THE COMMONWEALTH'S RESPONSIBILITY FOR ABORIGINAL YOUNG OFFENDERS

Chris Sidoti

On 6 January 1992 the Acting Premier of Western Australia, Mr Taylor, announced the Government's intention to introduce harsh new measures for certain juvenile offenders. The announcement followed a number of deaths in high-speed car chases through Perth suburbs and a forceful public campaign for the Government to "get tough" on juvenile crime. The campaign had been building for some time and was fanned by a local radio commentator, Howard Sattler, of 6PR. The campaign peaked shortly before Christmas when a pregnant woman died as a result of a collision following a car chase. A few days later an estimated 20,000 people attended a rally outside Parliament House to demand tougher government action.

The legislation introduced by the Western Australian Government at a specially convened session of the Parliament is the most draconian juvenile justice legislation in Australia. There is little doubt that it will have little or no impact whatsoever on reducing juvenile crime but that, on the contrary, if it is ever implemented, it will increase the probability of affected juvenile offenders becoming hardened adult criminals.

The Western Australian legislation drew criticism from a wide range of individuals and groups—legal professional associations, church leaders, criminologists, youth and social welfare experts, human rights and civil liberties activists. Many pointed out that it would principally affect Aboriginal young people, because of the disproportionate rate of conviction of Aboriginal offenders.

Aboriginal and Torres Strait Islander Young Offenders

Any discussion of juvenile justice gives rise inevitably to issues of Aboriginal justice. Aboriginal and Torres Strait Islander young people are over-represented at all stages within the juvenile justice system. Further, the extent of over-representation increases as the level of intervention increases. While these conclusions are beyond doubt, it must be noted that there is a scarcity of national statistics which provide a comprehensive overview of the situation of these young people within the juvenile
Aboriginal Justice Issues

justice system. The detailed research that has been undertaken has been done primarily on a State basis.

Studies undertaken by Garth Luke and Chris Cunneen in New South Wales provide the most significant information about the situation in that State. The preliminary results of their study of 1990 statistics shows the level of Aboriginal participation at each point in the juvenile justice system (see Table 1).

Table 1

Aboriginal Participation in the NSW Juvenile Justice System, 1990

<table>
<thead>
<tr>
<th>Aboriginal Participation</th>
<th>Aboriginal people as % of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal population 10-18 yrs</td>
<td>1.8</td>
</tr>
<tr>
<td>police cautions</td>
<td>6.9</td>
</tr>
<tr>
<td>total interventions</td>
<td>15.3</td>
</tr>
<tr>
<td>court appearances</td>
<td>16.5</td>
</tr>
<tr>
<td>charge cases</td>
<td>17.4</td>
</tr>
<tr>
<td>police bail refusals</td>
<td>23.1</td>
</tr>
<tr>
<td>final bail refusals</td>
<td>21.6</td>
</tr>
<tr>
<td>control orders</td>
<td>27.2</td>
</tr>
</tbody>
</table>


Luke and Cunneen comment, "As can be seen Aboriginal children are over-represented in contacts with police and this over-representation increases as one passes further into the system" (Luke & Cunneen, 1992, p. 5). They conclude, "The preliminary data suggests that Aboriginal children are not directly discriminated against at the court level but that they do appear to have a lower chance of receiving police cautions and court attendance notices" (p. 8).

The Western Australian Legislative Assembly's Select Committee into Youth Affairs, in its recent discussion paper, referred to the level of Aboriginal over-representation in the State as demonstrated by statistics provided by the WA Department for Community Services. The Committee's Discussion Paper stated,

Aboriginal juveniles aged between 10-17 years constitute only about 4 per cent of the State's juvenile population yet they comprise:

- 16 per cent of all youth who appear before the Children's Court
- 45 per cent of youth with a history of 5 + court appearances who appeared for 1990-91
- 66 per cent of youth with a history of 21 + appearances.

(WA Select Committee 1992, pp. 7-8)
The extent of over-representation among repeat offenders gives some insight into the impact of the Western Australian legislation. It is specifically targeted at repeat offenders and that means that it is targeted principally at Aboriginal young people.

The Committee came to the same conclusions as the Luke and Cunneen study in New South Wales, that the over-representation is exacerbated at each point in the process.

Significantly, Aboriginal juveniles charged with offences are less likely than non-Aboriginals to be diverted from the Children's Court system. There are also significant differences in the way in which Aboriginals are treated in the various regions of the State. (Select Committee 1992, p. 8).

The Queensland Criminal Justice Commission recently released a discussion paper on Youth Crime and Justice in Queensland. That paper presents similar conclusions for that State.

The proportion of Aboriginal and Torres Strait Islander youth under corrective orders increased between 30 June 1985 and 30 June 1990. In that time the proportion of children under care and control who were Aboriginal increased from 32.1 per cent to 42.8 per cent. Aboriginal and Torres Strait Islander youth are concentrated at the most intrusive end of the juvenile justice system. At 30 June 1990, 65.7 per cent of all Aboriginal and Torres Strait Islander youth under a juvenile corrective order were under a care and control order as the result of an offence; 27.8 per cent were under a supervision order. In contrast, for non-Aboriginal and Torres Strait Islander youth, 42.8 per cent were in care and control and 45.1 per cent on supervision. Aboriginal and Torres Strait Islander youth were admitted to care and control at a younger age than non-Aboriginal and Torres Strait Islander youth. (O'Connor 1990, p. 58).

Aboriginal children were also substantially over-represented in juvenile detention centres in Queensland. In the period 1987-1991, the proportion of Aboriginal youth in detention centres has varied between 30 and 40 per cent (and thus the level of over-representation of children in custody is greater than that of adults in custody). Given the location of the detention centres, incarceration means removal from family and kin. The sentencing of Aboriginal children is in need of further research. (Criminal Justice Commission 1992, p. 57).

Finally, in South Australia, research undertaken at various stages over the last ten years by Gale and Wundersitz produced significantly similar results (see Tables 2 & 3).

Table 2

Number of Children's Court and Children's Aid Panel appearances per individual, South Australia, 1 July 1979-30 June 1983

<table>
<thead>
<tr>
<th>Identity</th>
<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal</td>
<td>523</td>
<td>42.9</td>
<td>16,138</td>
<td>74.6</td>
</tr>
<tr>
<td>Non-Aboriginal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Aboriginal Justice Issues

<table>
<thead>
<tr>
<th>Identity</th>
<th>Detention</th>
<th>Detention (Suspended)</th>
<th>Bond</th>
<th>Bond with supervision</th>
<th>Fine</th>
<th>Discharge</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal</td>
<td>31.8</td>
<td>25.4</td>
<td>8.8</td>
<td>19.8</td>
<td>9.7</td>
<td>16.2</td>
<td>14.1</td>
</tr>
<tr>
<td>Non-Aboriginal</td>
<td>68.2</td>
<td>74.6</td>
<td>91.2</td>
<td>80.2</td>
<td>90.3</td>
<td>83.8</td>
<td>85.9</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>n=336</td>
<td>n=389</td>
<td>n=1,751</td>
<td>n=2,356</td>
<td>n=4,526</td>
<td>n=3,560</td>
<td>n=13,806</td>
<td></td>
</tr>
</tbody>
</table>

Source: Gale & Wundersitz 1987.

Table 3

Penalties imposed in appearances before the Children's Court in South Australia
1 July 1979 - 30 June 1983

In the course of a study undertaken for the Human Rights and Equal Opportunity Commission in 1990, Cunneen sought to identify and interview all Aboriginal young people in detention centres in Queensland, New South Wales and Western Australia. The over-representation in this most severe form of treatment in the juvenile justice system is evident in the statistics he provides (see Table 4).

The impact of the juvenile justice system on Aboriginal young people was the subject of a significant part of the Report of the Royal Commission into Aboriginal Deaths in Custody. Recommendations 234 to 245 deal with "breaking the cycle for Aboriginal youth". A large number of other recommendations also have implications for the juvenile justice system. In particular, recommendation 92 states:

that governments . . . should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.
Table 4

Aboriginal Over-representation in Juvenile Detention Centres in Queensland, New South Wales & Western Australia 1990

<table>
<thead>
<tr>
<th></th>
<th>NSW</th>
<th>QLD</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal young people as % of total youth population</td>
<td>1.8</td>
<td>3.8</td>
<td>4.1</td>
</tr>
<tr>
<td>Aboriginal young people as % of youth detainees</td>
<td>23.0</td>
<td>32.0</td>
<td>73.0</td>
</tr>
</tbody>
</table>


The Royal Commission's recommendations are important for a very simple reason. It is time to stop the process whereby young people who commit minor offences become adults who commit serious crimes. The over-representation of Aboriginal people and Torres Strait Islanders in the juvenile justice system leads inevitably to their over-representation in the adult justice system. Addressing the issues for children is critical to addressing them for adults.

Developments in the States

The Western Australian legislation received wide public attention but it is in fact only one of a number of significant developments in juvenile justice law and practice in many parts of Australia over the last twelve months. There seems to be unparalleled national interest in juvenile justice issues but the developments across the country are inconsistent, frequently ill-informed,
often counter-productive and in many respects contrary to Australia's human rights obligations.

**Western Australia**

The Western Australia legislation enacted in February—the *Crime (Serious and Repeat Offenders) Sentencing Act 1992*—was developed with unseemly haste and passed in an atmosphere of vengeance. In providing for mandatory indeterminate detention of certain young offenders, it seriously restricted the ability of the courts to treat each particular offence on the basis of its own facts and circumstances. The indeterminate nature of the detention defies all legal principle and is contrary to effective penal policy.

The sudden enactment of the legislation cut across two other important initiatives taken by the Western Australian Government to review its juvenile justice policy and develop new laws and programs. The first involved an expert committee appointed to advise the Government, working for some time, collecting the best available research and taking public submissions. It had reported as recently as November 1991. When that report was delivered, it was warmly welcomed and endorsed by the Government. It made a series of recommendations which were quite contrary to the provisions embodied in the Act.

Well before the legislation was thought of, the Legislative Assembly of the Western Australian Parliament had already appointed a Select Committee into Youth Affairs and given it terms of reference to consider youth and law. The Committee's work was well under way, although it had not reported, when the new legislation was introduced. The Committee presented a discussion paper on the subject on 18 March 1992. While the discussion paper does not express the views and conclusions of the Committee itself, it does summarise the major evidence presented to the Committee in oral and written submissions. It provides a more rational overview of juvenile crime in Western Australia and lends weight to arguments that an approach to young offenders based on rehabilitation is not only more humane but also more successful.

In spite of the well-founded recommendations of the expert advisory committee and in spite of the well-advanced work of the Parliamentary Select Committee, the Government decided upon a course of action which was quite contrary to the best advice and insupportable. The Parliament was recalled in an atmosphere of crisis, hardly one in which good judgment can prevail, and the Bill was forced through both houses. The Western Australian Opposition had been even more gung-ho in its approach than the Government. The Opposition controlled the Legislative Council but many of its members were uncomfortable about the proposals. The Government, however, would not accept this and instead agreed to a reference to the Committee after the Act was passed. So far as I am aware, the Act is unique in being subject to a subsequent examination by the Committee.

In May, the Standing Committee delivered a damning report in which it endorsed the views of many that the legislation infringed international human rights standards in many significant respects, that it was contrary to the recommendations of the Royal Commission into Aboriginal Deaths in Custody, which had been endorsed by the Western Australia Government, that it removes discretion from the courts and transfers it to the police and prosecuting authorities (in the exercise of their unfettered discretion to decide what an offender is to be charged with and thereby pursuant to the Act determine the penalty to be imposed—WA Standing Committee 1992, p. 19) and
that it was contrary to the Government's "longstanding commitment to actively seek the rehabilitation of offenders and to reduce the number of offenders in custody". The Standing Committee recommended that the Government should reconsider the legislation.

The Western Australian legislation was passed as a response to fatal accidents following high speed car chases. Since its passage, there have been no further deaths. Is this to be taken as an indicator that the legislation is having the intended effect? Or is it a reflection of the change in police guidelines governing hot pursuits, which were made at the same time as the passage of the new law? Many argued that the deaths of innocent people could be traced not to weak laws but to the actions of the police in undertaking dangerous chases through built-up areas. Perhaps that is why the police have refused to release their new guidelines. In any event, since they stopped giving chase the accidents and deaths have stopped.

South Australia

The juvenile justice debate in South Australia appears to be a delayed replay of the recent debate in Western Australia. Frequent high-speed chases and the inevitable deaths of innocent people as a result have been the subject of considerable media attention. The Police Commissioner, Mr David Hunt, announced on 20 May 1992 that there had been 162 high-speed pursuits in the first 141 days of the year. He called for stronger government action, although his statement was quite contradictory. "We need preventative measures in a way never seen before. One answer is stiffer penalties". Stiffer penalties are the antithesis of preventative measures.

Juvenile justice has also been the subject of an inquiry by a Select Committee on the South Australian Parliament, chaired by Mr Terry Groom, an Independent Labor MP. Mr Groom's public statements in recent months have lent weight to the pressure for stronger penalties. Echoing the approach of the Western Australian Government, he said South Australia should return to the old style "kick in the pants" policing with harsher penalties for repeat offenders. He has also called in the past for courts to send young offenders to adult prisons for a day or two as punishment and for deterrence. This would be in breach of Australia's obligations under the International Covenant on Civil and Political Rights and under the Convention on the Rights of the Child.

The South Australian Parliament's Select Committee is yet to report but Mr Groom's frequent public comments leave little doubt as to the direction he would like the report to take.

New South Wales

While in Western Australia and South Australia the clock is being rapidly turned back, in New South Wales there is hope of a more positive approach towards preventing juvenile crime. The failure of past policies is now well acknowledged and the Government, with strong community support, is moving towards a more humane and effective approach to juvenile crime.

The stimulus for this change of policy was a major report, Kids in Justice, produced by the New South Wales Youth Justice Coalition. That report exposed the ineffectiveness of policies of high detention rates and long sentences. It revived public debate on the need for policies that were both humane and effective. In 1990 the Standing Committee on Social Issues of the New South Wales Legislative Council was given a reference to inquire into the juvenile justice system in the State. That
reference was renewed by the Attorney-General and the Minister for Justice after the 1991 election. The report was released on 20 May 1992. The Committee strongly endorsed policies and programs to divert young offenders and potential young offenders from the court system and from detention centres. It saw the wisdom of not exposing young offenders, particularly first offenders, to hardened criminals and the desirability of using more effective rehabilitation strategies than detention. The report makes recommendations on crime prevention, court diversion schemes, community based options for young offenders, and broader resources and servicing in juvenile justice systems. It comments, "Any appropriate or effective response to juvenile crime must be based on an understanding of the causes of offending young behaviour".

The report has been welcomed by the New South Wales Government and has received strong support in the community. New South Wales seems set for another significant period of juvenile justice reform.

Queensland

In March 1992 the Queensland Criminal Justice Commission released an information and issues paper on Juvenile Crime and Justice in Queensland. The paper provides an overview of juvenile justice in Queensland and calls for urgent action in relation to crime prevention and the administration and operation of juvenile justice systems. The release of the report followed soon after an announcement by the Queensland Premier, Mr Goss, of the Government's decision to introduce significant reforms to the juvenile justice system. A task force on juvenile crime was established within the Office of the Cabinet to consider legislative measures and crime prevention programs in relation to juvenile justice. In his announcement, Mr Goss indicated that the reforms would seek to distinguish between welfare and justice matters in relation to children, with the emphasis on the latter in the juvenile justice system.

Juvenile crime is also the subject of an inquiry by a parliamentary committee. The committee recently travelled to Western Australia to examine the juvenile justice approaches being taken there. This apparent interest in the Western Australian model is ominous. The directions taken in that State are contrary to those proposed for Queensland by the Premier and, if introduced, would jeopardise the success of the reform effort there.

Northern Territory

Although there are no formal inquiries into juvenile justice under way in the Northern Territory, the Government has expressed interest in the Western Australian model and has indicated that it is being examined to assess its applicability to the situation in the NT.

The Commonwealth

Juvenile justice may be under the microscope in many States and the signs may indicate increasing inconsistency in policy directions and continuing ineffectiveness in programs. Nonetheless, the Commonwealth is yet to take a significant interest in the subject.

That is not to say there has been no Commonwealth activity in relation to juvenile justice. There are Commonwealth grants for innovative programs for the diversion of young offenders and potential offenders. There is also important Commonwealth...
responsibility for data collection and analysis, through both the Australian Bureau of Statistics and the Australian Institute of Criminology. But there is no Commonwealth juvenile justice policy and no explicit Commonwealth view on juvenile crime prevention or on the treatment of juvenile offenders.

This may be about to change. The Federal Justice Office, in the Attorney-General's Department, has been coordinating a joint Commonwealth/State examination of crime prevention strategies. This work, it is hoped, will culminate in the presentation of a White Paper on crime prevention in the budget session of Parliament. The White Paper will represent a Commonwealth commitment to involvement in crime prevention at a significant level and, inevitably, it must represent a new Commonwealth interest in juvenile justice. This interest is long overdue. The Commonwealth has clear responsibilities towards the community and young people in relation to juvenile crime. The responsibilities are particularly important for Aboriginal and Torres Strait Islander young people.

**The Commonwealth's Responsibility**

*Aboriginal and Torres Strait Islander people*

The Commonwealth has primary governmental responsibility for the well-being of Aboriginal and Torres Strait Islander Australians. Although juvenile justice systems are run by the State and Territory Governments, their impact on Aboriginal and Torres Strait Islander young people, and particularly the over-representation of these young people in them, requires the Commonwealth to take a close interest in the systems.
**Human rights concerns**

Australia has international obligations under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child which are applicable to the treatment of juvenile offenders. Other obligations under the Convention on the Elimination of all Forms of Racial Discrimination are also significant in view of the disproportionate detention of Aboriginal and Torres Strait Islander juveniles. These international instruments, which have been ratified by Australia, create obligations that bind not only the Commonwealth Government but also the governments of each State and Territory. The Commonwealth bears a particular responsibility to ensure that all Australian jurisdictions comply with these treaties' provisions. Further, the Commonwealth Government is required to report periodically on Australia's observance of the treaties and to submit to questioning by the international committees responsible for them.

The International Covenant on Civil and Political Rights (ICCPR) contains a number of articles relevant to the criminal justice system, including juvenile justice:

**Article 7:** The right to freedom from torture and from cruel, inhuman or degrading punishment.

**Article 9:** The right to freedom from arbitrary arrest or detention.

The right to be informed at the time of arrest of the reasons for the arrest and to be properly informed of any charges.

The right to be tried within a reasonable time or to be released.

The right, as a general rule, to release pending trial.

The right to take proceedings before a court to challenge arrest or detention.

The right to compensation for unlawful arrest or detention.

**Article 10:** The right of all persons deprived of liberty to be treated with humanity and with respect for the inherent dignity of the human person.

The right of persons remanded in custody to be segregated from convicted persons and treated separately in accordance with their status as unconvicted persons.

The right of juveniles to be separated from adults and to be treated appropriately to their age and legal status.
The Convention on the Rights of the Child (CROC) has important provisions relating explicitly to children in the criminal justice system. Some of these provisions mirror those in the International Covenant on Civil and Political Rights, for example

**Article 37:**

the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment

the right not to be deprived of liberty unlawfully or arbitrarily

the right to freedom from arrest, detention or imprisonment except in conformity with the law and only as a measure of last resort and for the shortest appropriate period of time.

the right to be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the age of the person

the right of a child deprived of liberty to be separated from adults unless in the child's best interests not to do so

the right of a child deprived of liberty to maintain contact with his or her family

the right of a child deprived of liberty to challenge the legality of the deprivation before a court or other competent, independent and impartial authority.

The Convention also includes important provisions relating specifically to the juvenile justice system. Article 40(1) provides:

States Parties recognise the right of every child alleged as, accused of or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's resuming a constructive role in society.
Further, Article 40(4) provides

A variety of depositions, such as care, guidance and supervision orders; counselling; probation; foster care; educational and vocational training programs and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

It is important to note as well that Australia is a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This Convention deals explicitly with forms of detention and situations which are contrary to the essential human dignity of the detainee.

Australia has also undertaken to observe international minimum rules and guidelines relating to the treatment of juvenile offenders (the Beijing Rules and Riyadh Rules). Although these do not create obligations in the same sense as international treaties do, nonetheless they represent a significant international commitment and therefore a Commonwealth responsibility. Whereas similar minimum rules relating to the treatment of adult offenders have been adopted throughout Australia, there has been no mechanism established for the application of the rules for juvenile offenders.

The juvenile justice system in various parts of Australia has been strongly criticised as infringing these fundamental internationally guaranteed human rights, which Australia has an obligation to observe. The Western Australian legislation mentioned earlier, for example, was the subject of detailed criticism by the Federal Human Rights Commissioner, Mr Brian Burdekin, and others as being contrary to these provisions. It is significant that the Standing Committee on Legislation of the WA Legislative Council supported these criticisms. Its report finds a clear violation of Article 9(4) of the ICCPR (detention should not be arbitrary and the detainee should be able to challenge detention in a court) (p. 7), clear inconsistency with Article 40(4) and Article 37(b) of the CROC, (the court must have a range of dispositions at its disposal and discretion to ensure appropriate and proportional sentencing) (p. 8), non-compliance with Article 2 of the CROC (the right to individual assessment before an appropriate sentence is passed) (p. 8), failure to meet the obligation under Article 12(1) of the CROC, (the right to be heard in proceedings affecting the child) (p. 8), clear breaches of Article 37(c) of the CROC and Article 10(3) of the ICCPR (separation of juvenile from adult offenders) (p. 9). The Committee quotes approvingly (p. 11) from a paper, "Juvenile Justice in Western Australia", by Ms Moira Raynor, Victorian Commissioner for Equal Opportunity and a former President of the WA Law Reform Commission:

The WA legislation is a problem for the whole country. Australia signed the Convention on the Rights of the Child with the States' consent. We have now adopted the Optional Protocol to the International Covenant on Civil and Political Rights in 1991. We are internationally accountable for our protection of human rights throughout Australia. We are about to be severely embarrassed.

The Western Australian laws are not the only juvenile justice practices in Australia which breach human rights standards. The use of police watch-houses in Queensland is also of serious concern. In a recent address to a seminar in Brisbane, the President of our Commission, Justice Elizabeth Evatt, referred to the prohibition of inhuman and degrading treatment and the requirement of adequate supervision. She said,
In terms of the overcrowded, unpleasant and under supervised conditions reported by children detained in watch-houses, this provision is undoubtedly not being honoured by Australia. . . Looking at each of the principles—last resort, separation of juveniles, discrimination, proportionality, rehabilitation and standards of treatment—there is much cause for concern—and plenty of material to suggest that Queensland has not yet done enough to bring its law and practice into conformity with international standards (Evatt 1992, pp. 6-7).

The standards set by international human rights instruments ratified by Australia are binding obligations. They bind all Australian governments equally but the Commonwealth has a primary responsibility to ensure that they are met. That responsibility is presently not being discharged.

**Federal offenders**

A number of young people coming before the courts are charged and convicted of offences under federal legislation. Although the number is small (probably around a hundred each year), the Commonwealth has clear responsibilities towards these federal offenders. This responsibility is particularly significant in the light of legislation such as the Western Australian Act which breaches Australia's human rights obligations.

The *Crimes Act 1914* (Cwlth) section 20C provides that a juvenile who violates Commonwealth law is "dealt with pursuant to State law". The offensive provisions of the Western Australian Act therefore apply to federal juvenile offenders, thereby placing the Australian Government itself in breach of its international obligations. It is not difficult to imagine this occurring; all that is needed is for a young person with previous convictions to assault someone while stealing a Commonwealth car. The same situation would arise if young persons charged with federal offences were placed in certain police watch-houses in Queensland. The effect of section 20C is to leave the Commonwealth responsible for the laws and programs of each State and Territory which deal with a juvenile offender on behalf of the Commonwealth.

**Inconsistent approaches**

In the face of inconsistent State objectives and practices in juvenile justice, there is now a clear need for a consistent national approach in this important area of public policy. The States at the moment are not merely moving in different directions; they are often moving in quite contrary directions. Australian governments are sending mixed messages to young people, and indeed to the whole community, about what they hope to accomplish through...
their juvenile justice systems, about attitudes towards offending behaviour and about the expectations for young offenders themselves. Because so many, aspects of the systems in so many States clearly breach international human rights standards, State practices also raise concern about our commitment as a society to the observance of fundamental human values.

Although the States and Territories have, and will continue to have, responsibility for the administration of juvenile justice, it is no longer good enough to leave to them the determination of fundamental principles. This is being recognised more generally in the community. In the wake of the Western Australian legislation earlier this year, the Insurance Council of Australia, amongst others, called for a new coordinated nationwide approach to juvenile crime and juvenile justice.

A National Approach

The President of our Commission, Justice Evatt, has also advocated a national approach:

(T)he inconsistency in the treatment of young people in the criminal justice system, and the apparent failure to comply with international obligations, suggest that these issues be looked at nationally in order to determine

- whether the treatment of juvenile offenders (especially Aboriginal offenders and young people convicted of federal offences) is in accordance with Australia's international obligations
- whether it is desirable that uniform standards apply to all juvenile offenders
- what legislative and other options are available to the Commonwealth to implement uniform standards and
- what those minimum standards should be.

The responsibility for coordinating national approaches to national issues lies with the Commonwealth. The Australian Law Reform Commission recognised this, in relation to juvenile justice, in its report on sentencing (ALRC 44), p 123.

The Commonwealth has a role in juvenile justice matters beyond simply making provision for federal and ACT juvenile offenders... the Commonwealth is in a position to influence, and play a leadership role in, the development of coordinated juvenile justice policies throughout Australia.

The new Commonwealth interest in crime prevention may be the catalyst and the proposed White Paper the vehicle for the assertion of a Commonwealth role in establishing principles and standards for juvenile justice in all Australian jurisdictions.

A national approach to juvenile justice should have four principal objectives:
• promoting crime prevention

• focussing on the rehabilitation of young offenders

• addressing the over-representation of Aboriginal and Torres Strait Islander young people in the juvenile justice system

• setting national standards, including human rights standards, for the treatment of young people who have been accused or convicted of crime.

The approach will not require changes in responsibility for the administration of juvenile justice systems. Rather, it will require a common outlook by Commonwealth, State and Territory Governments and a shared commitment to ensure a more effective response to juvenile crime and more humane treatment of young offenders. Such an approach is now essential.

References


WA Select Committee on Youth Affairs 1992, Youth and the Law: Discussion Paper No. 3, Legislative Assembly, Perth, WA.
