian lawyer said: “have young police specialise in working with these kids. Maybe take them out of uniform and show the kids that they can be human”. This issue consequently corresponds with the second most common proposal – the need for a change in police attitude. Also ranking highly was the suggestion for more liaison between the police and youth.

Table 5.9: Are the existing mechanisms for dealing with young people’s complaints adequate? Lawyers’ responses by state

	<i>Qld</i> (%)	<i>Tas</i> (%)	<i>Vic</i> (%)	<i>WA</i> (%)	<i>Total</i> (%)
No answer	-	-	-	-	-
No – too slow/ineffective/lacks credibility	16	-	10	20	10
No – necessity for independent body	21	65	45	60	69
No – it’s too intimidating/alienating	21	30	40	40	32
Don’t know	5	-	-	-	2
Youth never feel believed/fear repercussions	16	15	15	20	19
Necessary to shift to a welfare mould	5	-	-	-	2
Other	26	5	35	10	20
Yes	21	15	5	-	12
	n=19	n=20	n=20	n=10	n=69

NB: Percentages do not add to 100% as lawyers could give more than one reason.

Table 5.10: Suggested improvements to complaints mechanisms. Lawyers’ responses by state

<i>Improvement</i>	<i>Qld</i> (%)	<i>Tas</i> (%)	<i>Vic</i> (%)	<i>WA</i> (%)	<i>Total</i> (%)
No answer	11	16	-	-	8
Necessity for independent body	53	58	63	90	63
Penalise police who overstep power	-	5	-	10	3
Make information easier to access	10	16	6	10	11
Make youth feel they’re believed	5	-	-	-	2
Address social problems first	5	-	-	-	6
Simplify complaints system	11	-	13	-	6
Have timelines established	11	-	6	10	6
Work through youth workers	-	5	-	-	2
Increase staff at CJC (i.e. more \$)	11	-	-	-	3
Other	-	21	25	10	14
	n=19	n=19	n=16	n=10	n=64

NB: Percentages do not add to 100% as lawyers could suggest more than one improvement.

A fifth of respondents indicated that police/youth relations could be enhanced through education of young people.

Participation in police programs

Almost half (47%) of the respondents had not participated in any activity or program to improve police/youth relations (Table 5.14). The major area of activity was in the field of police/youth advisory committees and in joint police/lawyer legal education exercises in schools.

The majority of respondents who had participated in activities or programs to improve police/youth relations

indicated that they believed such programs improved relations a little. A smaller proportion indicated that such programs helped a lot, while no respondents believed that such programs made police/youth relations worse.

Legal aid

The majority of respondents indicated that young people did not have adequate access to legal advice and representation. (The exception to this was the Tasmanian respondents of whom 65% believed current services were adequate.) Lawyers and legal advocates noted the need for

Table 5.11: Alternative methods of resolving police/youth conflict. Lawyers' responses by state

<i>Method</i>	<i>Qld (%)</i>	<i>Tas (%)</i>	<i>Vic (%)</i>	<i>WA (%)</i>	<i>Total (%)</i>
No answer	5	5	-	-	3
Police training in youth issues	26	45	30	88	40
Parents/youth/police community projects	11	15	35	13	19
More youth services	5	10	5	-	6
Community involvement with police	16	15	20	13	16
Increase juvenile aid services/liaison	16	5	10	13	11
Educate both groups	16	10	10	13	12
Other	11	20	45	38	27
Mediation	11	10	-	13	8
	n=19	n=20	n=20	n=8	n=67

NB: Percentages do not add to 100% as lawyers could suggest more than one method.

Table 5.12: The main issues in police/youth relations. Lawyers' responses by state

<i>Main Issue</i>	<i>Qld (%)</i>	<i>Tas (%)</i>	<i>Vic (%)</i>	<i>WA (%)</i>	<i>Total (%)</i>
No answer	5	-	5	-	3
Us and them attitude on both sides	32	47	35	20	35
Police too arrogant/abuse power	53	53	45	40	49
Social issues – youth are disenchanted	5	5	-	-	3
Police need more training	11	37	25	30	25
Police don't understand youth	16	16	30	50	25
Police are too young	-	5	10	-	4
Police have too little power	-	-	-	-	-
Racism	11	-	-	-	3
Uncaring society	5	11	5	10	7
Perception of youth as suspect	5	-	-	10	3
Other	26	26	30	50	31
Police impotent due to court process	5	-	-	2	4
Lack of police/community resources	-	5	-	10	3
	n=19	n=19	n=20	n=10	n=68

NB: Percentages do not add to 100% as lawyers could name more than one issue.

24-hour access, and acknowledged that the present system is not effective (Table 5.15). Another major response was that legal advice or access was not taken seriously by the police or young people. One Victorian legal centre worker commented that “too many kids see the law as something against them. They don’t trust it...so they don’t access it when they should unless they’re in real trouble”.

The lawyers’ major suggestion to improve young people’s access to legal advice and representation was the need for better funding to enable more effective service provision (Table 5.16). The second most common response was the suggestion of a 24-hour service to facilitate easier access to legal advice and representation. A Tasmanian

respondent commented that there is “a cultural/generational gap. [The legal system needs to be]...presented as a concept accessible to all people in the community, not just for the business community”.

Community legal centres

Community Legal Centres are located primarily in capital cities and in some provincial centres in Australia. Community Legal Centres aim to provide accessible, innovative legal services which address the structural as well as individual issues that give rise to legal problems.

Table 5.13: Strategies to improve police/youth relations. Lawyers’ responses by state

	<i>Qld</i> (%)	<i>Tas</i> (%)	<i>Vic</i> (%)	<i>WA</i> (%)	<i>Total</i> (%)
No answer	-	-	-	-	-
Better police training	42	74	60	75	61
More juvenile aid type services in police	13	5	20	13	12
More advocacy type services for youth	16	5	10	13	11
Change of police attitude	11	47	30	25	29
More liaison between police/youth	32	32	15	25	26
Educate parents	5	5	5	-	5
Return to community policing	16	-	-	13	6
Tackle/consider social issues first	11	16	-	-	8
Educate young people	26	42	-	-	20
Increase in Aboriginal staff	5	-	-	-	2
See Aboriginal hostels as alternative to prison	5	-	-	-	2
Expectations of police too high	5	-	-	-	2
Other	11	16	45	88	32
	n=19	n=19	n=20	n=8	n=66

NB: Percentages do not add to 100% as lawyers could suggest more than one strategy.

Table 5.14: Lawyers participation in police programs for youth by state

<i>Program</i>	<i>Qld</i> (%)	<i>Tas</i> (%)	<i>Vic</i> (%)	<i>WA</i> (%)	<i>Total</i> (%)
No	74	65	25	10	48
Police education	-	5	25	20	12
Joint police/lawyer education in schools	5	-	45	10	16
Police/youth advisory committees	-	-	45	50	20
Social activities organised by police	5	-	5	10	4
Other	21	30	15	30	23
	n=19	n=20	n=20	n=10	n=69

NB: Percentages do not add to 100% as lawyers could participate in more than one program.

Many legal centres specialise in particular areas of the law, or in issues confronting particular groups in the community (for example tenancy law, social security law, women, migrants). Their level of funding means that they provide only a small fraction of the legal aid services in the country. However, they are particularly important for youth. Many Community Legal Centres have close links with social agencies in their locality and provide direct services to the clients of these agencies. Additionally, there are a number of Community Legal Centres that specialise in youth legal issues.

Twenty-six centres responded to the survey and indicated that they provided some legal services to youth in conflict with police or the criminal law. Five others responded that they provided no such services. Of the 26

services, five were in Queensland, eight in Victoria, four in New South Wales, two in Western Australia, five in South Australia and two in Tasmania.

Provision of services to youth

The mere willingness to provide services to young people does not ensure their utilisation. We therefore sought information from the services on the manner in which services were provided, and the extent to which services were offered which specifically addressed the legal problems young people experience with police and the criminal justice system.

Hours of service: The opening hours of the centres for the provision of advice and assistance varied. Most frequently, centres responded that assistance was available

Table 5.15: Comments on adequacy of access to legal advice/representation. Lawyers' responses by state

	<i>Qld</i> (%)	<i>Tas</i> (%)	<i>Vic</i> (%)	<i>WA</i> (%)	<i>Total</i> (%)
No answer	27	71	-	-	29
No – necessity for 24-hour access	27	-	13	56	20
Legal advice/access not taken seriously	20	-	13	11	16
Police should make immediate legal contact	30	6	7	11	11
Youth are ignorant of services	-	6	27	11	11
Police discourage contact	-	6	20	-	7
Need advice at all stages of investigation	7	-	7	11	5
Other	7	12	27	22	16
Present system doesn't work well	20	20	13	11	16
	n=15	n=17	n=15	n=9	n=56

NB: Percentages do not add to 100% as lawyers could make more than one comment.

Table 5.16: How can access to legal advice/representation be improved? Lawyers' responses by state

<i>Improvement</i>	<i>Qld</i> (%)	<i>Tas</i> (%)	<i>Vic</i> (%)	<i>WA</i> (%)	<i>Total</i> (%)
No answer	6	21	-	-	8
Legal advice/contact should be automatic	6	16	11	33	14
Public campaign/media advertising	6	32	39	-	22
24-hour service	33	11	22	44	25
More funding for effective services	39	5	33	67	31
Education regarding rights	11	32	22	11	20
Specialist panels for duty lawyers	17	5	-	-	6
Commitment to assist young people	22	11	-	-	9
Other	-	5	44	33	19
	n=18	n=19	n=18	n=9	n=64

NB: Percentages do not add to 100% as lawyers could suggest more than one improvement.

on specified days and nights by appointment only. A daytime service by appointment only was the second most frequent service offered. Two legal centres in Victoria provide 24-hour telephone services (on weekends only).

Provision of telephone advice: Many young people are unable for reasons of fear or ignorance to attend legal centres for advice or assistance. Just over half (56%) of legal centres provide telephone advice to young people. Most centres that provided this service advertised its availability.

Provision of service to young people during police questioning: The majority of legal centres did not provide lawyers or other independent persons to attend police questioning of young people. Ten centres did provide the services of lawyers or other independent persons to attend the police questioning of youth during normal office hours.

As was clear from the youth survey, many contacts between police and young people occurred at night and on the weekends. Only six centres provided lawyers or independent persons for police questioning outside normal office hours. This service was most frequently provided by rostered volunteers. Five of the centres offering an after-hours service advertised by way of cards, posters, giving information to youth workers, performances by youth at schools/refuges, and on the radio.

Training for people involved with police questioning of youth: The majority (68%) of legal centres did not provide training for people involved with assisting young people being questioned by the police. The training that was delivered was predominantly to youth workers. Lawyers received a small amount of training, while other centres provided training for people such as community members or JPs.

Involvement in courts: All centres indicated that they would provide advice and referral to young people charged with a criminal offence. Fifteen centres reported they that also represented children before the Children's Court. This representation was provided by salaried staff lawyers. In all states except Tasmania and South Australia, at least one centre is a specialist children's legal service, employs a specialist children's lawyer, or has a specific focus on youth legal issues. The majority of the legal centres (11) reported that the centre did not have eligibility criteria for providing assistance to young people in the Children's Court.

Provision of services to youth in detention centres or youth refuges: Some young people are especially disadvantaged in accessing legal services. Young people in custodial care experience particular difficulties. More than half (63%) of the legal centres did not visit or provide legal assistance to residents of juvenile detention centres. The majority of the assistance that is provided is at the request of the individual client rather than by regular attendance at the institution and providing assistance on an "as required" basis.

While youth in refuges are not physically prevented

from leaving the refuge to seek advice and assistance, the youth survey did indicate that they frequently experienced conflict with the police and criminal justice system. However, 60% of the legal centres do not visit and provide legal assistance to residents of youth refuges, and again, those that did provide services did so at the request of the individual client rather than on a regular basis.

Community legal education

The youth and lawyers survey indicated that lack of knowledge and understanding of legal rights was identified as an issue disadvantaging young people in their interactions with police and the criminal justice system. Eighteen centres were involved in Community Legal Education for young people on the criminal justice system. The education style varied and included talks to schools and groups, using games, videos and discussion groups. Other modes of presentation involved the production of leaflets, books, comics, "Rights" cards and games.

Only five centres reported involvement in community legal programs for youth in detention centres, and only one reported regular involvement. Twelve centres reported the provision of education programs to youth residents in refuges in relation to police and the juvenile justice system. For 11 of the 12 centres, participation was on an irregular basis.

Access to legal advice and representation

Twenty centres indicated that they did not believe that young people had adequate access to legal advice and representation. Most respondents indicated that increased funding for effective services or increased training of lawyers in youth legal needs would improve young people's access to legal advice and representation. For example, a Queensland respondent indicated the need to provide "user-friendly" lawyers, as in Youth Advocacy Centres. However, it was stressed that "access to legal advice and representation is not enough, it must be of good quality...or it is a fraud". Educating youth regarding their rights was also a common suggestion.

Vulnerable groups

The lawyers and legal advocates surveyed in this study considered that some young people were more harshly treated by police than others. It is not surprising that this was also the experience of the Community Legal Centres. Eleven legal centres responded that they believed Aboriginal and Torres Strait Islander young people were more harshly treated by the police than others. Nine centres identified unemployed youth or economically disadvantaged youth as being treated more harshly by the police. Homeless youth and children from non-English speaking backgrounds were also identified by seven centres as being particularly vulnerable.

The reasons for harsh treatment were related to the group nominated. For instance, for Aboriginal and Torres

Strait Islanders and ethnic youth, racism and discrimination were most frequently suggested as reasons for their harsher treatment. Others responded that certain groups of young people were easier to take advantage of, and there was less likelihood of a reaction against the police. A Victorian respondent commented that some young people are treated more harshly by the police “because the police want to show them who is the boss”. Another Victorian commented that the police have a “perception of ‘good’ as being mainstream”.

Main issues in police/youth relations

Nine centres identified the major issue in police/youth relations as being that the police were too arrogant, petty and abused their power in interactions with young people. The two other most frequent responses were that there exists an “us and them” attitude on both sides, with no communication between the two groups (5); and that the police do not understand young people’s situations (5). One New South Wales respondent commented that the main issue in police/youth relations was: “young people’s acceptance of police abuse of powers”. Another New South Wales response was that: “the local youth liaison person here is a well known kid basher”.

Police complaints

Despite the reported problems with police/youth interactions, the centres reported that very few young people lodge formal complaints. Eleven centres stated that no – or virtually no – young people complain, while seven centres indicated that in their experience between 5% and 25% of the young people who are inappropriately treated by the police lodge formal complaints.

Only one centre believed that the existing complaints mechanisms for dealing with young people’s problems with the police were adequate. Most centres stated that youth were reluctant to complain because they feared they would never be believed and that there would be repercussions from their actions. One Victorian respondent commented that they “knew of situations where police involved find out the identity of the complainant – resulting in harassment”. Consistent with the findings of the legal advocates’ survey, five respondents indicated that there was a need for an independent body, rather than have the police investigate the police. A Queensland respondent commented that young people “see all the others, especially lawyers, as part of the system”.

Thirteen centres thought that the existing complaints mechanisms for dealing with young people’s problems with the police could be improved by establishing a specific body that youth perceived as independent. One South Australian legal centre suggested “the use of officially recognised community based honorary peace marshals or ‘safe’ people”. A Victorian respondent suggested that there should be “severe penalties for the police”.

Alternative methods for resolving conflict between police and youth

More community involvement/projects between police, parents and youth was the main process suggested for the resolution of conflict between police and young people. Mediation also rated highly as a suggestion for informal conflict resolution. A New South Wales respondent indicated that it was necessary to “support young people in taking direct legal action against offending police”. A Victorian legal centre suggested “any process which disempowers the police and has the individual police officers responsible as individuals with equal status in the process as the complainant”.

Participation in police programs

Consistent with the above recommendation to improve police youth relations, over half the legal centres had participated in an activity or program designed to improve youth/police relations. The majority of the respondents’ activities took the form of police/youth advisory committees, closely followed by joint police/lawyer education of youth in schools or other settings. In the experience of the majority of the legal centre respondents, such programs did improve police/youth relations.

Legal Aid Commissions

The Legal Aid Commissions have primary responsibility for the delivery of legal aid services in the Australian community. They discharge this responsibility through the provision of legal assistance by their salaried staff, by funding assistance by private lawyers, through the funding of legal centres, and through community legal education.

For the purposes of this study, the Legal Aid Commissions of the states and territories were surveyed to ascertain the availability of services for young people, and the extent to which services specifically addressed the legal problems young people experience with the police and the criminal justice system. Responses were received from all states and territories, except Western Australia.

Availability of services

All Legal Aid Commissions provided legal assistance to children in conflict with police and/or the criminal justice system. The manner in which services were provided, and the extent to which particular problems experienced by young people were addressed, varied. All Commissions provided or funded duty lawyers for children appearing in Children’s Courts.

The Legal Aid Commission of New South Wales has established a specialist children’s legal service which employs a solicitor, social worker and administrator at Cobham Children’s Court. The South Australian Commission employs two solicitors who are located full-time at the Children’s Court to provide advice, assistance

and representation to children. The job description of the Victorian Commission's staff appearing as duty lawyers specifically requires them to focus on the legal problems of young people. The Queensland Commission funds the independent Youth Advocacy Centre and the Juvenile Advocacy Service.

The Queensland and Victorian Commissions provide telephone advice to persons seeking assistance. The Legal Aid Commission has targeted youth workers in their promotion program for the telephone information service (Telelink).

All Commissions therefore provide court-based assistance to young people, but there is variation in their commitment to and strategies for addressing the legal problems of youth in conflict with the criminal justice system, beyond the minimal provision of duty lawyers. Three Commissions have opted for in-house specialists, while the Queensland Commission has funded specialist independent agencies.

Police questioning

Despite the recognised difficulties children have in asserting their legal rights in police interrogation, no Commission routinely provides assistance in such circumstances. The South Australian Commission stated that upon request in serious matters, lawyers may attend questionings. The New South Wales Commission is researching the feasibility of training volunteers to attend questionings. There is ad hoc involvement by some Commissions in the training of youth workers to attend questioning.

Involvement with young people in institutions and refuges

Each of the Commissions reported that staff lawyers visit detention centres frequently to provide services to individual clients. No Commissions reported involvement in an ongoing education program within detention centres. However, involvement in ad hoc or irregular programs was reported. Involvement in education programs and attendance at youth refuges was far less common. While most Commissions would visit refuges at the request of individual clients, there appeared to be no regular visiting program or regular involvement in legal education.

Community legal education

Each of the Commissions reported involvement in legal education for young people through the presentation of talks and lectures to schools and community groups. The Victorian Commission has produced a booklet, "Am I old enough", and is about to produce a booklet on police powers. There is no systematic coherent community legal education program to address the legal needs of young people.

Police complaints and police/youth relations

The Commissions identified a number of reasons for the difficulty in the relationship between police and young people. First, it was reported that both police and young people had negative attitudes about the other. Young people did not trust police and perceived that they were unfairly targeted by police. Police were reported as being overly suspicious of young people, intolerant of differences, and poorly trained to deal effectively with youth. Second, a number of the Commissions reported that police officers failed to adhere to their own standing orders in relation to the processing of children. This undermined children's and lawyers' respect for the police. Third, there was a lack of recognition by police of other factors (such as family problems, peer group influence, lack of opportunities) that influenced young people's behaviour. Fourth, complaints procedures were not independent of police (or in states where they were, they were not perceived as being independent of police). This undermined children's sense of justice, as they perceived there was no avenue of redress for their problems.

The Commissions suggested that police/youth relations could be enhanced by police adhering to standing orders, by improving police training to assist police to deal more sensitively with young people, and by developing programs which encourage youth/police interactions. All Commissions indicated that the development of legal education programs would enhance children's respect for the law and their ability to protect their rights.

Summary and conclusion

Surveys of lawyers and legal advocates, legal centres and Legal Aid Commissions were conducted. The results were remarkably consistent across surveys and across states.

The lawyers and legal advocates reported that harassment of young people in public places such as malls, streets and shopping centres was not uncommon. Nearly all lawyers reported that they knew some young people who had been physically or verbally abused in incidents occurring in public spaces.

In relation to police investigation of offences, the lawyers reported that many young people experienced problems prior to formal questioning. These problems included verbal and physical intimidation. They also reported that many young people were denied access to a telephone call or access to legal advice while at the police station.

Lawyers and legal centres indicated their belief that young people were ignorant of their legal rights. However, they also indicated that even where young people were aware of their legal rights, they were not in a position to assert them. This was because the power imbalance between police and young people was too great. The

abuse of this power imbalance was identified as a major issue in police/youth relations, as were police attitudes to young people, and vice versa. Concern was also expressed about police breaches of their own standing orders in relation to the processing of juveniles. Respondents from the legal centres indicated that there was a need for education of young people about legal rights. They also clearly indicated that there was a need for increased education of police to deal more sensitively and effectively with young people.

Respondents expressed a preference for increased informal processing of young people in the juvenile justice system. Respondents to the three surveys indicated that very few children used formal complaints mechanisms to complain about their treatment. Respondents expressed substantial concern as to the independence or perceived independence of complaints bodies. They were considered especially inaccessible to young people.

While only half of respondents had participated in joint programs with police aimed at enhancing police/youth relations, respondents were supportive of such programs.

The results of the surveys of legal centres and legal aid commissions indicated that legal aid is readily available only to young people at the point of appearance at court. Most legal assistance is provided in the form of duty lawyers at Children's Courts. There are still very few specialist children's legal services in Australia. Access to assistance during police questioning is almost nonexistent (save, of course, that available on a full-fee basis). There is limited targeting of young people by Legal Aid Commissions.

Community legal education is still provided in an ad hoc manner.

6 Conclusion

by Ian O'Connor

While Children's Courts and detention centres form the symbolic hub of the juvenile justice system, the day-to-day responses to juvenile crime centre on the formal and informal interactions between police and young people. Recently the legislative framework and sentencing practices of the courts have been subject to scrutiny and review in most Australian states; yet the process of policing juveniles has received less attention. Recent research has indicated that the relationship between young people and police is problematic (Youth Justice Coalition 1990; Alder & Sandor 1990; O'Connor & Sweetapple 1988; O'Connor 1989; White 1990; Federation of Victorian Community Legal Centres 1990). Such studies have indicated maltreatment of youth including violence and lack of respect for legal rights. Such research findings are consistent with anecdotal evidence of young people, lawyers and youth workers. On the other hand, there are frequent reports in the media of the disrespectful attitudes of young people to the law in general, and to police in particular.

This project for the National Youth Affairs Research Scheme reviewed the legal and policy framework that governs police interaction with young people, and surveyed police, young people, lawyers, legal advocates and legal services. The results of these studies were reported in the previous chapters. In this chapter the themes that emerge from the previous chapters, and the implications of the research results, are discussed.

Police-youth contact

For the general adult community, contact with police (with the exception of motor vehicle related matters) is not part of everyday life. Adults may walk the streets, sit in malls and shopping centres, converse with friends and so on, without necessarily attracting police attention.

In contrast, the research reported in this paper suggests that police-initiated contact with young people is far more routine. Eighty per cent of the young people interviewed had been stopped by police: marginal young people and

Aboriginal youth had an even higher rate of contact – over 95%. The majority of these contacts happened when the youth were on the street, “hanging out” or “walking”. Most who were stopped were with groups of other young people. The police reported that most of their contact with young people involved such activities as providing information, assistance, warnings and telling young people to “move on”. That is, most of their contact is not related to responding to serious offending.

The practices of day-to-day policing bring police actively into contact with young people and set the stage for antagonistic interactions. For example, in the Christmas holidays of 1991 the Queensland police instigated operation “Youth Watch”. The operation was based on the (incorrect) assumption that youth were responsible for 80% of property crime. The aim of the program was to deter crime by questioning youth in public places (*Courier Mail* 1991).

The assumption that all young people are potentially criminal, coupled with police practices of targeting young people in public places, provides a fertile ground for the growth of conflict. Both young people and lawyers reported verbal and physical conflicts arising out of interactions between police and youth on the street.

Street policing exists almost in a legislative vacuum, but is informed by police assumptions about young people and vice versa. Routine policing necessarily involves interactions with individuals and groups. There is a need for police to reconsider the necessity for the frequent stopping and questioning of young people. Such interactions frequently escalate and generate conflict, resulting in the prosecution of young persons for street offences, as well as being the source of much ill will.

The survey of young people and police also revealed significant problems during police investigations of offences. Both lawyers and young people reported that physical and verbal intimidation were not uncommon. Fifty-six per cent of marginal youth reported being “roughed up” and 23% of non-marginal youth had similar experiences. All lawyers knew some young people who had been verbally intimidated prior to questioning, and only 13% did not know a young person who had

been physically abused. Over half the police agreed that too much physical force was sometimes used in apprehending juveniles.

Lawyers, police and young people believed that many young people were ignorant of their legal rights. The assumption that knowledge of legal rights equates with the ability to assert rights was questioned by the lawyers and legal advocates. They indicated that the power imbalance was so great, and the protections so few, that the ability to assert rights depended on the cooperation of the police. Indeed, the police indicated that the discretion which they exercised was determined by the seriousness of the offence, the degree of cooperation displayed by the young person, and the attitude of the young person.

Thus, from the young person's perspective, cooperation with the police, even at the expense of sacrificing legal rights, may make far more sense than assertiveness in terms of the outcome of the encounter.

Lawyers, police and young people also revealed a lack of clarity as to the actual rights of young people during questioning. The lack of clear, precise legislative guidelines for police practice during investigation was noted in Chapter 2. The inadequacy of existing legislation regarding police procedures prior to and during interrogation, and the rights of the suspect during this process, was reflected in the results of the survey. Young people and lawyers reported that lack of access to legal advice, to telephone calls, to guardians, and to independent persons early in the investigations was not uncommon. Indeed, the nature of young people's reports of their treatment in this regard was one of the most concerning aspects of the research.

It is clear that the theoretical protection of the rights of the accused is frequently not operative in the actual interactions between police and young people. There are a number of reasons for this, but prime among these is the imbalance of power between young people and police. In these interactions with police, the young person is an individual player in a game where the rules are forged in the particular circumstances of a particular interaction between police and child. Once a child is taken into custody by the police (or voluntarily assists the police) the interactions take place behind closed doors. The lack of clear statutory statements of the rights of the accused in investigations hinders any attempt on the young person's part to assert their rights, and makes it difficult for police to know the limits of their activities. Young people and police require more precise answers to questions, such as:

- At what stage of an investigation does the individual have a right to legal advice?
- Who may the individual contact during investigations and at what stage?
- Who should be notified when a child is at a police station or is to be questioned about an offence?

While some states have attempted to legislate standards in this area, the ongoing denial of these rights,

which is evidenced in this research, indicates the inadequacy of current legislation and the problems connected with relying solely on legislation to ensure the upholding of rights.

The lack of knowledge of rights, and of a clear statement of police procedures, is further compounded by the lack of legal assistance during the investigatory phase. While the Legal Aid Commissions and community legal centres provide representation in court – primarily pleas in mitigation of the sentence – no Commission provides routine assistance during questioning. Such advice is available only to those with the resources and knowledge to contact and retain a private lawyer. (The task is made more difficult because many police-youth interactions occur outside office hours.)

Vulnerability of specific groups of young people

A consistent finding across youth and legal surveys was that some young people experienced more difficulty with police than other young people, were less likely to have their rights respected, and were more likely to suffer some form of inappropriate treatment by police.

The survey of young people found that marginal young people (those not in full-time work or education) were more likely to report being stopped by police, taken to the police station, held in police cells, strip searched and roughed up. Males in general, as well as Aboriginal and Torres Strait Islander youth, were similarly more likely to be so treated. Lawyers and legal advocates also believed that Aboriginal and Torres Strait Islander youth, street kids and persistent offenders were dealt with more harshly.

The police themselves nominated Aboriginal and Torres Strait Islander youth, street kids and gangs as the most difficult of young people to deal with. These were also the young people with whom they dealt most frequently and, from our research, most "harshly".

Clearly, some young people are more visible than others and are therefore the target of street policing. Their visibility is coupled with a marginal social position, and a lack of access to those mainstream social institutions through which rights are distributed and protected. They perceive themselves to be in a position where their perspective is neither understood nor believed by adult authorities. They are not in a position to have their rights respected, or to be informed of remedies or appeals procedures when their rights are breached.

Police/youth relations

The research revealed that the relationship between police and young people is perceived as problematic by police,

Protection of rights

young people, lawyers and legal services. From the young people's perspective, these problems relate to the extent of contact with police; their treatment by police; and the level of respect for them as people. From the lawyers' and legal services' perspective, the issues relate to the perceived abuse by police of their powers; their lack of respect for young people and young people's rights; the lack of police training in dealing with young people; and the attitudes of police to young people and vice versa. Police saw the major issues relating to young people as being their general lack of respect for law, police and courts; problems of communication between young people and police; and lack of parental discipline.

The surveys consistently found that the groups of young people who experienced the most contact and difficulty with police were also those perceived as the most difficult to deal with by police. Stereotyped conceptions of those young people most likely to cause "trouble" may provide the preconditions for interactions which may escalate into ongoing skirmishes between police and young people:

"(P)olice tendency to use stereotypes in carrying out their duties naturally inclines police patrols to focus their attention upon groups in the community which are the subject of negative stereotypes. Unfortunately, stereotypes inevitably result in a significant number of "false positive" interactions, that is police initiated contacts with citizens in which the police officer's reason for initiating the contact proves groundless. The risk to police-community relations from wide scale negative stereotyping has been amply demonstrated in recent times by the Brixton riots in London." (Goldsmith 1991, p.206.)

It is not surprising that our surveys of young people revealed that those who experienced the most police contact had the least favourable attitude to police. This is similar to the findings of the Youth Justice Coalition who note:

(T)his should not be simply dismissed as a truism: it suggests that a stock of good will is dissipated by attitudes and activities which could be changed without reducing police effectiveness (1990, p.236).

The police themselves suffer the consequences of this build-up of negative attitudes towards police: virtually all officers in this research reported being verbally harassed by young people and just over half reported having been punched by a youth.

One of the positive findings of this research was that participation in some programs (particularly school visits and Neighbourhood Watch) is associated with more positive attitudes towards police. This should not surprise, for program participation by young people and by police requires each to engage with the other and to step out of their traditional roles.

The surveys of young people, lawyers and legal services revealed substantial allegations of maltreatment and of inappropriate processing of young people. Theoretically, young people are not denied remedies for such treatment. The courts will review the voluntariness of confessional evidence and the circumstances surrounding admissions. Similarly, the various police complaints systems will consider complaints raised by young people about their treatment.

Unfortunately the extent of the problem prevents either of these mechanisms from dealing adequately with it. It was previously noted that legal services are rarely available at the investigatory phase. Most young people's first contact with a lawyer is at the court where they will briefly meet with duty lawyers. Duty lawyers submit pleas of mitigation and bail applications for many children on any one day. There are substantial pressures of time to interview children quickly, ascertain their legal situation, and obtain instructions. Such interactions are not conducive to a detailed interaction with a child about the nature of their treatment by police. As has been noted elsewhere, children expect rough treatment from the police (O'Connor & Sweetapple 1988; Cunneen 1990). Only if the treatment is particularly rough will they raise it with their lawyers.

Young people are apprehensive about the law and lawyers: they are frequently reticent in their encounters with lawyers. Few lawyers have expertise in dealing with the young, and many share the negative attitudes of the adult community towards young people. Many young people do not expect to be believed by adults in authority. They do not believe their complaints will be treated seriously.

In addition, the legal system focuses on a particular event – the offence. However, the offence and the interactions between the young person and the police frequently have a history – a history which is not relevant to the court proceedings.

For courts to play an effective role in enforcing standards of policing, it is necessary for matters to be brought to the courts' attention. The routine processing of children in Children's Courts, and the reliance on duty lawyers to provide legal advice at courts, hinders the performance of any monitoring role the courts may have.

The system of legal aid for children remains less than satisfactory. From the perspective of young people, lawyers and legal services and Legal Aid Commissions, the current provision of Legal Aid to children is inadequate.

The second institutional mechanism for remedying inappropriate treatment of young people by police is through the various police complaints systems. Young people, lawyers and legal services all reported that young people rarely complain to these bodies about their treatment. A number of reasons for this lack of resort to

existing remedies were offered. First, in some states, the complaints systems are not independent. Consequently, young people do not expect their complaints to be taken seriously or believed; they expect that a police version of events will always be believed.

Second, many young people believe that there will be negative consequences for them if they complain. This is consistent with their experiences in attempting to assert their rights in questioning. The young people have to continue interacting with police in their own area, and do not believe they can be protected.

Third, complaints mechanisms are individually based. That is, they are triggered by the complaint of an individual about particular occurrences. This precludes inquiries into complaints made, for example, by a youth worker about the experiences of a group of young people, or into ongoing conflict in a particular area. In many locations, there is a need for an inquiry into not just a series of incidents, but the pattern of interactions between police and young people.

Goldsmith (1991) notes that enhanced relationships between police and the community, and improved efficiency of their operations, may follow from an effective complaints mechanism which encourages community feedback.

Complaints, in microcosm, are "unsolicited" suggestions about how police practices might be improved. Given that policing is likely to remain a relatively visible as well as contentious topic, complaints need to be seen not simply as threats to existing policies and practices, particularly in terms of their implications for good community relations. The issue is not whether or not complaints should be encouraged or tolerated, but whether there are adequate mechanisms and resources to ensure that citizens' complaints are fully stated, and systematically collected and analysed for the administrative lessons they provide for the future organisation and conduct of police work (p.207).

There is much to learn from young people's complaints about policing. The current complaints systems do not encourage young people to lodge complaints. There is a need for a mechanism, such as a youth ombudsman, which would have the dual functions of receiving complaints, and of proactively initiating inquiries into police/youth interactions (e.g. into issues such as fingerprinting, practices in watch houses, interactions in particular localities, and crime prevention strategies).

Additionally, consideration needs to be given to alternative means of resolving conflicts between police and young people. In many localities there are ongoing skirmishes between police and young people. Much could be gained from conceptualising such incidents as disputes, and adopting dispute resolution procedures. Encouraging a mediated dialogue between police and groups of young

people will assist to identify problems, and facilitate joint resolution of particular problems. Current dialogues between police and youth are conducted on streets and in stations on a one up-one down basis. Commitment from police to resolve interactional difficulties through mediation requires a willingness on the part of police to set aside some of their power so that a joint solution may be reached, to listen to young people, and to dialogue on neutral territory. The Queensland Criminal Justice Commission and Community Justice Program are currently piloting police/citizens mediation as a response to complaints about police.

Education and training programs

The development of monitoring mechanisms through the improvement of legal services and complaints mechanisms will enhance compliance with legislation and guidelines. It may have less impact on those attitudes and perceptions held by police and young people which give rise to difficulties. As the Youth Justice Coalition stated:

Attempts to deal with problems in youth-police relations simply by educating young people about their legal rights may be to miss the point badly. In the context of street policing, narrowly defined rights and legal provisions are regarded by police officers as being out of place: they conflict with the central task of order maintenance...

Much more fundamentally, what is required is a change in police attitudes towards the policing of young people. Police training, already undergoing substantial change, should stress the skills which are needed in dealing with young people and should communicate information about juveniles, and their attitudes to law and police, which will help to challenge some of the entrenched cultural stereotypes and misconceptions (p.236).

The research reported in this paper revealed that while work with young people made up a substantial part of police duties, police receive little specialist education and training for this aspect of their work.

To work successfully with young people, police need to have an understanding of the transitory nature of juvenile crime, and the aims of the juvenile justice system. Most importantly, they need to understand young people and their orientation to the world, and to have the skills of working with, and engaging young people. Police need to be sensitised to the fact that young people are not a homogeneous group, and different skills will be required to understand and work with different groups of young people.

Summary

Police, young people and lawyers agree that contacts between police and young people are fraught with difficulties. In part these may be accounted for by the inadequacy of police education and training relating specifically to their interactions with young people. However, evident across the findings of this research is the inadequacy of existing legislation regarding police procedures prior to and during interrogation, and the rights of the suspect during the investigative process. The lack of clear statutory statements of these rights hinders any attempt on the young person's part to assert their rights, and makes it difficult for police to know the limits of their activities. In general, it is also apparent that there are major problems with youth access to legal advice and to complaints mechanisms.

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Appendix I

These appendixes have been reproduced from those provided with the original research report. In order to conserve space in this publication, the lines allowed for the participants' responses have been edited out and other white space has been decreased. All words, instructions and 'literal errors' are as they appear on the originals except for words in [].

POLICE CONSENT FORM

There is increasing recognition that the policing of youth is one of the more difficult aspects of police work. It has also been suggested that adolescents do not always hold the police in high regard. In recognition of these difficulties we have been asked to conduct a study of police youth relations for the Department of Employment, Education and Training. This is a national study, with interviews being conducted in four states with police, youth and legal advocates.

The interview should take no longer than 30 minutes.
If you do not want to answer any of the questions, please feel free to say so.

The information you give us is strictly confidential. Your name will not be recorded on the questionnaire and we will ensure that there is no way that you can be identified from any of the materials in our report.

If you are willing to participate in this study, we will both sign this Consent form and a copy will be made available to you if you so require.

THANK YOU

Interviewer //1991

Interviewer //1991

POLICE QUESTIONNAIRE

State – Qld 1; Vic 2; Tas 3; WA 4.

Results

A. Profile

1. Age	18-20	1
	21 -25	2
	26-30	3
	31-35	4
	36-40	5
	40+	6

2. Sex	Male	1
	Female	2

3. Ethnic Background:

In what country were you born?

In what country was your mother born?

In what country was your father born?

Are you Aboriginal or a Torres Strait Islander?

1 = Aboriginal or Torres Strait Islander

2 = Australian born

3 = Overseas born – English speaking country

4 = Overseas born – non-English speaking country

4. How long have you been working as a police officer?

Less than 6 months	1
Less than 1 year	2
Less than 2 years	3
Less than 5 years	4
5 years+	5

5. Rank: What is your rank?

6. Which division are you attached to?

Juvenile Aid	1
Traffic	2
Licensing	3
Truancy Patrol	4
General Duties	5
Criminal Investigation	6
Drug Squad	7
Community Liaison	8
Other	9

7. Are you involved in any activities organised by the police force for young people in particular?

No	0	
Blue Light Disco	1 yes	2 no
Police-Youth Club	1 yes	2 no
Neighbourhood Watch	1 yes	2 no
Schools Liaison	1 yes	2 no
Other	1 yes	2 no

B. Education and Training

8. In addition to your formal training as a policy officer, have you:

- | | |
|--|---|
| Completed Year 12 | 1 |
| Partially completed tertiary education | 2 |
| Completed tertiary education | 3 |
| Other | 4 |

9. Have you had any specific training with respect to young people in conflict with the law or regarding those young people who are 'a risk'?

- No
Yes – Describe

10. Was this training useful?

- | | |
|-----|---|
| No | 1 |
| Yes | 2 |

11. What were the major strengths/weaknesses of the this training?

12. Have you had any in-service training on working with young people?

- No 0
Yes – Describe

13. Is there any specific information or training you would like to have in working with young people?

- No 1
Yes – Describe

C. General Duties

14. Location of Station

- | | |
|----------------------------|---|
| City Centre | 1 |
| Low-Income Inner-Suburb | 2 |
| Middle-Income Inner-Suburb | 3 |
| High-Income Inner-Suburb | 4 |
| Low-Income Outer-Suburb | 5 |
| Middle-Income Outer-Suburb | 6 |
| High-Income Outer Suburb | 7 |

15. Besides routine police work, do you have any other involvements in this particular community? For example, do you:

- | | | |
|--------------------------|-------|------|
| Live in the area | 1 yes | 2 no |
| Play or watch sport here | 1 yes | 2 no |
| Go to church here | 1 yes | 2 no |
| Spend social time here | 1 yes | 2 no |
| Other | 1 yes | 2 no |
| No involvement | 1 yes | 2 no |

16. In a normal week, what proportion of all the people you deal with are aged 10 -17 years?

- | | |
|---------------------|---|
| None | 1 |
| Less than 25 % | 2 |
| Between 25% and 50% | 3 |
| Between 50% and 75% | 4 |
| Over 75 % | 5 |

17. In a normal week, how many young people do you deal with?

18. In a normal work week how much of your time is spent on paperwork?

- None 1
- Less than 25 % 2
- Between 25 % and 50% 3
- Between 50 % and 75 % 4
- Over 75 % 5

19. In a normal work week, what proportion of your time do you spend in contact with young people?

- None 1
- Less than 25 % 2
- Between 25% and 50% 3
- Between 50% and 75% 4
- Over 75 % 5

20. Are there any shifts in which you are more likely to have contact with young people?

- No 0
- Yes
- If yes:
 - Morning 1
 - Afternoon 2
 - Evening 3
 - Night 4
 - Late Night 5

21. Are there specific areas that you patrol where the behaviour of young people is of particular concern to you?

- No 0
- Yes
- (Circle more than one if necessary)
- If yes:
 - Pubs 1
 - Malls 2
 - Shopping Centres 3
 - Beaches 4
 - Public Housing Estates 5
 - Discos 6
 - Football/cricket grounds 7
 - Other 8

D. Police/Youth Relations

22. Do you find young people difficult to deal with?

- No 0
- Yes 1

If yes, why is this the case?

23. Are there specific groups of young people that are more difficult than others?

- No 0
- Yes

- If yes:
 - a. Social background
 - Aborigines/Torres Straight Islanders 1 yes 2 no
 - Street Kids 1 yes 2 no
 - Young Men 1 yes 2 no
 - Young Women 1 yes 2 no
 - School Kids 1 yes 2 no
 - Gangs 1 yes 2 no
 - Other 1 yes 2 no

b. <u>Age</u>	
10-12	1
13-15	2
16-18	3
18 +	4

c. Other

24. Why do you feel that this is the case?

25. In the normal course of your work you would deal with some young people by providing them with information, others by providing assistance or by telling them to move one, sending them home, cautioning them or arresting them and so on. In your contact with young people what proportion do you deal with by:

Providing them with information	1	2	3	4	5
Providing them with assistance	1	2	3	4	5
Providing them with a warning	1	2	3	4	5
Telling them to move one	1	2	3	4	5
Talking their names	1	2	3	4	5
Taking them home	1	2	3	4	5
Sending them home	1	2	3	4	5
Taking them back to the station	1	2	3	4	5
Issuing them with a formal caution	1	2	3	4	5
Issuing them with a summons	1	2	3	4	5
Making an arrest	1	2	3	4	5
Searching their clothing or car	1	2	3	4	5
Asking them informal questions	1	2	3	4	5
Other	1	2	3	4	5

Scale: 1 = None
 2 = Less than 25 %
 3 = Between 25% and 50%
 4 = Between 50% and 75%
 5 = Over 75 %

26. In the normal course of your work as a police officer you make decisions as to how to best deal with situations involving juveniles. In some situations you make a decision as to whether it is better to deal with a juvenile formally, by arresting or summoning them, or informally by warning or cautioning them. In deciding to deal with a young person informally how important are the following factors in your decision:

the degree of co-operation	1	2	3	4	5
seriousness of the activity	1	2	3	4	5
attitude of the young person	1	2	3	4	5
young person coming from a good home	1	2	3	4	5
extent of previous involvement with police	1	2	3	4	5
the amount of paperwork required to proceed to court	1	2	3	4	5
number of young people involved	1	2	3	4	5
dissatisfied with normal court response	1	2	3	4	5
other matters	1	2	3	4	5

Scale: 1 = Not Important
 2 = Slightly Important
 3 = Important
 4 = Very Important
 5 = Crucial

27. How many young people that you come into contact with have much respect for authority and for the police in particular?

- | | |
|------------|---|
| Very few | 1 |
| A few | 2 |
| About half | 3 |
| Most | 4 |
| Nearly all | 5 |

28. Have you ever been harassed or assaulted by young people during the course of your work?

- | | |
|-----|---|
| No | 0 |
| Yes | |

If yes: a. Frequency

- | | |
|------------------|---|
| Often | 1 |
| Some of the time | 2 |
| Not very often | 3 |
| Hardly ever | 4 |

b. Behaviour

- | | | |
|-----------------------|-------|------|
| Nil harassment | 1 yes | 2 no |
| Verbal taunts | 1 yes | 2 no |
| Shouted at | 1 yes | 2 no |
| Swearing | 1 yes | 2 no |
| Kicked | 1 yes | 2 no |
| Punched | 1 yes | 2 no |
| Thrown object | 1 yes | 2 no |
| Assaulted with weapon | 1 yes | 2 no |
| Other | 1 yes | 2 no |

29. Have you ever had to apply force of any kind to a young person?

- | | |
|--|--|
| No | |
| Yes – Why, in self defence or other. (Specify) | |

30. From time to time there are allegations that some police officers use too much physical force in their dealings with young people. Do you think this sometimes occurs?

- No – then why do you think these allegations are made?
Yes – what does this usually consist of?
Is it likely to involve some types of young people than others? Describe.
Why do you think this happens?

31. After a young person has been taken back to the station, do they ever have the right to make a telephone call?

- | | |
|--------------------------------|---|
| No | 0 |
| Yes – under what circumstances | 1 |

32. After a young person has been taken back to the station, do they ever have the right for a third person (not a police officer) to be present during processing and/or questioning?

- | | |
|--------------------------------|---|
| No | 0 |
| Yes – under what circumstances | 1 |

33. In the last normal work week, what percentage of occasions you were processing and/or questioning a young person was there a third person?

- | | |
|---------------------|---|
| None | 1 |
| Less than 25% | 2 |
| Between 25% and 50% | 3 |
| Between 50% and 75% | 4 |
| Over 75 % | 5 |

Most often who was this third person? (Circle up to two)

Parent	1
Youth Worker	2
Lawyer	3
Legal Aid Worker	4
Community Law Centre Worker	5
Social Worker	6
Police Officer	7

34. At what stage do young people have the right to legal advice in their interaction with the police?

Before any questions are asked	1
After arrival at the police station	2
After a formal charge/summons/caution is laid	3
After police interview	4
After the parents are contacted	5
Other	6

35. How many of the young people that you come into contact with do you think know their legal rights?

Very Few	1
A Few	2
About Half	3
Most	4
Nearly All	5

36. Do you provide young suspects who are being questioned in relation to an offence with information regarding their rights?

No
If yes, which rights?

37. Have you ever had a formal complaint, unsubstantiated by later enquires or otherwise, made against you by a young person?

No
If yes, what was the nature of the complaint?

38. What do you think are the main issues or problems in police/youth relations today?

39. What do you think could be done to improve the situation between young people and the police?

THANK YOU VERY MUCH

Appendix 2

YOUTH QUESTIONNAIRE

State: Location:

1. Age:

2. Sex: Male Female

3. What are you presently doing:

Going to school full-time	S
Working full-time	WF
Working part-time	WP
Unemployed	UM
School/work part-time	SW

4. In what country were you born?

5. In what country was your mother born?

6. In what country was your father born?

7. Are you Aboriginal or a Torres Straits Islander?

8. Where are you living:

with parent/s or guardian	P
with relatives	R
friends	F
in a hostel/refuge	H
squat	S
on the street	T
other	O

9. Does your father have a job: No Yes

10. What is his job?

11. Does your mother have a job for which she gets paid? No Yes:

12. What is her job?

44. What day of the week are you MOST LIKELY to be approached by a police officer?
 W Monday to Friday OR E Weekends A All

45. When you are approached are you USUALLY (MOST OFTEN) in a group or by yourself?
 G Group OR M By Myself B Both

When you have had contact with the police, were you doing any of the following things?

46. Hanging out Never Sometimes Often

47. Fighting Never Sometimes Often

48. Drinking Never Sometimes Often

49. Graffiti Never Sometimes Often

50a. Playing Sport Never Sometimes Often

50b. Walking on street Never Sometimes Often

51. Other

52. Have you ever been taken to a police station? YES NO GO TO Q.74

53. About how many times?

Think about MOST OF THE TIMES that you have been taken to a police station
 At the police station did the police?

54. Speak nicely to you NO YES

55. Tell you about your rights NO YES

56. Explain what was happening NO YES

57. Try to get someone you wanted to come in to give you support NO YES

58. Try to make you comfortable NO YES

AT THE POLICE STATION did the police do any of the following
 (IF YES, please write the number of times you have been at a police station when this has happened to you)

59. Yell or swear at you NO YES No.=

60. Hit you NO YES No.=

61. Physically push you around NO YES No.=

62. Ask you to remove pieces of clothing NO YES No.=

63. Sexually assault you NO YES No.=

64. Other Please describe (you can use the back of the page if you like)

65. Most of the times you have been at a police station were you given the opportunity to make a phone call?
 YES NO

66. Most of the times you have been at a police station, has an adult (other than the police officers) been present with you while you were being questioned?

YES NO

67. Overall, do you think you were treated fairly by the police? YES NO

68. Have you ever been fingerprinted by the police? YES NO...GO TO Q.70.

69. Were you arrested for an offence that time? YES NO

70. Have you ever been held in police cells? YES NO-go to Q.74

71. How long were you held?

72. Was there anyone else in the same cell? NO YES

73. Were you in the cell with

A adult/s
Y other youth/s
C both adults and youths

74. Have you ever been strip searched or asked to undress at all by the police? NO YES

75. Have you ever been Officially Cautioned by police (that is, have been you asked by the police to go to the police station with your parents to be warned by the Sergeant)?

NO YES

78. Personally, have YOU ever been roughed up in any way by the police

NO...Go to Q.86 YES

79. Where did this occur? (you can tick more than one place)

S on the street
PS in the police station
V in the police van
H in a house
B in a public building
O Other – Please describe

80. What did they do? (you can use the back of the page if you like)

81. Did you tell anyone about what happened? YES NO

82. Why not?

F frightened of police retaliation
B nobody would believe you
N nobody would do anything anyway
O other – please explain...

83. Who did you tell?.. Friends (01) Solicitor/legal family (05)

Family (02) Neighbour/other adult (06)

Youth worker (03) Teacher (07)

Doctor (04) Other (08)

84. Did you or anyone else make a formal complaint on your behalf? NO YES

86. Have you ever admitted to an offence to the police that you did not commit? NO YES

—
N
—
Y
—
A
—
R
—
S
—

86. Why

87. Have you ever had to go to court? NO YES

88. What legal representation/advocacy did you have?

- N None
- L Duty lawyer
- A Legal aid
- Y Youth welfare advocate
- O Other

89. What do you think about the police?

KNOWLEDGE OF LEGAL RIGHTS

90. Do you think that it is true that young people have certain legal rights when they are stopped or are questioned by police?

NO YES

91. What are those rights?

YOUTH LEGAL SERVICES

92. If you needed a lawyer or a legal representative who would you call/ or go to see?

93. Do you know of any legal services that are especially for young people? NO YES

94. Can you name them?

95. Have you ever been given any information by the police about your rights when you have been stopped or are being questioned by them?

NO YES

96. Have you ever tried to assert your rights when you have been stopped or questioned by a police officer?

NO YES

97. What happened as a result?

98. Do you think that you need more information about your legal rights?

NO YES

99. Can people see a lawyer for free or very cheaply if they cannot afford the costs?

- Y Yes
- S Not sure
- N No

100. Do you think that young people who may need to see a lawyer often don't go to one?

NO YES

101. Why?

Here is a list of statements about the law and lawyers. We would like to know whether you agree or disagree with them

	AGREE	DISAGREE
102. I know my legal rights	A	D
103. I find legal matters a bit difficult to understand	A	D
104. Lawyers cost a lot of money	A	D
105. The law is used unfairly against young people	A	D
106. Lawyers do not understand what it is like to be young today	A	D

Appendix 3

LAWYERS/LEGAL ADVOCATES QUESTIONNAIRE

YOUTH ASSISTED BY POLICE

1. In an average month, how many young people, aged under 18 years, report receiving or seeking police assistance?

2. Of these young people what proportion would report the following experiences in seeking or receiving police assistance.

a being helped or assisted by police after being subject to abuse within their family.

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

b being helped by police after an assault by a non-family member.

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

c being helped to solve a family conflict or problem.

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76%+

d being helped to solve a peer conflict or problem.

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76%+

e being helped to find emergency accommodation.

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

POLICE CONTACT WITH YOUTH ABOUT YOUTH BEHAVIOUR

3. In an average month how many persons aged under 18 years who have had contact with the police about their alleged behaviour would you see?

PUBLIC PLACES

4. Of the young people that you have assisted, what proportion would report the following experiences with police in public places such as street corners, malls, concerts, public venues etc..?

a Being stopped and questioned about their behaviour

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

b Regular harassment

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76%+

c Being verbally abused

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

d Being physically assaulted

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76%+

e Being strip searched

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

f Being assisted with a problem

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

g Are there any other comments that you would like to make about young people and police in public places?

POLICE INVESTIGATION

5. Of the young people that you have assisted to, what proportion would report the following experiences during the police investigation of an offence(s)?

a Being well treated

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

b Not being warned of the right to remain silent

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76%+

c Being denied access to legal advice during questioning

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

d Being denied access to their parents or guardian

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

e Being verbally abused prior to formal questioning

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

f Being physically abused prior to formal questioning

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

g Being verbally abused during formal questioning

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

h Being physically abused during formal questioning

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

i Being verbally intimidated (e.g. warned that it will be much worse if they don't confess) prior or during questioning

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

j Being threatened with physical violence prior to or during questioning

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

k Being verbally

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

l Being held for overly long periods prior to questioning

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

m Admitting to offences they did not commit

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

n being questioned without having an independent person present

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

o being denied access to a phone call
(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

6. Thinking about the young people you have contact with, do you believe that

a Young people who commit offences should be dealt with by police informally by programs such as cautioning or aid panels rather than being dealt with by courts

1	Not at all
2	Less than they are at present
3	The same as present
4	More than they are at present
5	Nearly all the time

b Young peoples attendance at court should be secured by way of summons rather than arrest

1	Not at all
2	Less than they are at present
3	The same as present
4	More than they are at present
5	Nearly all the time

c Is the right to silence adequately protected by cautioning and existing laws and procedures/

1	Yes
2	No

d What proportion of young people know their legal rights
(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

e Do you know of any instances of negative consequences for young people who have asserted their rights during police questioning?

f Do you think young people are in a position to be able to make use of their rights in police questioning?

h What do you think could be done to improve young people's knowledge and understanding of their legal rights and responsibilities?

POLICE COMPLAINTS

7. In your experience what proportion of young people who are inappropriately treated by Police lodge formal complaints.

(Please Circle)

1	2	3	4	5
None	5-25%	26-50%	51-75%	76% +

8. Are the existing complaints mechanisms for dealing with young people's problems with police adequate?

Yes No ---> What problems?
How could they be improved?

9. Besides the formal complaints mechanisms what other processes Do you consider might be useful to resolve conflicts between police and youth?

10. Do you think some young people are treated more harshly by police than others?
 No Yes ---> Which young people
 Why?
11. What do you think are the main issues or problems in Police youth relations today?
12. What do you think could be done to improve the situation between young people and police?
13. Do young people have adequate access to legal advice and representation?
 Yes No ---> Comment
15. What do you think could be done to improve young people's access to legal advice and representation?

POLICE PROGRAMS

16. Have you ever participated in any activity or program to improve police youth relations
 0 No
 1 Police Education
 2 Joint police – lawyer education of youth in schools or other settings
 3 Police – youth advisory committees
 4 Social activities organised by police for young people
 5 Other ---> specify
17. In your experience do such programs improve relations between police and young people
 (Please Circle)
 1 2 3 4 5
 A lot a little not at all makes a little worse makes a lot worse

Other Information

18. Are you
 1 lawyer in private practice
 2 salaried legal aid commission lawyer
 3 community legal centre lawyer
 4 specialist young people's legal service
 5 other ---> specify
19. What proportion of your practice is concerned with people under 18 years
 (Please Circle)
 1 2 3 4 5
 None 5-25% 26-50% 51-75% 76% +
20. How frequently would you represent a child on a criminal matter
21. Are you 1 female 2 male
22. Age
23. Town or city of practice?

THANK YOU FOR YOUR ASSISTANCE

Appendix 4

LEGAL CENTRE SURVEY

1. Name of Centre: _____ Address: _____
2. Does the service provide
- a legal advice or assistance to young people having problems with the police or juvenile justice system; and/
or
- b participate in legal education of youth or youth workers in relation to young people having problems with the police or juvenile justice system.

No ---> There is no need to complete the remainder of the survey. Please return it in the supplied envelope. Thank you for your assistance.

Yes ---> Go to Question 3.

CLIENT CHARACTERISTICS

3. Approximately how many people does your centre provide advice and assistance to in a 12 month period?
- 4a. Approximately how many young people (10 -17 years) received advice or assistance with problems with police or the juvenile justice system?
- 4b. Of these young people approximately what proportion were:
- i) female
 - ii) male
 - iii) Aboriginal or Islander
 - iv) from Non English Speaking Background

AVAILABILITY OF SERVICE

5. Does the centre provide legal advice or assistance to young people:
- 1 day time – appointment only
 - 2 day time – no appointment necessary
 - 3 evening – appointment only
 - 4 evening – no appointment necessary
 - 5 day and night – appointment only
 - 6 day and night – no appointment necessary
 - 7 other (specify)
6. Does the centre provide telephone advice
- 1 No ---> Go to Question 7
 - 2 Yes ---> Is this widely advertised?
 - 1 No
 - 2 Yes

7. Does the centre employ any workers whose job description specifically requires them to focus on young people with problems with the police or juvenile justice system (including community legal education in this area)?
- 1 No ---> Go to Question 8
 - 2 Yes ---> Please give details:

	Number	Proportion of workers time
Lawyer		
Social worker		
Youth worker		
CLE worker		
Other		

POLICE QUESTIONING

- 8a. Does the centre provide lawyers or other independent persons to attend police questionings of young people?
- 1 No ---> Go to Question 9
 - 2 Lawyers
 - 3 Other independent persons
 - 4 Lawyers and independent persons
- 8b. Does the centre provide lawyers or other independent persons to attend police questionings of young people outside of normal office hours?
- 1 No ---> Go to Question 9
 - 2 Yes ---> Is this provided by:
 - 1 centre staff
 - 2 rostered volunteers
 - 3 other
- 8c. Is the after hours service advertised?
- 1 No
 - 2 Yes ---> How
9. Does the centre provide training for persons involved in police questioning of young people?
- 1 No
 - 2 Lawyers
 - 3 Youth workers
 - 4 Independent persons on centre's roster
 - 5 Other

INVOLVEMENT IN COURTS

10. Does the centre provide to young people charged with a criminal offence
- 1 Advice and referral only ---> Go to Question 14
 - 2 Legal advice, assistance and representation
11. How is the centre involved in the assistance and representation of young people charge with a criminal offence?
(Circle more than one if necessary)
- 1 Salaried staff appear
 - 2 Staff act as duly lawyer
 - 3 Organises duty lawyer schemes
 - 4 Employs specialist children's lawyer(s)
 - 5 Specialist children's legal unit
 - 6 Other

12. In an average month how many young would the centre's staff appear for in the Children's Court?
13. Does the centre have eligibility criteria for providing assistance in this jurisdiction?
- 1 No
 - 2 Yes ---> Please attach.

INVOLVEMENT WITH YOUNG PEOPLE IN INSTITUTIONS OR REFUGES

14. Does the centre visit and provide legal assistance to residents of juvenile detention centres?
- 1 No ---> Go to Question 16
 - 2 Yes ---> 1 at request of individual client
2 on a regular basis
15. In an average month how many visits are made to detention centres?
16. Does the centre provide education programs to youth residents in detention centres on their rights in relation to police and the juvenile justice system?
- 1 No
 - 2 Yes on an irregular basis
 - 3 Yes on a regular basis
17. Does the centre visit and provide legal assistance to residents of youth refuges?
- 1 No ---> Go to Question 19
 - 2 Yes ---> 1 at request of individual client
2 on a regular basis
18. In an average month how many visits are made to youth refuges?
19. Does the centre provide education programs to youth residents in refuges on their rights in relation to police and the juvenile justice system?
- 1 No
 - 2 Yes on an irregular basis
 - 3 Yes on a regular basis

COMMUNITY LEGAL EDUCATION

20. Is the centre involved in Community Legal Education for young people (10 -17 years) on police and the criminal justice system?
- 1 No
 - 2 Yes ---> Describe briefly (e.g. which youth, mode of presentation etc.)

POLICE COMPLAINTS

21. In the experience of your centre what proportion of young people who are inappropriately treated by Police lodge formal complaints.
(Please Circle)
- | | | | | |
|------|-------|--------|--------|------|
| 1 | 2 | 3 | 4 | 5 |
| None | 5-25% | 26-50% | 51-75% | 76%+ |
22. Are the existing complaints mechanisms for dealing with young people's problems with police adequate?
- Yes
 - No ---> What problems?
 - How could they be improved?

23. Besides the formal complaints mechanisms what other processes do you consider might be useful to resolve conflicts between police and youth?

24. Do you think some young people are treated more harshly by police than others?

No

Yes ---> Which young people

Why?

25. What do you think are the main issues or problems in Police youth relations today?

26. What do you think could be done to improve the situation between young people and police?

27. Do young people have adequate access to legal advice and representation?

Yes

No---> Comment

2a. What do you think could be done to improve young people's access to legal advice and representation?

POLICE PROGRAMS

29. Have you ever participated in any activity or program to improve police youth relations

0 No

1 Police Education

2 Joint police – lawyer education of youth in schools or other settings

3 police – youth advisory committees

4 Social activities organised by police for young people

5 Other ---> specify

30. In your experience do such programs improve relations between police and young people
(Please Circle)

1
A lot

2
a little

3
not at all

4
makes a little worse

5
makes a lot worse

THANK YOU

Appendix 5

NATIONAL YOUTH AFFAIRS RESEARCH SCHEME – LEGAL AID COMMISSION SURVEY

1. Name of Commission:
2. Number of regional offices

CLIENT CHARACTERISTICS

3. Approximately how many people does the Commission provide advice and assistance to in a 12 month period?
- 4a. Approximately how many young people (10 -17 years) received advice or assistance with problems with police or the juvenile justice system?
- 4b. Of these young people approximately what proportion were:
 - i) Female
 - ii) Male
 - iii) Aboriginal or Islander
 - iv) from Non English speaking background

AVAILABILITY OF SERVICE

5. Does the Commission have any special programs or policies to facilitate the delivery of legal services to young people having problems with the police or juvenile justice system?
6. Does the Commission provide telephone advice
 - 1 No ---> Go to Question 7
 - 2 Yes ---> Is this widely advertised?

1	No
2	Yes
7. Does the Commission employ any workers whose job description specifically requires them to focus on young people with problems with the police or juvenile justice system (including community legal education in this area)?
 - 1 No ---> Go to Question 8
 - 2 Yes ---> Please give details:

POLICE QUESTIONING

- 8a. Does the Commission provide lawyers or other independent persons to attend police questioning of young people?
 - 1 No ---> Go to Question 9
 - 2 Lawyers

- 3 Other independent persons
- 4 Lawyers and independent persons
- 8b. Does the Commission provide lawyers or other independent persons to attend police questioning of young people outside of normal office hours?
 - 1 No ---> Go to Question 9
 - 2 Yes ---> Is this provided by:
 - 1 Commission staff
 - 2 Rostered volunteers
 - 3 Other
- 8c. Is the after hours service advertised?
 - 1 No
 - 2 Yes ---> How
- 9. Does the Commission provide training for persons involved in police questioning of young people?
 - 1 No
 - 2 Lawyers
 - 3 Youth workers
 - 4 Independent persons on Commission's roster
 - 5 Other

INVOLVEMENT IN COURTS

- 10. Does the Commission provide assistance to young people charged with a criminal offence
 - 1 Advice and referral only
 - 2 Legal advice, assistance and representation
- 11a. How is the Commission involved in the assistance and representation of young people charge with a criminal offence? (Circle more than one if necessary)
 - 1 Salaried staff appear
 - 2 Staff act as duty lawyer
 - 3 Organises duty lawyer schemes
 - 4 Employs specialist children's lawyer(s)
 - 5 Specialist children's legal unit
 - 6 Other
 - 7 Funds private solicitors to appear
- 11b. If possible please attach details of the Commission's duty lawyer program in the children's court, where it operates, etc., and details on specialist children's lawyers or legal unit.
- 12. In an average month how many young people would the Commission's staff appear for in the Children's Court?
- 13. Does the Commission have eligibility criteria for providing assistance in this jurisdiction?
 - 1 No
 - 2 Yes ---> Please attach.

INVOLVEMENT WITH YOUNG PEOPLE IN INSTITUTIONS OR REFUGES

- 14. Does the Commission visit and provide legal assistance to residents of juvenile detention Commissions?
 - 1 No ---> Go to Question 16
 - 2 yes --->
 - 1 at request of individual client
 - 2 on a regular basis

15. In an average month how many visits are made to detention centres?
16. Does the Commission provide education programs to youth residents in detention centres on their rights in relation to police and the juvenile justice system?
- 1 No
 - 2 Yes on an irregular basis
 - 3 Yes on a regular basis
17. Does the Commission visit and provide legal assistance to residents of youth refuges?
- 1 No ---> Go to Question 19
 - 2 Yes --->
 - 1 at request of individual client
 - 2 on a regular basis
18. In an average month how many visits are made to youth refuges?
19. Does the Commission provide education programs to youth residents in refuges on their rights in relation to police and the juvenile justice system?
- 1 No
 - 2 Yes on an irregular basis
 - 3 Yes on a regular basis

COMMUNITY LEGAL EDUCATION

20. Is the Commission involved in Community Legal Education for young people (10-17 years) on police and the criminal justice system?
- 1 No
 - 2 Yes ---> Describe briefly (e.g. which youth, mode of presentation etc.)

POLICE COMPLAINT S

21. In the experience of the Commission, are the existing complaints mechanisms for dealing with young people's problems with police adequate?
- Yes
- No ---> What problems?
- How could they be improved?
22. What do you think are the main issues or problems in Police youth relations today?
23. What do you think could be done to improve the situation between young people and police?
24. What improvements are necessary to enhance young people's access to legal advice and representation?

POLICE PROGRAMS

25. Is the Commission involved in any activity or program to improve police youth relations
- 0 No
 - 1 Police Education
 - 2 Joint police – lawyer education of youth in schools or other settings
 - 3 police – youth advisory committees
 - 4 Social activities organised by police for young people
 - 5 Other ---> specify

26. Any comments on the above programs?