
Submission to NSW Ombudsman

Re: *Crimes Legislation Amendment (Police and Public Safety) Act 1998*

Submitted by: The Shopfront Youth Legal Centre

This submission concerns the *Crimes Legislation Amendment (Police and Public Safety) Act 1998* ("the Act"). The submission is compiled on behalf of the Shopfront Youth Legal Centre, and comprises:

1. an introduction explaining the work of the Shopfront;
2. a brief discussion of criminological literature relevant to the Act;
3. a statement about the principal concerns of the Shopfront concerning the Act;
4. a series of case studies from the recent files of the Shopfront exemplifying the inappropriate use of police powers;
5. an account of a meeting between representatives of the Shopfront and Juvenile Justice Officers;
6. an analysis of surveys conducted among some local young people;
7. a discussion of the perceived limitations of the complaints process;
8. a series of recommendations that might improve the efficacy of the Act;
9. a short summary of our other concerns about the Act.

1 The Shopfront Youth Legal Centre

The Shopfront Youth Legal Centre was established in early 1993. The Shopfront is a joint initiative of the Sydney City Mission, the Salvation Army and the law firm Freehill Hollingdale & Page. The Shopfront employs two full-time solicitors and a full-time receptionist/legal secretary. It is also assisted by volunteers involved in law or youth work practice or study.

The primary work of the Shopfront is providing legal support, advice and advocacy for homeless and disadvantaged young people. Our clients are usually aged between 12 and 25. We cater mainly for homeless young people from inner city Sydney. Young people are referred to the Shopfront by welfare and youth organisations and many approach the centre "off the street".

The work of the Shopfront encompasses:

- crisis legal work for clients who are arrested and need immediate representation;
- legal advice, assistance and support on a variety of matters;
- referrals to organisations providing assistance for homeless and disadvantaged young people (such as accommodation, health, free food, financial assistance, specialised counselling, and drug and alcohol rehabilitation);
- legal education for young people and youth workers; and
- law reform and policy work (mostly through membership of relevant networks).

Much of the work performed by the Shopfront is in criminal law. It also deals with numerous other matters including assistance for victims of violence, family and child welfare law, rental and housing issues, social security and administrative law, employment law and debt and consumer claims.

The Shopfront tries to avoid taking an overtly political stance but believes that it has a role to play in lobbying for the rights of young people, particularly those who are homeless or disadvantaged. This lobbying is performed through committees and networks, and through submissions such as this one.

As a primary legal service for young people in contact with the police and the criminal justice system, the Shopfront has had much experience of the relationship between state agencies and young people. It has also witnessed the impact of legislation concerning street offences, safety and public order on young people.

2 Criminological Literature on Police Powers

Professor David Dixon has commented that:

"a realistic analysis of police powers must focus on the effects of prohibitions as well as on provisions which overtly provide legal authority for police actions.... while the primary focus of such legislation is the substantive criminal law, its corollary is an extension of police powers"¹ _

An appraisal of any legislation must go beyond the substantive provisions and examine two aspects of police powers:

- how the powers are currently exercised; and
- the impact that the new provisions have upon police culture and the impact that this has on the way powers are exercised and enforced by police.

It is important to acknowledge that there is a level of enforcement activity conducted by police which occurs outside the jurisdiction of courts. Even if charges are eventually not taken further or are dismissed by a court, numerous studies² have exemplified how powers such as arrest and search can be utilised by police to effect:

- punishment;
- social discipline;
- intimidation and enforcement of police authority; and
- surveillance.

When these goals are pursued by a state agency against primarily disadvantaged groups, societal goals of human rights and equality before the law are undermined. Another, sometimes less acknowledged, consequence is the counter-productive impact such behaviour has on crime control and social order including:

- the deterioration of an effective community-police relationship and an increase in hostility between youth and police³; and

¹ D Dixon "Policing and Police Powers Since the Police Royal Commission" Paper presented to the Seminar on 'Trends in Police Powers and Practices' co-hosted by the NSW Ombudsman's Office and the Sydney Institute of Criminology, 26 August 1998.

² Goldstein H (1993) "Confronting the complexity of the policing function" in LE Ohlin & F Remington (eds) *Discretion in Criminal Justice* (SUNY Press) at 51; Chatterton M (1976) "Police in social control" in JFS King ed *Control without Custody?* (Cambridge: Institute of Criminology) at 114; R Reiner (1992) *The Politics of the Police* (Harvester/Wheatsheaf) at 212; David Dixon "Policing and Police Powers Since the Police Royal Commission" Paper presented to the Seminar on 'Trends in Police Powers and Practices' co-hosted by the NSW Ombudsman's Office and the Sydney Institute of Criminology, 26 August 1998 at 2; D Dixon ed (1999) *Changing Police* (Annandale: Federation).

³ See for example Scarman (1981) *The Brixton Disorders* (London: HMSO) at para 4.57 concerning the cause of the Brixton riots in the UK

- a lack of respect for authority and reduction in community responsibility, resulting in an increase in offending amongst young people⁴.

These studies establish that it is not only morally suspect to feel that certain sectors of the community can be sacrificed for the overall benefits of a "get tough" approach to crime but it is inaccurate. If young people or other disadvantaged people are continually targeted they will respond in a negative fashion and undermine social order.

3 Experiences of the Shopfront

The experiences of the Shopfront have provided a wealth of anecdotal evidence which reflect the concerns of criminological literature. The Shopfront has received numerous reports of young people being dealt with inappropriately by the police, including:

- being issued with infringement notices (always for the maximum penalty of \$550) for the possession of knives and other implements;
- being harassed by police;
- being stopped and searched repeatedly and inappropriately, including being strip-searched in public places; and
- being told to "move on" for no apparent reason (apart from a general desire by police to sweep all young people away from a certain area).

Case studies have been chosen from our files to provide an illustration of our experience. Clients' names have been changed to protect their confidentiality. Incidents such as the burning of Gary and the ongoing harassment of Helen (see case studies below) exemplify a wider trend of hostility between police and young people in Sydney, particularly in certain areas like Woolloomooloo, Bankstown and Hurstville (see section on discussions with Juvenile Justice). It is possible that this situation could escalate; community outrage accompanied the assault on Gary and police claimed to fear for their safety. A police station was threatened and attacked in Lakemba and some areas of Bankstown are regarded as "no-go" areas by police as a result of the breakdown of the community-police relationship.

The Shopfront is particularly concerned that the new Act extends police powers relating to searches of young people. This concern is two-fold:

- an extension of the powers of police contributes to a public perception of a law and order "crisis" which can encourage and legitimise abuse of powers by police; and
- the experiences of the Shopfront suggest that existing search powers are being abused by the police and used to harass and intimidate young people.

⁴ R Reiner (1992) *The Politics of the Police* (Harvester/Wheatsheaf) at 154

The time surrounding the introduction of the "knife laws" saw a flurry of publicity about public safety and the use of knives by young people. The publicity both prompted politicians to introduce the Act and legitimised its existence once enacted. Much of this publicity was grossly inaccurate, seeming to suggest that any congregation of young people are armed to the hilt with knives and liable to attack users of public space. The publicity about the knife laws has fed into a general media approach which tends to portray young people as dangerous and prone to violence.

The Shopfront is also concerned about the way the Act has been referred to by politicians and the media as the "Knife Laws" and "Gang Laws". However, the police powers in the Act are much broader than that and can be used in situations that have nothing to do with knives, gangs, nor indeed with public safety.

The promotion of the idea that Sydney is experiencing a law and order crisis creates an atmosphere of menace and violence which both intimidates and inflames the general community. This community concern seems to be exploited by leaders in politics, the media and public affairs. If the community is misled into thinking that knife violence by young people is endemic, and that the community is in danger, it is inevitable that calls for greater police powers will eventuate.

A more sinister consequence is that the community is less likely to be concerned about restrictions on the use of police powers and the potential abuse of powers. Police are also more likely to feel justified in paying scant attention to the need for "reasonable suspicion" before they undertake searches of young people.

To illustrate the concerns of the Shopfront, we have provided some examples of the experiences of our clients with the police. As much as possible we have used the information derived from the police statement of facts and have indicated where our client's instructions have differed from police accounts. Many of the case studies are not about searches relating to knives. They are provided to exemplify that existing search powers are often misunderstood by police or exercised in a heavy-handed or gratuitous manner. These experiences foreshadow how new search powers for knives could come to be used. In fact, it has been the experience of the Shopfront, and numerous other organisations working with young people, that the misuse of search powers by police has become more widespread since the introduction of the "knife laws". It seems that the expansion of police powers has led to police feeling that they can search people whenever they choose and for any reason. Existing requirements of a "reasonable suspicion" for searches relating to other materials (eg drugs, stolen goods) have certainly done nothing to prevent young people from being searched, often in an invasive and aggressive manner, for doing nothing but being in company, being in a particular area, and/or being young.

It is axiomatic that the young can't help being young, but homeless and disadvantaged young people often can't help being on the street late at night with friends. The lifestyle of disadvantaged young people necessitates late hours, taking part in street life and developing close-knit friendships and support groups that meet and spend time in public areas. When police powers are used to target young people on the streets it is typically disadvantaged young people who are most vulnerable. This is not to say that only disadvantaged young people are affected. Anecdotal evidence suggests that young people from all socio-economic groups are subject to

inappropriate use of police powers. All young people should have the right to use public areas without harassment or invasive searches by police.

4 Case Studies - Inappropriate Searches

.1 Danny

Danny is 17, unemployed and Aboriginal. He has been homeless for some time and now stays at a local youth refuge. Danny is described in the police brief as "well known to local police and is regularly stopped and spoken to in relation to street offences".

(a) Danny Search 1

At 11.00pm officers of DOCS attended the Kings Cross police station and expressed concern about Danny, who was then 15. He had been spotted in a park "frequented and used by drug users and suppliers". Danny was told that he would be taken to the Kings Cross police station so that inquiries could be made about the whereabouts of his parents.

There is nothing in the police facts to indicate that Danny was suspected of carrying drugs, offensive implements or anything else, but Danny was physically searched and placed in the back of a caged vehicle to be conveyed to the police station.

(b) Danny Search 2

On 9.50pm in Kings Cross Danny was observed walking across the street. Police kept a close eye on Danny because he was "fiddling with his beanie" and looking at the police. He was then observed to make a phone call apparently "without being engaged in a conversation", again fiddle with his beanie and then hurry past the police.

Danny was stopped and searched and was described as "aggressive".

(c) Danny search 3

At 10.40pm Danny was walking in Darlinghurst. Danny was stopped and searched because he "matched a description given over the police radio of a suspect for drug activity". The police discovered a picnic set down Danny's left sock. The picnic set was a fold up set of a fork, spoon and knife. Danny was homeless at the time and had been using the set for eating take away food. He hid the set as he had been charged with being in possession of a knife four weeks earlier. Danny was charged with having custody of a knife in a public place. The picnic set was described in the charge sheet as a "silver coloured 2.5 inches bladed knife".

(d) Danny search 4

Danny was walking along a street in Marrickville at 2.15am with a friend. There is no suggestion in the police brief that he was committing a crime or being in any way disruptive or offensive.

The police decided to stop and search Danny "due to the recent spate of break and enters in the Marrickville CBD that have been conducted by juveniles"(it is

questionable how the police would know the offences were in fact committed by juveniles).

Danny was therefore going to be stopped and searched for no basis other than his age and the location in which he was walking. There is no record of what was said to the boys but Danny ran away when approached by police. Police called in the dog squad (!) to assist in a search for him to no avail.

Later that evening Danny was found by Police and explained that he had run away as he thought there were warrants out for him. The police told him he was to be searched pursuant to section 357E of the *Crimes Act*.

Section 357E states, inter alia, that the police may "stop, detain and search any person" whom they reasonably suspect has or is conveying stolen property or something which is to be used in the commission of an indictable offence.

The ground the police stated as the basis for their reasonable suspicion was the "high amount of break, enter and steal offences in the Marrickville CBD area", although Danny was not informed what, if anything, he was suspected of carrying.

A struggle ensued when the police tried to search Danny and he was charged with offensive language, assault police, resisting arrest and having custody of an offensive implement in a public place. The alleged "offensive implement" was a laser pointer, a device used by teachers and lecturers to highlight information on a board.

.2 Michael

At the time of the search Michael was 18, homeless and living in his car. Michael was pulled over by the police for speeding. The police searched the car and strip-searched Michael. In the car they found a baseball bat (and a baseball) and a tool set which contained several screwdrivers, a black-handled knife and a small penknife. Michael used the tools to fix his car and the penknife for repairs and food preparation. He used the bat and ball to play in the park with his friends. The bat and tools were confiscated. Michael was issued an infringement notice for \$550 (the maximum penalty) in relation to the black-handled knife.

.3 Gary

Gary is 18 years old and unemployed. Gary was at a basketball court in Woolloomooloo in the afternoon with about 5 of his friends. (This was described as "loitering in the area" in the police brief). Gary was showing his friends a bracelet which had been given to him by his mother. A police truck drove by and it is alleged that Gary waved at the truck. The truck then did a U-turn and two police officers approached Gary and asked him his name. He refused to tell them his name, insisting that he had done nothing wrong. The police officers then told him that they had a reasonable suspicion that he was carrying drugs (the police brief states that the officers saw something being passed around between the boys). Assuming that he was going to be searched for drugs Gary pulled down his pants and stood against the police vehicle. This was interpreted as an offensive gesture by police who said that Gary was thrusting his genitals against the truck (this was denied by Gary who said he was using the truck to shelter his genitals from public view). Gary was searched and his ventolin spray for his asthma was taken. Gary was moving around while he

was searched and told to stand still. He was then grabbed by the wrist and told he was to be arrested for offensive conduct. He asked "what for?"

As a result of a struggle, Gary tripped over and was then pushed down onto a metal plate on the road to be handcuffed. It was a hot day and the metal plate was extremely hot. Gary was wearing only a singlet. Gary began screaming that he was burning. A group of people had congregated and called out to the police to let him off the hot plate. One tried to help Gary off the plate but was prevented by the police. Gary was held onto the plate for about 3-4 minutes whilst he screamed in pain. When he was allowed to stand he had visible burns on his shoulders. After Gary was taken to the police station, a group of residents broke an egg onto the metal plate. It fried in about a minute.

Gary was charged with resisting police and was acquitted at the hearing.

.4 Steven

Steven is 19, lives in Woolloomooloo and is a friend of Gary. Steven was present whilst Gary was pushed onto the hot plate. In a statement about the incident Steven explained why Gary had pulled down his pants. He said it is a common occurrence for police to strip search young people on the street in Woolloomooloo. He said that he has been required to open his pants and expose his penis on 3 or 4 occasions.

.5 Commentary

The above case studies exemplify how police use the availability of powers to search as a method of social control and intimidation. Many of the studies do not refer to whether the young person was charged or not, or whether they were convicted of the offence. The point is that their contact with police was unpleasant and punitive irrespective of eventual legal outcomes. The existence of statutory and judicial protection of their rights did not prevent contact being initiated when the young people were committing no offence against the law or against public order generally.

The case studies below concern more overt police violence occurring against young people.

.6 Luke

Luke was with a group of about 15 young people in Maroubra who were drinking beer and watching a fire. Police attended the scene and approached Luke and his 15 year old sister. Luke became angry when police started to swear at his sister and then tipped out his beer onto the street.

Luke directed a stream of offensive abuse towards the police. According to the police brief Luke was "arrested, cautioned, handcuffed and conveyed to Maroubra Police Station".

This process involved Luke being thrown to the ground, kned in the back, his arm bent roughly and handcuffs being put on too tight. Luke was told that the handcuffs would be loosened if he stopped swearing. When he continued to swear and struggle his face was pushed into the gravel and his eye pinched. One officer whispered in his ear "I'll bash you". Luke stopped struggling and swearing.

Luke has suffered a number of injuries from the incident requiring treatment including damage to his hand, cheek, elbow, back, shoulder and neck and post traumatic stress syndrome.

.7 Helen

Helen is 18 and unemployed and lives with her mother and her sixteen-month old daughter in The Rocks.

(a) Helen Incident 1

At approximately 4pm she was inside her mother's house having attempted to evade police apprehension on the street.

The police statement of facts says that:

"[the] defendant's mother allowed police to enter the premises and she lead police to the upstairs bedroom where the ... defendant was located. ... the defendant resisted police violently and had to be restrained by several police".

Helen's mother actually denied she gave permission to enter and instead was pushed aside.

Helen had gone into the bedroom to assist her friend who was in the room with a female police officer. The friend was screaming and Helen assumed that she was in danger. Five police officers then came into the room. What followed was described by police as the female police officer attempting to prevent the girls from leaving the room: eg "eventually after struggling with both females, they were handcuffed"; "both young people resisted any attempts to calm them and they continued to struggle with police".

Helen's account is that she was thrown on to her bed with knees in her back. One officer was sitting on her back and another had his knees on her back and shoulder so that Helen was unable to breathe. This continued for five or six minutes during which time Helen continued to struggle to get her breath. Her mother (who is a nurse) described her colour as purple and her lips white. Eventually she was handcuffed, after being restrained by six police officers.

Helen made a complaint to the Ombudsman's office about the incident which she reports has led to more hostility and harassment from the police.

Note: the incident occurred after Helen was chased when she ran from a car the police were following. Note also the way Danny was treated in search 1 after he ran from the police and the case study of Chris below. In contrast we attach an excerpt from the Kings Cross police report in the May 1999, Issue 25, edition of *The Paper*, a local paper for the Darlinghurst area. After a police chase of a BMW a man ran away from police and injured himself in the escape. When the police discovered "his credentials" - he was an executive of a well-known firm who claimed to have only met the driver that night after having too much to drink - he was released without charge.

(b) Helen Incident 2

Police version of the facts:

In October 1998 Helen was in the foyer of the Downing Centre Local Court. She swore at a number of police who were also seated at the foyer whilst she walked passed them towards the lift and then back again. She was followed to the lifts and warned by one officer about using offensive language in a public place. She retorted that she would not stop and threatened to "get the boys onto ya". She was cautioned and warned that she could be charged but she replied "I don't fucking care, charge me". As she walked into the lift other officers approached and two police officers followed her into the lift and held onto her jumper. A struggle resulted and Helen struggled wildly and violently, repeating abuse and threats constantly. Eventually she was restrained by five police officers and handcuffed despite continuing to struggle violently. She was conveyed to Surry Hills police station where she continued to swear, struggle and make threats.

Helen's version of the facts:

Helen is a very physically slight girl weighing about 45 kg. She has suffered grief and anger as a result of the death of a close friend of hers who was shot during an altercation with police. Helen states that when she walked past the police they called out to her about recent charges and made jokes about her amongst themselves. She then swore at them. Helen denies she was spoken to or cautioned before her arrest. She said that as she tried to get into the lift two police officers grabbed her jumper. She spun around to shake the contact off. At this point Helen states that the five officers jumped on her and dragged her onto the ground. Helen suffered carpet burns on her chin and bruising to her knee.

5 Discussions with Juvenile Justice Officers⁵

As part of the preparation for this submission representatives of the Shopfront conducted discussions with a number of Juvenile Justice Officers (JJOs) employed by the NSW Department of Juvenile Justice. The JJOs approached the Shopfront to express concern about police harassment and in particular the increasing use of invasive police searches towards young people. JJOs have the unique perspective of being part of a government agency but also maintaining close relationships with young people in their designated area. The discussion covered a number of areas, some of which deserve to be raised in this submission.

The JJOs report that there has been a dramatic increase in the number of searches on young people in 1999. The JJOs believe that the *Police and Public Safety Act* is part of the reason for these police "blitzes". JJOs have had clients receive fines for the possession of a fork and possession of a nail file under the *Police and Public Safety Act*. Many times it is not clear what the grounds of the search are as they are not stated. In Chatswood, Bankstown and Kings Cross there are numerous reports of police stopping and searching every young person that approaches a train station or shopping centre. Sometimes the searches are strip searches; they always require the subject to remove their shoes. The JJOs report that particular police officers develop

⁵ 11 June 1999 at Department of Juvenile Justice, Surry Hills, Sydney with four Juvenile Justice Officers. The JJOs are happy for their comments to be put on record, but have requested that their names remain confidential.

reputations for harassing young people. For example in Kings Cross a female police officer is known to stop and search every young girl that she recognises in the area. The grounds given are the suspicion that the girl is carrying drugs. The girls are not required to strip but the searches are carried out in public view and are regarded as humiliating.

.1 Police Harassment

(a) Bankstown

The JJOs have noted a particularly poor relationship between the police and young people, primarily of Arabic descent, in the Bankstown area. At Bankstown Shopping centre youth workers and JJOs have observed every young person of Arabic descent being stopped and searched by police. If the search yields nothing the police officers attempt to provoke a response from the young person. A typical approach is to swear and make vulgar comments about the mother of the Arabic young person, considered particularly culturally offensive. When the young persons angrily swear back they are charged with offensive language or assault police. Youth workers have observed that the younger members of a group tend to be targeted, those around 14 or 15. One theory is that police are scared of older members of families and friends. Apparently police refuse to go to certain areas of Bankstown known as "no-go zones" or only attend with a high level of back up.

The relationship between police and the community in the Bankstown area came under media scrutiny after some violent crimes in the area including the shooting of Lakemba police station. It is thought by the JJOs that the hostility between police and young people in the area contributed to the escalation of violence and certainly plays a part in the difficulty that police have experienced in gaining assistance from the local community.

In one incident known to the JJOs, a local youth worker was specifically requested by police to organise a meeting between police and youth leaders (congregations of young people in the Bankstown area are referred to as "gangs" by police and media, but usually the young people are just groups of friends). The young people were told that the meeting concerned the outbreak of violence in the area and the relationship between the community and the police. When the young people attended the meeting, police took down their names and addresses and most were subsequently arrested on outstanding warrants or other charges. Obviously this incident has severely damaged the relationship between the community and the police. It also undermined the credibility of the youth worker who organised the meeting as many of the young people attending felt that they had been 'set-up'. The youth worker has since been threatened and abused and fears for his safety.

The JJOs were also familiar with a case of an Arabic community worker who was attacked and stabbed in the area. When he went to report the matter to the police he was belittled and humiliated. The Shopfront and the JJOs are currently investigating the above matters in order to make a formal complaint to the NSW Ombudsman's Office.

It is interesting and ironic to note that many in the community would regard Middle Eastern countries like Iran, Iraq and Lebanon as dangerous and sinister with shadowy

secret police and dubious human rights practices. A JJO of Arabic descent has had many Arabic parents complain to him about police practices. Immigrants and refugees from the Middle East are horrified that young people can be constantly harassed with little or no redress. Some have commented that they feel much safer in their home country.

(b) **Darlinghurst**

Police practices in Darlinghurst often centre on street sex workers. Street sex workers are regularly harassed and abused by police and some have experienced violence and sexual assault at the hands of police but have been reluctant to report the matter. The JJOs are currently looking into three separate allegations of sexual assault made by street sex workers against the same Kings Cross police officer. They have so far been unable to convince any of the victims to approach police with a complaint.

The JJOs have also observed a police practice in Darlinghurst which has long been of concern to the Shopfront - approaching street sex workers to ask about prices for sex and, when they reply, charging them with soliciting under s19 of the *Summary Offences Act*. While this conduct can not be considered soliciting under the terms of the section, many sex workers are not aware of this. They often plead guilty (or don't turn up at court, assuming they will get a fine) and then are forced back onto the streets to pay the fines that are imposed.⁶

Another practice which has come to the attention of the Shopfront is the practice of arresting and charging sex workers for soliciting offences, rather than adopting the more appropriate course of issuing a court attendance notice. Arresting the sex worker is a punitive action, forcing people from one of the most disadvantaged sectors of the community to go to a police station and spend several hours in custody for no obvious reason or benefit to the community. The practice of arresting the sex worker enables police to impose restrictive bail conditions such as "not to loiter in the vicinity of SCEGGS on Forbes Street" or even "not to loiter for the purposes of prostitution". Even if a sex worker is acquitted of soliciting, he or she is effectively prevented from working during the remand period.

It is important to remember that while "soliciting" (ie approaching, accosting or importuning passers-by) is not legal, prostitution (ie agreeing to exchange sexual services for financial reward) is legal and so is "loitering" for the purposes of prostitution. Such restrictive bail conditions are, in our view, an unwarranted infringement of civil liberties and do not accord with the spirit of the *Bail Act*. They appear to be a back-door way of sweeping sex workers off the streets. We understand that police have also tried to use their move-on powers to get rid of sex workers. This tougher approach coincides with the enactment of the *Police and Public Safety Act* and also appears to be a response to complaints from wealthy and powerful residents of the new Horizon Tower in Darlinghurst. We are also aware (from discussions with the Sex Workers Outreach Project) of similar police practices in the Canterbury Road area.

⁶ See K Edwards "Soliciting – What is the Go?" (1999) *Alternative Law Journal*

The JJOs and the Shopfront have found that if a young person (usually a girl) is charged with soliciting, or even is friendly with someone who has been charged with soliciting, she is labelled as a "prostitute" by police. The police often approach the girls, asking about their behaviour and threatening to "lock them up". If they are subsequently charged with any offence, police will often list the occupation of the girl on the police statement of facts as "prostitute"- sometimes when the girl has never been a sex worker or been charged with soliciting.

(c) **Woolloomooloo**

The JJOs have conducted a series of discussion with police officers in Woolloomooloo. The JJOs (like the Shopfront) have noted a particularly poor police-community relationship in the area. Their attention was first drawn to the problem when clients complained that they were continually being moved on from local basketball courts- a rare recreation opportunity in the area and a popular meeting place.

When one JJO spoke to Greg Matts, head of the Woolloomooloo police station, and other local officers, she was told that the officers were bored. A 70% reduction in break and enter in cars had left the police with little to do and she was encouraged jokingly to get her clients to commit more crime. Her suggestion of bonding with the community or playing basketball with local young people was not taken up.

Mr Matts told her that the officers were particularly pleased with the search and move on powers contained in the *Police and Public Safety Act*. He said "this new move-on law we love it... before we didn't have the right laws to really hassle the kids but now we do, it's great".

.2 Complaints Mechanisms

The JJOs expressed concern about their ability to lodge complaints about conduct of the police in general and towards their clients. One JJO formerly worked as a JJO in Melbourne, Victoria. Just as in NSW, complaints could be made to police internal affairs. The patrol commander would have to register the complaint and allocate one or two officers to investigate. Unlike Sydney, she was aware of officers being transferred or resigning as the result of complaints and investigation. A police liaison officer was also employed and provided an extremely effective service. The liaison officer would inquire about any dissatisfaction about police practices and would also provide insight from the police perspective and provide information to the JJOs. This relationship greatly improved the relationship between the police and the JJOs.

The JJOs feel that they have no good communication mechanisms with the police. They found that officers were only interested in obtaining information from them to convict their clients. The JJOs feel that there should be an officer with whom they can request information about police conduct and practice and if necessary complain about police. It seems remarkable that the service has so far not been provided to this valuable coalface link between the police and government.

We are aware that the NSW Police Service, at least at a policy level, has been giving high priority to recruiting and training specialist Youth Liaison Officers (YLOs). However, this policy does not seem to be reflected in practice. For example, in Kings Cross - an area with a high youth population - the YLO has to perform a full

schedule of general duties and has very little time available to perform his vital youth liaison role.

.3 Charges for "Trifecta" Offences

It is very common for the clients of the Shopfront (and those of Juvenile Justice) to build an extensive criminal record consisting entirely, or almost entirely, of the following trio of offences:

- offensive language;
- resisting arrest; and
- assaulting a police officer in the execution of their duty.

This trifecta of charges arises from an antagonistic, often unsolicited and undeserved, encounter between the police and the young person. As a result of building a portfolio of these offences, there exists:

- an increased likelihood of the young person getting frustrated and 'acting out' and committing a substantive offence against property or persons; and/or
- an increased likelihood of being sentenced to a term in detention due to an apparently extensive criminal record.

Statistics and studies are almost unanimous in finding that a stay in detention dramatically increases the likelihood of recidivism in young people and the chance that the young person will face increased social exclusion (which may cause or exacerbate problems such as alcoholism, unemployment, depression and domestic violence).

The Shopfront acknowledges that the "trifecta" charges, police harassment and sentencing are outside the boundaries of the current inquiry. The point is that there exists tremendous incentive to reduce harmful and antagonistic encounters between young people and police. This includes both the reasons for them and the powers which facilitate them, including the *Police & Public Safety Act*.

6 Surveys Conducted Among Local Young People

The Shopfront Youth Legal Centre a survey on the *Police and Public Safety Act*. The aim of the survey was to gather information to be included in this submission, and to get a young person's perspective on their dealings with the police and how the new legislation has affected the relationship between the police and young people.

The survey was based on a small sample and its methodology was not scientifically rigorous, but we believe that it does reflect a significant trend of police intervention in young people's lives.

The surveys were distributed to the Opposition Youth Crisis Centre (Kings Cross), the Salvation Army's Oasis Youth Centre (Surry Hills), and the Fact Tree Youth Service (Waterloo). There were 33 surveys completed within a 4-week period in June and July 1999. The majority of the surveys were completed by young people who used the Fact Tree Youth Service in Waterloo. Some of the survey forms were filled in by the young people themselves, but most of the surveys were conducted by youth workers.

33 young people were surveyed. 61% of the participants were male, 36% were female, while 3% did not specify their gender. The ages of the young people varied from 12 to 22.

Most of the young people were in the 12-15 year age group (42.5%), followed by the 16-17 year olds (27.5%) and 18-19 year olds (15%). The 20-22 year olds represented a lower percentage (12%) of the young people being searched by the police. 3% of the participants did not specify their age.

The majority of the young people surveyed lived in the Waterloo (64%). Other places of residence were Kings Cross (9%), Surry Hills (9%), Alexandria (6%), Marrickville (3%) and homeless (6%).

The survey had two sections. The first section looked at knives, weapons and implements, and the young person's experiences of being searched, fined or otherwise dealt under the relevant provisions of the Act. The second section of the survey looked at a young person's experience with the police and public space, and in particular the "move-on" powers given to police by the Act.

.1 Knives, Weapons, Implements and Police Searches

When the young people were asked whether they had been pulled over by a police office in the last 12 months, 85% said "yes", while 6% said "no" and the rest did not specify.

When asked if the search was on the suspicion of carrying a knife or a weapon, 28.5% said that the police officer had pulled them over because they were searching for a knife. 71.5% of the participants said "no", and many seemed to be unsure as to why the police officer was detaining them.

Some of the young people's comments as to why they thought they had been stopped and/or searched are as follows:

- Just because I live in Waterloo.
- No reason
- Because I was standing on Elizabeth St.
- I was walking from the shop to the Fact Tree, when I was pulled over by 2 female police officers.
- Because he wanted to, he was rude to me.
- Standing out the front of Waterloo post office.
- For walking across the road when the lights were green.
- Just hanging around with my friends.
- Walking in the local area.
- To ask and enquire about some accommodation.
- Because I was standing on the corner talking to the boys.
- There was no reason, they just do it for fun.

Some of the situations in which a police officer did specify a reason were as follows:

- I got blamed for stealing from someone's car.
- The police believed I matched a description.
- The police officer thought I was a prostitute.
- For drinking in a public place.
- Suspicion of selling drugs.
- Looking suspicious.
- Suspicion of being in possession of drugs.

The participants were in several different suburbs at the time the police pulled them over. Those suburbs were Waterloo (64%), Kings Cross (15%), Surry Hills (9%), Liverpool (3%), Rockdale (3%) and Newcastle (3%). 3% of the participants did not specify where they were.

The police officers conducted searches at varied times, but by far the most common time was around 4pm.

The young people were asked "what was the procedure of the police search?" These included:

- Empty pockets (39%)
- Pat down or frisk (14%)
- Strip search (7%)

- Bag search, pat down and empty pockets (7%)
- Empty pockets and bag search (7%)
- Bag search (4%)
- Asked for the young person's name (4%)

Out of the young people who had been searched, 90% were found not to be in possession of a knife, weapon or implement. The 10% who were found to be in possession of a knife, weapon or implement, had them confiscated by the police officer.

In all there were 4 participants found in possession of a knife, weapon or implement. Two were scissors, one was a syringe, and the other was not specified. All of these implements were confiscated. Three of these respondents said that they were fined and two had to go to court, but their responses are unclear as to why (for example, it appears that at least one of the young people was dealt with for possession of a pipe and a bag of pot). One participant said that her parents had been fined.

.2 Public Space

The participants were asked if they had been asked to move on from a public place by a police officer, security guard or both. Of the 33 participants, 97% said that they had, and 3% (one person) did not answer this question.

Most of the survey participants reported that they had been asked to move on more than once. *16 (nearly 50%) of the young people had been asked to move on more than 5 times over the last 12 months.*

The young people were asked whether they were alone or with friends when asked to move on by a police officer. 25 (78%) of the participants reported that they were with friends at the time. These respondents were then asked how many friends they were with at the time. Their response was 1 friend (8%), 2 friends (20%), 3 friends (16%), 4 friends (12%), more than 4 friends (40%), and an unspecified number of friends (4%) when the police officer asked them to move on.

The young people were asked if they or their friends had ever been searched or asked their personal details by a police officer when being asked to move on from a public place. The response was that 51% had been searched, while 43% had not, and 6% did not specify whether they had been searched or not.

70% were asked to give their personal details, and 27% were not, and 3% did not specify. When the young people were asked what personal details the police had taken, some said that they had had their names and addresses taken, and some their names only. Out of the 33 survey participants, 58% had had their names taken by the police.

The participants were asked how they felt the police officer had treated them during the move-on procedure. There was a mixed response to the way the young people felt they were treated; some felt they'd had a negative encounter with the police, while some of the young people felt their experience was a positive one.

Participants described the way they had been treated as follows:

Positive/mixed responses:

- All right
- Politely
- Sometimes Good/Bad

Negative responses:

- Shocking
- Disrespectful
- I felt embarrassed
- Very badly, I felt like crying
- Rude
- Unjust
- Like I was subhuman
- Nasty
- Intimidating

.3 Complaints

The young people were asked if they had ever made a complaint to a friend, family friend, youth worker, police officer, lawyer, the Ombudsman, or the privacy commission about their negative experience with the police. 27% said that they had made a complaint, 64% had not made a complaint, while 9% did not specify whether they had made a complaint or not. Most of the complaints were made to friends, family friends and youth workers. A few complaints were made to the police, and only one to the Ombudsman. Those who made complaints said that no action had been taken on the complaints.

Some of the complaints were in relation to:

- Being hit by a police officer
- The police office threw me up against a wall very harshly
- Being told to move on from a public place
- Being pulled by the arm roughly
- Being harassed by the police and security guards.

The young people were also asked if they knew what the Ombudsman does, if they would know how to make a complaint to the Ombudsman, and if they would make a complaint.

24.5% of the young people said that they were aware of the Ombudsman's role, 48.5% were not and 27% did not specify. 24.8% said that they knew how to make a complaint, while 48.5% did not know how, and 15% did not specify whether they knew how to make a complaint.

The respondents were then asked whether they would actually make a complaint to the Ombudsman. 48.5% said they would, while 33.5% said no they would not, and 18% did not specify whether they would make a complaint or not.

The young people were asked "If you would not make a complaint to the Ombudsman, what would your reason be?". Responses are as follows:

- Nothing would be done
- Too much hassle
- Time consuming, no results
- Nothing will be done
- Because the cops would beat me up

In conclusion, there seems to be a significant number of young people being pulled over and searched by the police, or asked to move on, within the Waterloo area. In the Waterloo and surrounding areas, there is a large population of people from a low socio-economic background, and approximately 70% of residents live in Department of Housing accommodation.

Young people in Waterloo are more likely to hang around with their friends on the streets when being involved in outdoor activities, because of the lack of resources and facilities within their local community. The application of the Act could prove to be harsher on the young people in the Waterloo area.

If there is a perceived problem with young people congregating on the streets in the Waterloo area, the solution lies in providing more activities, resources and facilities for the young people to become involved in their community. This is preferable to giving police officers more power through legislation such as the Act. It would be more youth friendly for both the police and the young people to build a rapport, not put a wall of hostility between them, which we believe that the Act has been promoting.

7 Complaints Against Police

The limitations on the power of the Ombudsman need to be recognised, and it should not be assumed that a lack of complaints reflects a high level of satisfaction with police conduct. The experience of the Shopfront and the JJOs is that young people - who are most likely to be victims of abusive police power - are very reluctant to complain to the Ombudsman. This is partly out of fear of reprisals and partly due to a perception that a complaint won't go anywhere. There may well be other reasons as well. The Ombudsman's effectiveness as a watch-dog is seriously limited if she does not receive formal complaints. The reality of this situation needs to be recognised, rather than holding onto the fiction that wide ranging discretionary police powers must be satisfactory because we have an Ombudsman and a police service purged of corruption.

.1 Limitations of the Complaints Process

If a complaint is made against police to the Ombudsman's office or to the Patrol Commander, the Shopfront has identified the following limitations with the process:

- (a) There appears to be either a lack of power, resources or willingness for the Ombudsman's office to actively investigate complaints. When the Shopfront has made complaints on behalf of its clients it has been asked to compile evidence such as witness statements. This not only makes complaint-making a more onerous process but can sometimes prevent any further action. Legal services like the Shopfront do not have the power to compel people to produce evidence.
- (b) It is difficult to find out what action has been taken in relation to the complaint. For example, the Shopfront was informed by the Ombudsman's office that as a result of a complaint some police officers had been reprimanded and required to undertake a training program. When we asked when the training would take place and what it consisted of we were informed that this information would not be supplied to us. Our clients are less likely to approach the Ombudsman with complaints if they are not going to be given any tangible evidence about the result of their actions.
- (c) The investigation process seems very time-consuming. Many clients feel that this is because their complaint is not taken seriously or is being neglected. If the investigation process can not take place more speedily, it is of course desirable for the Ombudsman's office to communicate regularly with the complainant, so that the complainant is aware of what action is being taken and why the process is so time-consuming.
- (d) Police often seem eager to conciliate complaints. While this is sometimes desirable, it can also be a mechanism for sweeping problems under the carpet. The integrity of the complaints process requires that sometimes strong action is taken against police who abuse their powers. Yet despite the numerous examples of abuse that have been provided, and the many complaints that we have made, it is extremely rare that a police officer is punished for inappropriate or violent behaviour as a result of a complaint and investigation. Our clients are well aware of this and this makes them feel that making a complaint is time-consuming, onerous and eventually fruitless.

.2 Case Study

The following case study illustrates the many limitations of the complaints process.

Chris is Aboriginal and at the time of the following incident was 16. Chris was running away from police officers who were chasing him through several backyards. The police version of events was that Chris scaled a fence and then stood with his fists raised and attempted to punch one officer. He was grabbed by the police officer and wrestled to the ground. Chris fought and swore violently and landed a number of painful blows. The officer "attempted to subdue him" by striking him in the head several times but Chris continued to struggle violently. Eventually the two officers restrained him, handcuffed him and led him away. He was charged with resisting arrest.

Chris claims that he never attempted to scale the fence but stopped and raised his arms when one officer called out "stop, police, or I might shoot". He said "I give up". Chris was asked to lay down and he did so. He was then kned in the back, his arms were grabbed and he was punched repeatedly in the head. He called out "there is no need to hit me, please stop hitting me" but was continually hit until the officer realised that a woman was watching when he she called out "what is going on?". Chris was then forced to stand although he complained that it was extremely painful to move as his handcuffs were too tight. Chris suffered from bleeding, bruising, hearing loss and severe headaches requiring medical attention as a result of the beating.

The event was witnessed by a woman who lived in the house in whose backyard the incident took place. At the hearing for the charge of resisting arrest against Chris the witness was described by the Magistrate as "one of the most competent people I have seen before this court in some time and highly observant". The witness saw a police officer kneeling on the back of a young man whose arms were being held behind his back and heard the young man cry out "don't hit me". She witnessed the man being hit several times on the right side of his head although he was not struggling. She also saw that the second officer did not arrive until after the man was standing and handcuffed.

The presence of an independent witness who was prepared to give a statement which directly contradicted that of the police would suggest that a complaint would easily be sustained by a police investigation. In fact, the police internal investigation did not sustain the complaint and recommended that no further action take place. The Patrol Commander found that there were "conflicting versions" and the complaint could not be sustained in view of "the failure of the eye witness to assist either version". The Chief Superintendent of the district found that the "versions given by the parties involved are totally inconsistent and the independent witness does not assist in determining where the truth lies". This is clearly incorrect. While the witness was not present for the entire period, the statement of the witness contradicted the police version and substantiated that of the complainant in every respect. If a police internal inquiry can come to this conclusion in an unusually clear cut case with an independent witness the implication is very disturbing. What chance do unrepresented parties without witnesses have of any action being taken by police concerning complaints?

In contrast, the Ombudsman's office pursued the matter and is to be commended for this. However, the matter was originally found to be "unable to be determined" and was only referred to the DPP when the transcript of the resist arrest hearing was provided to the Ombudsman's office by the Shopfront. The police officers were charged with perjury and committed for trial. However, the DPP decided not to take the matter to court and the charges were "no billed". The officers were issued with "performance warning notices" as a result of their conduct.

.3 Difficulties Faced by Police

We are aware that this submission has been critical of police and has referred to them as if they were a monolithic entity. The Shopfront acknowledges that being a police officer is often a difficult and dangerous job and that police receive little gratitude or financial support. It is easy to see how an initially well-intentioned officer could become bitter and cynical when subjected to taunts and abuse, probably resulting from behaviour of their colleagues and predecessors about them which they know or have contributed little or nothing. Police almost certainly do need more support, education and financial rewards. But, at least in the short term, the Shopfront believes that the best way to reduce harmful encounters between police and young people is to curtail and closely monitor police discretionary powers and their use.

8 Primary Recommendations

The Shopfront feels that a wholesale examination about the use of police powers needs to take place. If that is outside the bounds of the inquiry, we would make the following submissions in relation to the *Police and Public Safety Act*:

- (a) The search power is too broad and needs to be limited and better defined. Ideally more guidance or limitations should be placed on the grounds for "reasonable suspicion". The presence of a person in a "crime hot spot" should not be sufficient for a person to be searched.
- (b) It is commendable that the Act at least specifies the type of search permitted. This should be retained as the use of strip searches under other Acts remains rife.
- (c) The move-on power is too broad and should be limited and better defined. The problem with acting on the basis of the hypothetical fear of a "person with reasonable firmness" is that many citizens probably do hold an unreasonable fear of congregations of young people. This fear is in part a result of the "law and order" crisis perception held by the community which the new laws have fuelled. This problem should be solved by better education and community awareness. It cannot and should not be solved by providing police with powers to sweep the streets of young people who are committing no offence.
- (d) There needs to be a review of the contribution that the Act has made to police culture and police harassment. There seemed to be an improvement in police culture after the conclusion of the Police Royal Commission. The introduction of the *Police and Public Safety Act* seems to have ushered back more draconian police practices.
- (e) Anecdotal evidence suggests that infringement notices (always for the maximum amount of \$550) are being frequently and readily utilised towards young people who have little ability to pay, even for the first offence. The Act was introduced partly to break down the culture of carrying knives amongst young people. Fines against young people do not break down knife

culture but merely embroil the young person in the bureaucracy of the State Debt Recovery Office. The Shopfront submits that it is more appropriate that young people be dealt with under the *Young Offenders Act* and cautioned or directed to conferences. The JJOs have commented that police seem very reluctant to direct young people to conferencing.

9 Further Concerns

The Shopfront is also concerned about some other aspects of the Act which are not directly addressed in this submission. These issues were raised in the Ombudsman's discussion paper, and are as follows:

- (a) The fact that police don't seem to be adequately trained about what their new powers mean and how to use them properly (see page 11 of discussion paper).
- (b) The need for further clarification of certain powers, especially what constitutes a "reasonable direction" (see page 14).
- (c) The fact that a person under 18 needs written parental consent to apply to get a knife or weapon back. Young people do not need parental consent to get other property back, so why knives, especially if they own them for a legitimate purpose? (see pages 12 and 13).
- (d) Potential problems with police use of names and address they collect pursuant to their power under Crimes Act section 563 (see page 15).
- (e) Concern about whether police are recording data accurately (see pages 15-16).

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