This paper will provide the background to juvenile justice in New South Wales. The release of various significant reports, the establishment of the Office of Juvenile Justice and the Juvenile Justice Advisory Council and other government committees provide the current perspective within which juvenile justice can be viewed. The suggested Charter of Principles for juvenile justice also adds to this framework and may be of national interest.

Four significant issues have been identified which particularly impact upon juvenile justice in New South Wales. These are crime prevention, early intervention, community alternatives to court processing and Aboriginal issues. The paper highlights the Office of Juvenile Justice, the recipient within the criminal justice system of those young people who have not been successfully diverted from offending through crime prevention or early intervention strategies.

The degree to which juveniles have been sentenced to full time custody has been reduced dramatically over the last six years, whilst the numbers sentenced to community service orders has risen. This has demonstrated an increasing commitment by magistrates to use custody as a penalty of last resort. These positive developments provide the basis upon which to build the future of juvenile justice in New South Wales.

Philosophical Direction

The phrase "Juvenile Justice" may reflect the philosophical approach being taken to juvenile offenders in New South Wales. However, the phrase also raises several questions about the philosophical approach. What is justice? Justice for whom? Is the "system" of justice, just? The answers to these questions are important to an understanding of the philosophical approach to juvenile justice in NSW. There are two features of the system which provide an answer to the questions.

Firstly, alleged juvenile offenders usually appear before a Magistrate in the Children's Court (depending on the offence) and the case results in either
dismissal because guilt is not proven or some form of sentencing option provided for under the *Children (Criminal Proceedings) Act 1987*.

Secondly, Juvenile Justice Officers employed by the Office of Juvenile Justice prepare background and/or assessment reports to assist the court in determining an appropriate sanction. These reports take into account the social background of the young person as well as family history, education, employment, counselling and recreational issues. Accordingly, the "justice" response to the young person is determined in the context of an understanding of the offending behaviour and the circumstances of the young person.

In terms of the debate concerning "welfare" and "justice" models it would seem that the juvenile justice system in NSW includes elements of both models. However, a "justice" model which relies primarily on the court to dispense justice may be limited because neither the victim of the offending behaviour nor the community in which the offending occurred are part of, or integral to, the court process.

One can also question whether the young person receives justice given the research which has shown that the majority of juvenile offenders are themselves victims—of dysfunctional families, of emotional, physical or sexual abuse or of economic deprivation. In this context, one wonders whether the concept of "justice", with its emphasis on a court/legal response to the offending juvenile, is adequate.

There is a need to re-examine our current understanding of "justice" to ensure that it includes all the elements which are integral to a full concept of justice: justice to the offender; justice for the young person; justice to the victim; and justice to the community. A philosophical approach to juvenile justice in NSW needs to include the following:

- respect for and recognition of the rights of the young person;
- acknowledgment of the young person's responsibility and obligation to the community;
- a concept of justice that includes the responsibility and obligation of the community and the government to the young person;
- the accountability of the court for its determinations;
- the involvement of the victim and the community in the justice process; and
- a focus on the offending behaviour, the environment in which the offending occurs and community reintegration.

The Charter of Principles for juvenile justice in NSW referred to later in this paper is consistent with this philosophical approach.

**Framework for Juvenile Justice in New South Wales**

There have been significant developments in the juvenile justice system in NSW over the past few years. These developments have occurred at structural, policy and operational levels.
Reports on juvenile justice

In 1989 the Youth Justice Coalition (NSW) undertook an independent review of the juvenile justice system in NSW which focused on the experiences and perspectives of the users of the system—primarily juvenile offenders and their families, victims, members of the public and community workers—and drew substantially on the expertise and insights of the personnel of the agencies involved in the juvenile justice system—the police and the courts.

The Youth Justice Coalition's report, *Kids in Justice: a blueprint for the 90s*, dealt with the social context of juvenile crime and juvenile justice, the system of juvenile justice, the policing of young people, community based options and detention centres. The Report made a total of 233 recommendations.

In 1991 the NSW Legislative Council Standing Committee on Social Issues commenced an inquiry into the juvenile justice system in NSW with a specific focus on crime prevention programs, court diversion schemes, sentencing and community based options for the care and management of young offenders, selection and training of staff in relevant youth services and the adequacy of services to young people in the juvenile justice system. The Standing Committee's Report, *Juvenile Justice in New South Wales*, made a total of 134 recommendations.

In 1992 the NSW Minister for Justice sought the assistance of the Juvenile Justice Advisory Council of NSW in the preparation of a Government Green Paper on Juvenile Justice. The Advisory Council sought to build on the findings and recommendations of the two previously mentioned reports. The Green Paper commences with a charter of principles for juvenile justice in New South Wales, identifies the main issues concerning crime prevention, community alternatives to court processing, the police, community based programs, health, education, legal services, legislation, courts, coordination, research and evaluation, establishes key objectives in each of these areas and makes over 400 recommendations.

Establishment of the Office of Juvenile Justice

Juvenile Justice was, until recently, a unit within the former Department of Community Services. As such, welfare and justice responses to young people were the responsibility of one agency. In 1991, Juvenile Justice was transferred to the Attorney General's Department and then to the Department of Corrective Services, as the Government sought to establish an appropriate structure for Juvenile Justice in New South Wales. An independent Office of Juvenile Justice was established on 1 November 1991 within the Justice portfolio. The function of the Office of Juvenile Justice is to provide juvenile justice services for the State of New South Wales in the following areas:

- **institutions:** Juvenile Justice Centres (formerly known as Detention Centres) and Transport Services;
- **community:** Community Youth Centres and community based programs operated by Juvenile Justice Community Services; and
- **policy, research and evaluation:** strategic planning, policy development, research, review and quality assurance.
Establishment of Juvenile Justice Advisory Council

The Juvenile Justice Advisory Council of NSW was established by the Minister for Justice and the then Attorney-General on 18 September, 1991 to provide advice to the government on juvenile justice policy for an initial period of two years. It is independent of the Office of Juvenile Justice and has the support of both major parties. The Juvenile Justice Advisory Council comprises community representatives, service providers and experts on juvenile justice and crime prevention issues.

Government committees

A Ministerial Advisory Committee on Juvenile Justice which consists of several Liberal and National Party parliamentarians advises the Minister for Justice on legislative matters concerning juvenile offenders and a Cabinet Sub committee on Justice comprising the Minister for Police, Attorney-General and the Minister for Justice considers justice matters.

Juvenile justice policy direction

The NSW Minister for Justice, the Hon Terry Griffiths, MP has established a clear policy direction for juvenile justice in New South Wales which is highlighted in the theme, "A Second Chance for Kids". This policy direction entails:

- a focus on rehabilitation, diversion and preventive programs;
- addressing, where possible, a juvenile offender's behaviour in the community;
- the use of detention as a last resort; and
- detention in a humane and supportive environment with an emphasis on vocational and education programs.

In addition, a framework has been provided for future policy directions in the form of a Charter of Principles as set out in Future Directions for Juvenile Justice in NSW —Green Paper (1993).

The adoption of the Charter of Principles would provide the means for a consistent approach to juvenile justice by all the participants in the criminal justice system and give effect to the new philosophical direction for juvenile justice in NSW which was discussed earlier.

Current Situation

Having considered the broad framework for juvenile justice in NSW, it may be valuable to assess the major trends in recent years with respect to sentencing. This then establishes the base from which it is proposed to progress in the future.

The last ten years have witnessed significant changes in the way that the courts have viewed and used custody for young people. Simply stated, the changes demonstrate an increasing commitment by children's magistrates to use custody as a penalty of last resort.
Two significant sentencing trends provide ample evidence of this commitment. The first is the greatly reduced number of committals ordered by the court (with a corresponding increase in the use of alternatives to custody such as Community Service Orders). Over the past five years the total number of juvenile offenders committed to Juvenile Justice Centres has decreased from 1,558 in 1985-86 to 920 in 1990-91; a decrease of 41 per cent (see Figure 1). The second is the lowered rate of incarceration as a proportion of all proven outcomes determined by the Children's Court.

Monthly statistics for the last two and a half years show that the number of young persons detained in juvenile justice centres on control orders has remained reasonably constant. At any time, there are some 300 juveniles serving control orders and around 900 young people are ordered into custody each year. Furthermore, the percentage of Aboriginal young people in Juvenile Justice Centres has decreased from 25 per cent to 21 per cent for the period February, 1987 to February, 1992 (see Table 2).

The Aboriginal population of Juvenile Justice Centres as a proportion of the total Juvenile Justice Centre population has remained relatively constant at above 20 per cent over the last five years, though there has been some fluctuation in the actual number of Aboriginal detainees.

This information provides the basis from which to build the future for juvenile justice.
Table 1

Custodial and Non Custodial Outcomes by Remission Scheme, Children's Court
March 1984 to June 1991, New South Wales

<table>
<thead>
<tr>
<th>Remission Scheme</th>
<th>Custody</th>
<th>Non-custody</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automatic Remission</td>
<td>9.8%</td>
<td>91.2%</td>
</tr>
<tr>
<td>(3/84 to 9/87)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Earned Remission</td>
<td>7.0%</td>
<td>93.0%</td>
</tr>
<tr>
<td>(10/87 to 9/89)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sentencing Act</td>
<td>6.3%</td>
<td>93.7%</td>
</tr>
<tr>
<td>(10/89 to 6/91)</td>
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</tr>
</tbody>
</table>

Table 2

Aboriginal People in Juvenile Justice Centres (As at 7 February each year),
New South Wales

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total in Residence</td>
<td>401</td>
<td>375</td>
<td>320</td>
<td>398</td>
<td>404</td>
<td>388</td>
</tr>
<tr>
<td>Aboriginal people</td>
<td>100</td>
<td>102</td>
<td>70</td>
<td>85</td>
<td>97</td>
<td>80</td>
</tr>
<tr>
<td>% Aboriginal people in Juvenile Justice Centres</td>
<td>25%</td>
<td>27%</td>
<td>22%</td>
<td>21%</td>
<td>24%</td>
<td>21%</td>
</tr>
</tbody>
</table>

Significant Issues to Consider within Juvenile Justice

Crime prevention

The first significant issue for juvenile justice is the development of crime prevention initiatives. In NSW there are a host of programs for young people which have a crime preventive impact. These programs include education, employment, housing, transport, health, sport and recreation and community services. The NSW Police Service has been a leader in regard to specific juvenile crime prevention programs, with initiatives such as:

- the General Duties Youth Officer Program;
- Crime Prevention workshops; and
- Blue Light Discos

The Office of Juvenile Justice is also a key player in the juvenile crime prevention area through its community based correctional programs for juvenile offenders and its Juvenile Justice Centres for those committed to custody.
As part of the new direction for juvenile justice in NSW, emphasis will be placed on developing a coordinated approach across government agencies and facilitating local community based crime prevention projects.

**Early intervention in the juvenile justice system**

The second significant issue for juvenile justice is the use of early intervention in the juvenile justice system. The police are the first point of contact for young people who become involved in the juvenile justice system. Police interventions may be informal or formal. Informal police interventions consist of the provision of "friendly advice", a "warning on the run" and the use of a caution. All of these interventions occur pre-court. Formal police interventions are on the spot infringement notices, summons, court attendance notices and charging.

A NSW Police survey of formal cautioning for the 1991 calendar year found that the average rate of juvenile cautioning in New South Wales was 28 per cent and that police cautioning rates varied across patrols from 3 per cent to 83 per cent. The report, *Kids in Justice (1990)*, found that:

> While cautioning rates in NSW rose from around 4 per cent in 1985 to over 20 per cent in recent years, this is still well below other jurisdictions. In Victoria, some 60 per cent of young suspects are cautioned; in Queensland, nearly 70 per cent are cautioned. Since NSW and Victoria have similar overall intervention rates, a young suspect is three times more likely to go to court in NSW than in Victoria. This is an alarming disparity. Even in England, where the Thatcher Government has heavily promoted police cautioning, the average rate is more than double that in NSW at around 50 per cent.

Due to concerns about the effectiveness of the form of cautioning used by police which involves a juvenile offender attending a police station with his/her parent to be cautioned by a Senior Sergeant, an alternative form of cautioning has been developed in the Wagga Wagga police district. This form of cautioning involves the juvenile offender with his/her family group and the victim with his/her family group or significant others.

A conference chaired by the cautioning officer is held with all parties and the process confronts the juvenile offender with the offence and provides an opportunity for restitution or reparation. It should be noted that the method of cautioning in Wagga Wagga is part of a local model of community based policing. Details on the Wagga form of cautioning have been provided at this National Conference on Juvenile Justice by Senior Sergeant Terry O'Connell, NSW Police Service (*see* pp. 221-32 of this volume).

Early indications are that the form of cautioning developed in Wagga Wagga is effective. Prior to the introduction of the new form of cautioning, 56 per cent of young people were charged. The current rate of police charging is approximately 28 per cent. Out of ninety-nine appearances before the cautioning panel in Wagga Wagga, only nine juvenile offenders have re-offended in the past twelve months.
Community alternatives to court processing

The third significant issue to juvenile justice is the use of community alternatives to court processing. In NSW a variety of alternative mechanisms to the court processing of juvenile offenders has emerged as the community, juvenile justice personnel and the courts have searched for better ways of responding to the deeds and needs of juvenile offenders. Once again, the extent to which community alternatives to court processing are used impacts upon the number of young people who receive a court order and are managed by the Office of Juvenile Justice.

The mechanisms in NSW are the Koori Community Justice Council at Taree, the Juvenile Justice Panel at Wellington and Community Aid Panels.

**Taree Koori Community Justice Council**  The Taree Koori Community Justice Council is a one-year pilot project funded by the Office of Juvenile Justice. The pilot project, with the support of the local police, specifically targets the local Aboriginal community.

Police are able to refer an Aboriginal juvenile offender who admits to minor offences to the Community Justice Council which consists of five Aboriginal people. The Council is presided over by a coordinator. Police Aboriginal Community Liaison Officers monitor referrals to the Council.

The hierarchy of action that takes place is as follows:

- informal or formal police cautioning;
- police referral to the Community Justice Council; and
- police commenced court action: summons, court attendance notice or charge.

As a result of the Council, juvenile offenders are able to experience the consequence of their actions by making reparation, under supervision, to the community.

**Wellington Juvenile Justice Panel**  The Wellington Juvenile Justice Panel is a community based program aimed at children of a young age who are habitually encountered on the street and are considered likely to become involved in the juvenile justice system, and minor offenders who have previously received warnings by the police.

The Wellington Juvenile Justice Panel consists of an elected volunteer chairperson and deputy chairperson and a broad range of Aboriginal and non Aboriginal community representatives. The volunteer representatives work on a rotational roster with four to six people on each panel. The hierarchy of action that takes place is as follows:

- informal police cautioning;
- police referral of juvenile offender to the Juvenile Justice Panel;
- formal police cautioning; and
• police commence court action: summons, court attendance notice, or charge.

It should be noted that a juvenile offender may be referred to a panel on several occasions before formal cautioning.

**Community Aid Panels**  In March 1992 there were fifty-five Community Aid Panels operating throughout New South Wales. These Panels are coordinated by the NSW Police Service and can include police officers, local solicitors, and members of the local community and are part of the court process. A magistrate can adjourn a juvenile matter for several months to enable a young person to undertake community work at the direction of the community aid panel. The young person then returns to court at which time the case is usually dismissed with a caution.

**Aboriginal people and juvenile justice in NSW**

The final area to which consideration must be given is the over-representation of Aboriginal young people in the juvenile justice system and Aboriginal juveniles and juvenile justice in New South Wales. This section will only consider several general issues.

A survey of Aboriginal juveniles in detention conducted on 24 February 1992, found that there were ninety-six Aboriginal juveniles in Juvenile Justice Centres while the total number of detainees was 416. Of these seventy-two Aboriginal juveniles were on a control order, twenty-two were on remand and two were on both a control order and remand. The overwhelming majority of Aboriginal juveniles were in detention for property offences (55.4 per cent) whilst the minority were being detained for offences against the person (19.6 per cent) and good order offences (19 per cent).

The over-representation of Aboriginal young people in Juvenile Justice Centres is clearly unacceptable. However, a significant reduction in the level of Aboriginal over representation in Juvenile Justice Centres will only occur through the effective use of diversionary mechanisms such as police cautioning, the establishment of appropriate strategies at the early stages of the juvenile justice system which have been outlined and full utilisation of existing sentencing options such as recognisance with conditions, and the development of culturally appropriate programs.

These strategies should include specific crime prevention initiatives for Aboriginal juveniles and their communities, an increase in the use of informal warnings and cautions by police, an increase in the number of pre court diversionary schemes, suitable programs for the full utilisation of sentencing options and a wider range of community based sentencing options for the courts.

Culturally appropriate services and programs for Aboriginal juvenile offenders and those at risk of offending need to be provided in each of the key areas of the juvenile justice system. These areas include:

• community based policing;
crime prevention;
pre court diversion;
court services;
community based sentencing options;
Juvenile Justice Community Services;
Juvenile Justice Centres;
counselling services; and
post release support.

The decision as to what is culturally appropriate in any given situation, should be a
decision of Aboriginal people in accordance with the principles of self-determination.

The Office of Juvenile Justice seeks to achieve equitable outcomes for Aboriginal young
people at each and every stage of the juvenile justice system through the
development of culturally appropriate processes, procedures, services and programs. However, the Office recognises that the police and the courts play a major role at key
stages of the system and that decisions at these stages have a significant impact on
Aboriginal young people.

The Office also recognises that the needs of Aboriginal communities throughout
NSW are not homogeneous and that each community has a particular history with
differing needs and priorities. Accordingly, services and programs for Aboriginal juveniles will be developed at the local community level in order to ensure that they are
relevant, supported by the community and targeted to community needs.

The Future of Juvenile Justice in NSW

The Importance of inter-agency cooperation

In order to achieve reform and move successfully into the future there must be
consistency in the direction taken by all the players in the juvenile criminal justice
system. The formation of the Ministry for Justice with responsibility for the Office of
Juvenile Justice, adult Corrective Services and Courts Administration in New South
Wales has been important to this process.

The Green Paper (1993) on the Future Directions for Juvenile Justice in NSW,
prepared by the Juvenile Justice Advisory Council strongly emphasises the importance
of inter-agency coordination and cooperation.

Coordination of the key agencies involved in the juvenile justice system is crucial
for the effective operation of the system and for moving ahead with policies for the
future. Coordination ensures:

- consistency in strategic planning, policy and program development and
  monitoring and evaluation;
- effective utilisation of resources;
• elimination of duplication; and
• achievement of Government objectives.

Reference is made to work being undertaken overseas, particularly in the United Kingdom, as information and material were collected during a study tour undertaken by the Director of the Office of Juvenile Justice (NSW) and the Policy Adviser to the Minister for Justice. Progress being made overseas on increasing the use of community based sentencing options instead of custody is of interest in New South Wales.

Changing community attitudes

The view must be dispelled in the community that giving juveniles custodial sentences as a "short, sharp, shock in order to set them on the straight and narrow" is effective.

The disadvantages of custodial sentencing for young offenders were highlighted in the Green Paper, *Punishment, Custody and the Community*, published by the British Home Office in July 1988. The Paper stated that:

Most young offenders grow out of crime as they become more mature and responsible. They need encouragement and help to become law abiding. Even a short period of custody is quite likely to confirm them as criminals, particularly as they acquire new criminal skills from more sophisticated offenders. They see themselves labelled as criminals and behave accordingly.

The task therefore has been for all the organisations concerned with youth crime and young offenders to coordinate their efforts to ensure that effective and relevant community-based options are available so that custody is only used in cases where there is genuinely no alternative (NACRO 1991, p. 1).

Of key importance to the future of juvenile justice is an acceptance of a presumption in favour of using community based penalties as the "right" sort of reaction to offenders.

In order that community based sentences are recognised as being credible and valuable options there must be far greater awareness of what it means to receive such a sentence within the community, by the judiciary and importantly the media. The Office of Juvenile Justice in NSW is integral to promoting information and educating the public on what it means to undertake a community based order. Community based penalties must be readily understood and straight forward to administer.

Publicity must be given to the very short terms juveniles spend in detention, usually less than six months, and how little this does in terms of impacting upon their offending behaviour or breaking the cycle of crime. Six months is too short a time for completing educational or vocational training and the negative impact of dislocation from school, or employment, family and friends is hard to estimate. Preliminary results from a study by the NSW Office of Juvenile Justice indicate that recidivists surveyed in detention in April 1992 had committed offences more serious than their initial proven
offence receiving custody in over 50 per cent of cases. Earlier periods in detention had therefore not successfully diverted these juveniles from offending.

Research is necessary to assess community attitudes to crime and offenders in order to identify the problems and needs, as perceived by local communities, which can then be addressed. Providing regular information to the community and participants in the criminal justice system on levels of crimes committed, issues such as recidivism and the effectiveness of community programs will help to involve the public and raise awareness.

Publicising the results of initiatives undertaken with young people, the impact of programs, achievements by juvenile offenders and crime prevention strategies can all assist in winning community opinion and influence media coverage.

Public fear of crime, which is frequently influenced by the media, should not be allowed to adversely affect the way in which government agencies respond to young people and offenders.

The participation of the community in the juvenile justice system can be encouraged in many ways. The involvement of the victim in the criminal justice process has previously been referred to in the discussion on the Wagga form of cautioning and the involvement of the community was considered in the discussion on pre and post court panel mechanisms. There is the scope for a greater involvement by non government agencies in the delivery of services and programs. Crime prevention strategies involve the whole community and many agencies including Local Government, and the Department of School Education which have a significant role to play. Young people themselves must be consulted during the policy making process and in establishing the provision of services.

Involving community members in programs with juvenile offenders can positively affect attitudes, for example through participation as sessional supervisors for Community Service Orders, the use of volunteers and non government agencies. This helps to promote the acceptance of those programs and reinforces the notion that juvenile offenders continue to be part of the community and the community itself has a responsibility toward those young people.

*Increasing the use of community sentences instead of detention*

The future of juvenile justice in NSW is directed towards providing credible sentencing options which will offer the means for more juveniles to be managed within the community, as opposed to custody.

Reducing numbers in custody is often interpreted as meaning "going soft" on offenders. Recognition must be given to the fact that community based sentences are punishments in themselves. The common reference to community based sentencing options as "alternatives" to detention, implicitly suggests that offenders should have received a custodial sentence but were given a softer option. It must be understood and accepted that community options are appropriate for the offence committed and do not constitute a penalty that is less than that which is appropriate. Community based schemes which aim to strengthen and support juveniles’ links with the home, school
and the workplace are likely to provide a more effective way of dealing with persistent and serious offenders than the costly and negative experience of custody. Such schemes can also provide adequate levels of supervision.

The use of available sentencing options by the court is in part a reflection upon the credibility of those options. Recent research undertaken by the NSW Office of Juvenile Justice revealed that few children in full time detention previously had the benefit of a supervised probation, a supervised recognisance or a Community Service Order. Fewer than one in four detainees (21.8 per cent) on a control order as at 13 April 1992 had previously received a supervised probation or recognisance order. Only twenty of 275 (7.3 per cent), previously had the benefit of a Community Service Order, despite its status as the penultimate penalty.

The Office of Juvenile Justice will in future be focussing upon clearly distinguishing between the sentencing options of probation and recognisance with supervision. It is intended that through offering programs associated with each sentence these community-based options will become more attractive to the courts. It is also important to highlight the management of these sentencing options. The level of supervision for recognisance, probation and parole needs to be addressed to ensure it is satisfactory to the judiciary and the community.

It is recognised that the simple provision of non-custodial options does not necessarily result in a reduction in the use of custody. There is always the possibility of net widening occurring and this once again emphasises the value of the judiciary having input to the process of determining the nature and availability of sentencing options.

Participation by the judiciary in the development of sentencing options and programs has had positive results overseas particularly in the reduced use of custodial sentences. In the Federal Republic of Germany between 1983 and 1988 the number of juveniles in custody (aged 14-20 years) decreased by 39 per cent. Since then the decrease has either been continued or maintained (Berinson 1991, p. 30). One of the most significant factors in the reduction of the juvenile population in detention reported was the change in judicial attitudes as reflected in changes in sentencing practices. Judges provided leadership in rejecting the idea that imprisonment was a constructive sanction, particularly for juveniles. Four factors were identified as impacting upon judicial attitudes:

- consultation with the judiciary on proposals for the implementation of change;
- involvement of the judiciary in the establishment of diversionary projects;
- provision of statistical information to judges on sentencing practices; and
- appointment of female judges which led to a greater willingness to adopt alternative approaches.
The first three points are achievable in New South Wales. Reference has already been made to consulting and involving the judiciary in proposals for change and establishing programs. The judiciary could become participants in helping to identify what referral programs were needed locally. In Germany, members of the judiciary are involved on the boards of management of some programs. This has the benefit of clearly showing what is undertaken by offenders, how the program is managed and how offending behaviour is addressed. The provision of feedback to the courts on sentences imposed by offence category, by level of court and location would assist the judiciary in making state-wide comparisons and information on sentencing costs could also be provided.

In England and Wales the judiciary have become involved in juvenile justice programs as part of interagency cooperation within the Intermediate Treatment Initiative. In 1983 funding was made available to voluntary organisations working in partnership with local authorities to provide intensive, community-based projects for juvenile offenders as a direct alternative to care orders and custodial sentences. Project management communities were established in each local authority that received funding for the Initiative and fifty of the sixty-seven committees included magistrates (75 per cent).

Research into the Initiative for the period 1983-1989 indicated:

The success of Initiative Projects in affecting change in local sentencing practice may be in large part due to this involvement. Initially magistrates were concerned not to compromise their independence (as they and their clerks saw it), and in some areas were reluctant to participate. In November 1985, the Lord Chancellor gave them the go ahead to become involved (NACRO 1991, p. 31).

Similarly, in New South Wales such participation would not interfere with the discretion of the judiciary, but would be intended to invite a greater involvement by the judiciary within the criminal justice system. This is vital to bringing about change.

One strategy successfully adopted overseas for increasing the use of community sentences whilst reducing numbers in custody, is the adoption of statutory criteria for the imposition of a custodial sentence. In the United Kingdom the 1982 Criminal Justice Act, which came into force in May 1983, laid down new statutory criteria for the use of custodial sentences for young offenders aged under twenty-one years. It stated that a custodial sentence should only be imposed on an offender aged under twenty-one when:

... no other method of dealing with him is appropriate because it appears to the court that he is unwilling to respond to non-custodial penalties or because a custodial sentence is necessary for the protection of the public or because the offence was so serious that a non-custodial sentence could not be justified (NACRO 1992, p. 3).

The statutory criteria are distinct from the more rigid approach to sentencing guidelines adopted at the Federal level in the United States.
Between 1983 and 1989 these criteria helped to reduce the annual number of custodial sentences for juveniles (under 17) from 6,800 to 3,400 and for young adults (17-20) from 24,000 to 14,000 (NACRO 1990, p. 6). The criteria were found to be particularly useful in appeals against inappropriate custodial sentences.

Further amendments were made to the legislation in 1988 which refined the circumstances in which a custodial sentence could be given and extended similar statutory criteria to the sentencing of adult offenders. In view of the earlier references to the discretion of the judiciary with respect to consultation and involvement in the criminal justice process, it is even more pertinent to address the issue of discretion with respect to statutory criteria. In the United Kingdom the Government's White Paper *Crime, Justice and Protecting the Public* (February 1990) stated that:

The present legislation on the use of custody for young offenders shows that it is possible for Parliament to give guidance on the use of custody without placing intolerable restrictions on the discretion of the courts. The legislation defines in general terms the circumstances which justify a custodial sentence. When a court gives a custodial sentence to a young offender, it has to explain, in open court, why it has done so. A more consistent approach to sentencing young offenders has emerged from the Court of Appeal's guidance on interpreting the legislation. This points the way forward for the future . . . The Government intends to introduce legislation which would require a court, before it gives a custodial sentence, to be satisfied that the offence for which the offender has been convicted by the court is so serious that only a custodial sentence is justified or that a custodial sentence is necessary to protect the public from serious harm (NACRO 1992, p. 6).

The author considers that the adoption of statutory criteria is an important issue to place on the national agenda.

Successfully managing those in detention

Where juveniles are sentenced to detention they will no longer be managed separately from Juvenile Justice Community Services. A continuum of service provision from the community, into detention and back into the community is one of the new directions for the future in NSW. This will be reflected in:

- case management commencing in the community and continuing into detention;
- case conferences involving community based staff prior to exit from detention;
- establishing pre discharge units;
- focusing within juvenile justice centres upon release into the community.

The special needs of offenders in detention will be examined more closely and assessment made as to whether the programs available meet those needs.
**Young women in custody**

In particular there is recognition that young women in custody have specific needs that may be different, or need to be managed differently, to young men in custody. Whilst the number of girls in custody in NSW is low, twenty-one as at 7 July 1992 as compared with 365 boys, appropriate services and programs must be provided.

The Report of the Standing Committee on Social Issues, *Juvenile Justice in New South Wales*, May 1992, identified that the vast majority of girls who enter the system had been victims of abuse. Members of the Committee were advised that up to 80 to 90 per cent of girls at the Juvenile Justice Centre accommodating most girls had drug dependencies and low self-esteem as a result of their difficult backgrounds. Aboriginal girls were over represented relative to their population in the wider community (Standing Committee on Social Issues 1992, pp. 139-40).

A Working Party on Girls in Custody was established in June 1992 with members from the Office of Juvenile Justice and the community. The purpose is to review and evaluate programs for young women, staffing arrangements, staff training, case management, post release follow up and the special needs of girls as distinct from boys.

**Aboriginal young people in custody**

The Office of Juvenile Justice provides a range of programs for Aboriginal juvenile offenders in Juvenile Justice Centres and has put in place a range of measures to ensure the well-being of Aboriginal juveniles detained in the Centres.

The Office of Juvenile Justice has also provided funding for specific programs for Aboriginal juvenile offenders such as a Bail Hostel at Redfern, the Yulumuncka Youth Support Centre at Bourke, the Koori Community Justice Council at Taree, the Aboriginal Juvenile Placement Program, Aboriginal Community Workers and a Court Support and Post-release program in South Sydney. The author believes that it is essential for Aboriginal communities and organisations to be consulted in the development, design, implementation, management, monitoring and evaluation of juvenile justice programs specifically for Aboriginal juvenile offenders.

Furthermore, this consultation must extend to and include negotiation with Aboriginal organisations and Aboriginal young people and be based on a recognition of and respect for the right of Aboriginal people to self determination and to their personal and cultural identity.

**Young people aged eighteen years or over in custody**

The number of young people in custody aged eighteen years or over was 121 on 24 July 1992 out of a total population of 383 (31.6 per cent). Programs are required for this group which place greater emphasis upon independent living skills, vocational skills and sexuality. Community reintegration must be the central focus of programs.
Case management

The introduction of case management into Juvenile Justice Centres will provide young people in custody with a range of options that enable them to reach their potential for successful reintegration into the community, and develop alternatives to offending by taking into account employment issues, family issues and so on. Issues including age, gender, cultural background, and entry level skills will all be addressed through this process.

In future, far greater emphasis is to be placed upon the return of young offenders to the community, and an integration of services between Juvenile Justice Centres and Juvenile Justice Community Services, community organisations and other agencies is planned. The health care program for juveniles in detention based upon assessment will also be part of the case management plan. Specialised care must be provided to juveniles who experience mental health problems, youth with disability and juveniles with drug and/or alcohol problems.

Managing serious offenders

In view of the future direction which will promote the use of community sentencing options and will ensure that such options are credible, it is anticipated that those offenders in custody will, over time, be the more serious and entrenched offenders. Special consideration will need to be given to what programs can effectively address their behaviour.

Conclusion

In conclusion, there are many possibilities for moving in new directions in New South Wales. The Report of the Standing Committee on Social Issues Juvenile Justice in NSW and the Green Paper, Future Directions for Juvenile Justice in NSW have provided valuable opportunities to address major problems in relation to key areas of the juvenile justice system. In this paper particular issues have been singled out that are of significance to the Office of Juvenile Justice in NSW and which may be of interest at a national level.

In NSW the future lies in a coordinated approach to juvenile justice in which the Office of Juvenile Justice plays a proactive role in achieving change. Whilst the Office is the recipient of juveniles through the court process, it is possible to minimise the extent to which young people become entrenched in the criminal justice system through crime prevention strategies, early intervention in the juvenile justice system and community alternatives to court processing. What can realistically be achieved in terms of the goal of using community sentences in preference to detention will be significantly affected by community attitudes to offending. To ensure the long-term viability of the reforms being introduced to Juvenile Justice in New South Wales, the community needs to be aware of the relative ineffectiveness of custody in breaking the cycle of crime.
References


