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Introduction

An opportunity to review new police powers in a controlled pilot setting does not come by often. As my Office noted in the report *Policing Public Safety*¹, policing rarely lends itself to evaluative research in a strict sense where initiatives can be evaluated against rigorous controls. Policing is usually just one, albeit important, factor in crime reduction and detection, and cannot usually be singled out as a factor in examining trends and patterns in crime and social disorder.

The *Crimes Legislation Amendment (Penalty Notice Offences) Act 2002*, and our review role, therefore affords a rare opportunity. New police powers to issue on the spot fines for certain offences, and to take fingerprints on the scene to verify identity, are being trialled in a small number of locations for a fixed period of time. This affords my Office the opportunity to evaluate and comment on these powers prior to a decision being made on their extension and expansion.

This issues paper describes the nature of the new powers, the conditions of the trial, and identifies some issues for consideration by NSW Police and the community in the course of the trial. It also describes some of the research questions to be considered by my Office in the review and evaluation of these new powers, and invites submissions from key stakeholders and interested persons on any aspects of these powers and their application.

The importance of this review for future decision making requires that we be made aware of experiences, impressions and views – both good and bad – to ensure that our review is fair and thorough. I am particularly keen that members of the community with direct experience of the legislation in action, such as victims of crime and offenders who are given penalty notices, as well as NSW Police, contribute to this review.

I welcome and look forward to contributions from all those with an interest in these issues, to ensure that their views are taken into account in any future decisions regarding these powers.



Bruce Barbour
Ombudsman

¹ NSW Ombudsman. *Policing Public Safety: Report under s.6 of the Crimes Legislation Amendment (Police and Public Safety) Act 1998*. November 1999. p. 322.

1. Overview of the *Crimes Legislation Amendment (Penalty Notice Offences) Act 2002*

Presently NSW Police have a range of options to deal with a person suspected of having committed a criminal offence, including issuing a warning or caution, issuing a Field Court Attendance Notice (FCAN) or a summons to appear at court, or arresting and taking into custody the suspect, where they may be served with a Court Attendance Notice (CAN) or charged.

The *Crimes Legislation Amendment (Penalty Notice Offences) Act 2002* (the Act) amended the *Criminal Procedure Act 1986* and the associated regulation to allow police to issue on the spot penalty notices (known as a "Criminal Infringement Notice" or "CIN") for a limited number of offences in specially selected trial locations for a twelve month period.

The Act also amended the *Crimes Act 1900* to allow police to undertake identification and fingerprinting procedures to verify the identity of the person being issued a CIN.

Review and Evaluation

The Act provides for the review and evaluation of the CIN trial. For the period of twelve months after the commencement of the Act (which commenced on 1 September 2002), the NSW Ombudsman is required to keep the CIN trials and associated identification and fingerprinting powers under scrutiny.

As soon as possible following the completion of the review period, a report is to be furnished to the Attorney General, the Minister for Police and the Commissioner of Police. As soon as practicable after receiving the Ombudsman's report, the Minister is to table the report in Parliament.¹

Since 1998, the Ombudsman has had an active role in the review and evaluation of certain criminal law reforms giving police officers significant new powers. These powers have been evaluated using the tests of fairness, proper application and effectiveness. The review of the CIN trial will adopt the same tests, and consider a number of particular issues in the implementation and application of CINs by police.

As the powers are subject to trial and evaluation, NSW Police has also been active in implementing and evaluating the new powers. A Steering Committee consisting of representatives from operational, policy, legal, forensic and infringement processing units within NSW Police have been involved in preparing for the commencement of the legislation, and its subsequent implementation, administration and evaluation. Ombudsman officers have been attending meetings of this Committee as observers.

As part of the evaluation of the powers, the Ombudsman will consider the implementation of the powers, and their effect on police workloads, court administration, suspects and victims of crime, as well as on the community generally. This will entail monitoring of police action taken, crime statistics, and discussions with key stakeholders including police, offenders, victims, legal advisers, local communities in the trial locations, and the broader community.

At the same time as this trial is taking place in New South Wales, a similar trial of fixed penalty notices is taking place in the United Kingdom. A pilot scheme allowing police to issue penalty notices for certain "disorder" offences has been underway in four locations since August 2002. It is to be evaluated by the Home Office in September 2003. Appropriate regard will be had to relevant findings and recommendations from this review.

¹ S.172 *Criminal Procedure Act 1996* as amended by the *Crimes Legislation Amendment (Penalty Notice Offences) Act 2002*.

2. Objectives of the Act

The overwhelming objective of the Act is to reduce the administrative demands on police, in relation to what was argued were relatively minor offences. It was said to be an additional and quick alternative to that of arrest for police officers in dealing with minor matters, and allowed police to remain on the beat rather than having to arrest the offender and take them to the police station. It was also argued that there would be savings in the time taken in preparation for and appearance at court.

When introducing the legislation, The Hon. Michael Costa MLC, then Minister for Police, argued that:

This proposal extends the use of penalty notices and allows them to become a general tool in the array of responses available to police. It provides police with greater flexibility in their response to criminal behaviour.²

When introducing the legislation into the Legislative Assembly, The Hon. Bob Debus MP, the Attorney General, said:

The proposed trial of the scheme is advantageous for the State administratively and structurally. The prosecution and the court system are saved the cost of having to deal with more minor offences. The more effective manner of penalising people proposed in this scheme will also assist with court time and trial backlogs. Nevertheless, the offender will retain the right to be heard by a court. That mechanism will allow people to contest the facts of a case when they argue that they did not commit the offence for which the penalty notice was issued.³

In his reply at the end of the Second Reading Debate, Mr Debus noted that the Minister for Police had introduced the legislation following suggestions by frontline officers:

I am told by my colleague the Minister for Police that he has visited dozens of police stations during his time in office, and he has been told on dozens of occasions not only that officers would like to be less involved with paperwork and red tape but also that officers have consistently supported a scheme of this nature is a way of cutting down on paperwork.

An officer who has in the past been engaged for hours preparing a charge for, say, a dollar's worth of sugar stolen from a shop does not regard this scheme as some flight of ministerial fancy. The Minister for Police assures me—and I certainly believe him—that such an officer is extremely supportive of this initiative.⁴

NSW Police articulated further aims and objectives for the legislation when it prepared Standard Operating Procedures (SOPs) for the Act's commencement in September 2002.

The SOPs state that the aim of the legislation:

...is to provide an additional and quick alternative to the arrest and charge of suspects for relatively minor matters by issuing a CIN. Suspects can be dealt with on the spot, allowing police to stay on the street, remaining highly visible and catching more criminals, rather than spending time in police stations doing paperwork, or at court, for minor offences.

The SOPs then go on to describe the objectives of the trial as being to:

- Reduce the amount of police time spent in processing minor criminal offences;
- Reduce problems which can arise when suspects are arrested and taken to the police station;
- Reduce injuries to persons arrested and to police;
- Reduce the risk of self harm in custody;
- Provide a process which balances the inconsistencies between loss of liberty and the final outcome at court; and
- Provide an increased non-custodial alternative when dealing with Aborigines and Torres Strait Islanders.

² The Hon. Michael Costa MLC, Legislative Council, Hansard, 18 June 2002, p. 3202

³ The Hon. Bob Debus MP, Legislative Assembly, Hansard, 27 June 2002, p. 4109

⁴ Ibid

3. Issues from the Parliamentary debate

During the Parliamentary debate on the legislation, Members commented on two main issues.

Some Members criticised the legislation for its inadequate response in dealing with offenders who had committed what they considered to be serious crimes, and the potential that such offenders would be the least likely to pay an on-the spot penalty.

Other Members expressed concern that the legislation may have a disproportionate impact on particular communities, especially Aborigines and Torres Strait Islanders and people from non-English speaking backgrounds.

Mr Andrew Tink MP, then Shadow Minister for Police, expressed concern that the legislation:

...increases the use of penalty notices to deal with what are significant crimes of dishonesty and violence.⁵

He cited Audit Office figures on the likely recovery of unpaid fines by the State Debt Recovery Office, and said:

[Seventy] per cent of fines that are referred to the State Debt Recovery Office remain unpaid, and that percentage increases with the age of the outstanding debt. The reality is that those who are most likely to commit assaults or offences of dishonesty are least likely to pay their penalty notices.

Therefore, those offences are decriminalised by this bill. The sort of person to whom a police officer will issue a penalty notice for any one of the offences listed in the Crimes Act is the sort of person who will screw up that notice—probably in the officer's face, sight and hearing or as soon as that officer turns the corner—and chuck it in the bin. The State Debt Recovery Office audit tells us that there will be no follow-up.⁶

In the Legislative Council, The Hon. Peter Wong MLC, expressed concern about the potential impact on people from non-English speaking backgrounds, fearing that police would find it easier to issue a ticket than take the time to explain why a warning or caution was being given:

I note that this trial will take place in the Bankstown and Parramatta police local area commands, areas with high concentrations of people from an Arabic-speaking background. My concern is that we will end up with a situation in which police may use their discretion to issue fines in preference to choosing to issue cautions, especially when it comes to members of certain ethnic communities. That leads me to the other practical concern with this bill. Of the 12 police local area commands, approximately half—Central, Parramatta, Bankstown, Blacktown, The Rocks and Miranda—have a particularly high concentration of residents from non-English speaking backgrounds.

However, we are talking about a bill that seeks to extract efficiencies from the police force by cutting red tape. To follow the logic, for a police officer faced with cautioning or fining someone who cannot speak English the most efficient approach would be to issue a fine. Certainly from a strict time and motion efficiency approach to this bill, it would be faster to demand a citizen's driver's licence or other identification rather than to take time to issue a verbal warning or to counsel a person who cannot speak English. On paper the arguments for this bill sound plausible; in practice, I fear it will lead to inconsistent and, therefore, unfair application of the law.⁷

⁵ Mr Andrew Tink MP, Legislative Assembly, Hansard, 27 June 2002, p. 4109

⁶ Ibid

⁷ The Hon. Peter Wong MLC, Legislative Council, Hansard, 26 June 2002, p. 3787

The Hon. Michael Gallacher MLC, Leader of the Opposition in the Legislative Council, questioned the extent of savings in time that could really be achieved:

I am amazed that it is thought that the issue of an infringement notice on the side of the road for a false representation under section 527A—or a section 61 assault, which I regard as quite bizarre—will somehow reduce the paperwork that a police officer must complete.

When a police officer issues an infringement notice, say for a section 61 assault, irrespective of whether the person says at the side of the road that he or she will plead guilty or not guilty, the police officer must prepare a brief immediately. The officer cannot wait 21 days and then get the physical evidence required to prosecute the offence. That evidence may be a photograph of the victim or the crime scene or an interview of witnesses. That evidence must be obtained at the time, otherwise it may be a month before the officer interviews witnesses or victims, and their recollection of events might have changed, as might the crime scene and the police officer's recollection.⁸

In response to the debate on the Bill, the Minister⁹ replied:

The bill does not lower the penalty for any offences. The amount of the fine is based on the median fine currently issued by the courts.

The result of this bill will be that, in many cases, the fine received for an offence will be higher than the fine that would have been given by a court. The advantages of such a system are many. Without this trial we will continue along the old path of police and courts spending time processing offences when the matter could be better enforced by the payment of a fine. This bill proposes a quick and effective means of punishing minor offenders. Serious or repeat offenders will not be issued with a penalty notice. Police will continue to arrest these persons and seek high penalties in the courts. But for minor offenders it is a win for everyone for an appropriate fine to be given on the spot. Police win because they do not have to spend extra time on paperwork.

The courts win because fewer resources are being used in processing minor offences. Minor or first-time offenders win because they can pay the fine for the crime and avoid the bureaucracy of the court system. Alternatively, they can argue before the court that they did not commit the crime and that they are innocent. Most importantly, the community wins because more police are on the front line and minor offenders are deterred from reoffending by receiving swift punishment. If they reoffend they will be dealt with by police accordingly.¹⁰

4. The Criminal Infringement Notices Trial

Criminal Infringement Notices are similar in form to parking and traffic infringement notices. They consist of a description of the offence and the particulars of the alleged offender, the nominated penalty, instructions on how to pay the fine, and an option to elect to take the matter to court.

A CIN may be issued for the following offences:

Crimes Act

- Section 61: Common Assault
- Section 117: Larceny and shoplifting, where the property or amount does not exceed \$300
- Section 527A: Obtaining money etc by wilful false representation
- Section 527C: Goods in Custody.

⁸ The Hon. Michael Gallacher MLC, Legislative Council, Hansard, 26 June 2002, p. 3787.

⁹ The Minister in Reply to the Second Reading Debate was The Hon. Carmel Tebbutt MLC, then Minister for Juvenile Justice.

¹⁰ The Hon. Carmel Tebbutt MLC, Legislative Council, Hansard, 26 June 2002, p. 3787.

Summary Offences Act

- Section 4(1): Offensive behaviour
- Section 4A(1): Offensive language
- Section 6: Obstructing traffic
- Section 6A: Unlawfully enter vehicle or boat.

The Act provides that a CIN cannot be issued in relation to:

- industrial disputes;
- apparent genuine demonstrations or protests;
- processions; or
- organised assemblies.¹¹

These are similar to the protections enacted for the move on powers in s. 28F of the *Summary Offences Act 1988*, established by the *Crimes Legislation Amendment (Police and Public Safety) Act 1998*.

The NSW Police SOPs for the CINs trial also instruct police that a CIN should not be issued for:

- domestic violence offences;
- offences where the person is so seriously intoxicated or affected by drugs that the officer believes that person cannot comprehend the procedure;
- offences which are continuing, where the suspected offender refuses to comply with the police request to stop the offence;
- offences where the person is the subject of an outstanding warrant; or
- offences requiring further investigation.

Furthermore, NSW Police have made a policy decision that police officers alleged to have committed offences covered by the Act should not be issued with a CIN.

The SOPs instruct police to deal with all offences in the same manner when a suspect has committed multiple offences. Therefore, it is not possible to be charged for one offence and given a CIN for another offence. However, if the alleged offender has committed multiple offences for which a CIN can be issued, up to four CINs may be issued at one time.

There is no prohibition on a CIN being given to repeat offenders, but police are advised to use their discretion, giving balance to the time saved “with the need to have an appropriate penalty imposed or indicate community condemnation of the behaviour.”

¹¹ S.167 *Criminal Procedure Act* as amended by the *Crimes Legislation Amendment (Penalty Notice Offences) Act*.

Locations

The Act permits police to issue CINs in 12 trial locations for a pilot period from 1 September 2002 to 1 September 2003.

The trial is taking place in the following local area commands:

- Albury
- Bankstown
- Blacktown
- Brisbane Waters
- City Central
- Lake Illawarra
- Lake Macquarie
- Miranda
- Parramatta
- Penrith
- The Rocks
- Tuggerah Lakes

Maps of the Local Area Commands where the trials are taking place are contained in Appendix A.

During the trial period CINs can only be issued within these locations. Officers from other commands working in these locations may issue CINs only after being trained on their correct usage.

Issuing a CIN

Police can only issue CINs to an adult whose identity has been confirmed and whose offence meets the necessary criteria. The Act clearly states that a CIN may not be issued to a person under the age of 18 years.

To confirm the identity of the suspect, the Act gives police the power to request the name and address of the suspect, and to request proof of those particulars. In addition police may request the suspect to consent to having finger and palm prints taken.

If the CIN is paid, the finger/palm prints must be destroyed. Prints will be retained for so long as payment is not made, or if the person is convicted after electing to have the matter go before a court.

Paying a CIN

The penalties for each offence for which a CIN can be issued are as follows:

Crimes Act

- | | |
|--|-------|
| • Section 61: Common Assault | \$300 |
| • Section 117: Larceny and shoplifting, where the property or amount does not exceed \$300 | \$350 |
| • Section 527A: Obtaining money etc by wilful false representation | \$350 |
| • Section 527C: Goods in Custody | \$400 |

Summary Offences Act

- | | |
|--|-------|
| • Section 4(1): Offensive behaviour | \$200 |
| • Section 4A(1): Offensive language | \$150 |
| • Section 6: Obstructing traffic | \$200 |
| • Section 6A: Unlawfully enter vehicle or boat | \$250 |

Penalties are to be paid to the Infringement Processing Bureau, or a court election is to be made within 21 days of the CIN being issued.

Once the penalty has been paid no person is liable to any further proceedings for the alleged offence. A criminal record of the offence is not maintained, and any payment of the penalty is not to be regarded as an admission of liability for the purposes of any civil claims, action or proceeding arising from the same occurrence.¹² However, it is possible for the penalty notice to be withdrawn before the due date for payment, even if the penalty has been paid (if this is the case, the payment is to be refunded). It is then possible for other proceedings to be commenced.¹³

Unpaid penalties are referred to the State Debt Recovery Office for further action to enforce the fine, as set out in the *Fines Act 1996*.

Verification of Identity

Additional amendments made by the Act permit a police officer intending to issue a CIN to request the name and address of a suspected offender.¹⁴ These powers are subject to the same conditions that have featured in recent legislation creating or enhancing police powers. Before asking for the person's particulars, the officer must provide evidence that they are a police officer (unless they are in uniform), give their name and place of duty, inform the person of the reason for the request, and warn that failure to comply with the request may be an offence.

A person who fails or refuses to comply with a request, or states a name that is false in a material particular, or states an address other than the full and correct address of their residence is liable to a maximum penalty of 2 penalty units (1 penalty unit is currently equal to \$110). A police officer may ask for proof of the person's name and address. There is no penalty for failing to provide this proof of name or address.

¹² S. 166 *Criminal Procedure Act* as amended by the *Crimes Legislation Amendment (Penalty Notice Offences) Act*.

¹³ S. 168 *Criminal Procedure Act* as amended by the *Crimes Legislation Amendment (Penalty Notice Offences) Act*.

¹⁴ S. 169 *Criminal Procedure Act* as amended by the *Crimes Legislation Amendment (Penalty Notice Offences) Act*.

Withdrawal of Penalty Notice

The Act enables a penalty notice to be withdrawn at the discretion of a senior police officer or at the direction of the Office of the Director of Public Prosecutions. Withdrawal of a penalty notice means that the amount payable under the CIN ceases to be payable, and any amount paid is repayable to the person by whom it was paid. Withdrawal of the notice allows, but does not require, further proceedings to be commenced against any person in respect of the alleged offence.¹⁵

5. Fingerprinting to verify identity

The Act also amended the *Crimes Act* to enable police officers to require a person served with a CIN to submit to having their finger and/or palm prints taken.¹⁶

As with the verification of identity, there are procedural requirements for police to follow. The officer must provide evidence that they are a police officer (unless they are in uniform), give their name and place of duty, inform the person of the reason for the request, and warn that failure to comply with the requirement may result in the person being arrested for the offence concerned and whilst in custody, prints may be taken without the person's consent.¹⁷

The Act also provides that if there are two or more officers carrying out the taking of prints, only one officer need satisfy the conditions unless the person asks for the name and place of duty of any of the other officers present, who then must provide the details requested.¹⁸

The Act also allows these procedures to be followed with respect to a person who has been served with a notice to attend court but is not in lawful custody, these usually being FCAN¹⁹, which are issued to compel a person to appear at court without having to be taken to a police station and charged. The taking of prints for an FCAN is not part of our review.²⁰

As these prints would normally be taken in the field, away from a police station, police have been issued with special forms and ink pads for this purpose. These resources are an alternative to standard fingerprint forms and ink or 'Livescan' units, which are to be used when a decision has been made to proceed by a Court Attendance Notice or charge.

The Act establishes that police may require prints to be taken, and that failure to comply with the requirement may result in arrest for the offence concerned. The SOPs state that suspects are to be given a warning that if they do not co-operate by providing their prints, then the CIN cannot be issued and the person may be arrested for the offence for which it was intended to issue the CIN and whilst in custody their prints may be taken without their consent.²¹

However, as the Act is presently worded it could be interpreted to mean that police may only require prints to be taken *after* the CIN has been served:

*A police officer who serves a penalty notice on a person under the Criminal Procedure Act 1986 may require the person to submit to having his or her finger-prints or palm-prints, or both, taken and may, with the person's consent, take the person's finger-prints or palm-prints, or both.*²²

This interpretation appears to be reflected in the SOPs, where the suggested form of request for the prints is:

*"I require your prints in case the need arises later to confirm you're the person who received this/these notice/s ..."*²³

¹⁵ S. 168 *Criminal Procedure Act* as amended by the *Crimes Legislation Amendment (Penalty Notice Offences) Act*.

¹⁶ S. 353AC(1) *Crimes Act* as amended by the *Crimes Legislation Amendment (Penalty Notice Offences) Act*.

¹⁷ For convenience and clarity, "prints" will be used in this discussion to mean finger-prints and/or palm-prints.

¹⁸ S. 353AE *Crimes Act* as amended by the *Crimes Legislation Amendment (Penalty Notice Offences) Act*.

¹⁹ S. 353AD *Crimes Act* as amended by the *Crimes Legislation Amendment (Penalty Notice Offences) Act*.

²⁰ S.172(1) *Criminal Procedure Act* as amended by the *Crimes Legislation Amendment (Penalty Notice Offences) Act*.

²¹ The taking of prints in this fashion is authorised by s. 353A of the *Crimes Act*.

²² S. 353AC(1) *Crimes Act* as amended by the *Crimes Legislation Amendment (Penalty Notice Offences) Act*. Our emphasis.

²³ NSW Police. *Crimes Legislation Amendment (Penalty Notice Offences) Act 2002 - Policy and Standard Operating Procedures*. September 2002. p. 15. Our emphasis.

This raises the question of whether it is lawful to issue a CIN for an offence, then require a person to submit to having their prints taken, and then arrest the person for the offence for which a CIN has already been issued if they do not submit to the request for prints.

At the time of writing, about a quarter of the people issued with CINs have had their prints taken. In discussions with NSW Police, we have been made aware that there is reluctance by some officers to take prints when issuing CINs because of the requirement that the prints be destroyed upon the person paying the penalty. This has led to suggestions by these officers that there be amendments to allow prints to be retained for future reference.

An argument against this is that the prints are taken in order to verify the identity of the person issued the CIN. Once the penalty is discharged through payment, no criminal record of the offence is kept, so why should prints be retained? The taking and retention of prints is a significant issue for NSW Police and the community, and we invite particular consideration of these matters.

Key Questions

- 1 To what extent are fingerprints being taken in verifying identity for people issued with CINs?
- 2 To what extent are persons failing to submit to the request for prints, and as a result being arrested for the offence for which it was originally proposed to issue a CIN?
- 3 What is the extent of compliance with the requirements to destroy prints after the payment of the prescribed penalty?
- 4 Should all prints taken as part of the CINs process be retained for future reference? If so, should there be any limits on their use?

6. Issues for the community

What is the community's experience of the trial of the CIN scheme? Is there any evidence of "discriminalisation" or of downgrading the seriousness of offences?

We want to examine the experience of those members of the community most directly affected by the CINs trial: people who receive CINs, and the victims of offences for which CINs are issued. Their experiences and perceptions of CINs as an alternative to arrest, charge and appearance at court will be a critical aspect of the evaluation of the effectiveness and level of support for CINs.

Given the concerns expressed in the Parliamentary debates, another issue that we will examine in some detail is whether there has been any marked impact on the incidence of the offences that are the subject of the CINs trial. We will look at the difference in offending over time in the trial locations and between comparable local area commands not involved in the trial.

The concern about the effective "downgrading" of criminal offences lies in the nature of the penalty, and its enforcement. The suggestion is that many people who have committed criminal offences for which they are issued a CIN are likely to default on paying the fine in the initial period, resulting in the need for the SDRO to take action to enforce the fine. This may take some time, leading to claims that a CIN is a less serious "condemnation" of criminal behaviour.

The Australian Retailers' Association expressed a particular concern on this score during Parliamentary debate on the legislation. The Association argued that an on the spot fine may not sufficiently discourage retail theft. We intend to canvass these issues with the Association, local chambers of commerce and local retailers to ascertain their direct experience of the use of the powers in their locality.

Key Questions

- 5 How has the trial of the new powers affected perceptions of crime in local communities?
- 6 What has been the experience of those issued with a CIN? What views do they have on the CIN as an alternative to arrest, charge and court appearance?
- 7 What has been the experience of victims of crimes for which CINs have been issued? What views do they have on the offender being issued a CIN?
- 8 What support exists for the application of CIN powers by police in those local communities that have had direct experience of their use?
- 9 Is there any evidence that certain offences have been effectively downgraded by being the subject of CINs?
- 10 To what extent are fines being paid after CINs have been issued by police without the need for any further action?
- 11 To what extent are unpaid fines being referred to the State Debt Recovery Office for further action?
- 12 What action is being taken to enforce unpaid fines by the State Debt Recovery Office?
- 13 To what extent are fines remaining unpaid after referral to the State Debt Recovery Office?

Is there any evidence of 'net widening'?

One concern expressed in the legislative debate was that by making it easier for police officers to "prosecute" matters – in this case, by not having to go to court unless the offender elected to do so – it would increase the likelihood that police would intervene in situations where previously they may not have intervened or instead issued a caution or warning to the offenders.

Proponents of this view are concerned that police will be more likely to intervene in matters that might give rise to the offences of offensive behaviour and offensive language because they can issue a ticket rather than having to take the matter to court. Given changing community views on what constitutes offensive behaviour and language, and several court cases where the police view on what constitutes offensive conduct and language have not been upheld, this will be an area of particular scrutiny.

Early figures from NSW Police covering the first six months of the trial indicate that over half of the CINs issued since 1 September 2002 are for larceny, shoplifting, offensive conduct and offensive language.

Another concern is that a CIN may act as an entry point into the criminal/penalty system in circumstances that may have previously only warranted or incurred a warning or caution. Failure to pay the penalty set out in the CIN will result in the eventual referral of the fine to the State Debt Recovery Office, which has a range of options to enforce the penalty, such as garnisheeing wages and cancelling driving licences.

Is there any evidence of adverse impact on particular segments of the population?

A concern expressed during the legislative debate was that there might be a disproportionate impact on particular groups in the community, such as Aborigines and Torres Strait Islanders or people from non-English speaking backgrounds. This relates to the 'net widening' argument, in that it is suggested that people from particular groups might receive CINs in situations that might have otherwise been dealt with by a caution or warning.

Key Questions

- 14 Is there any evidence of significant increases or decreases in the number of charges for prescribed offences in the Local Area Commands that are part of the trial? Can these differences be reasonably explained by the trial use of powers?
- 15 To what extent are other offences (such as 'assault police' or 'hinder police') arising from police intervention in relation to the CIN offences?
- 16 To what extent are offenders accumulating additional penalties by failing to pay their original fine?

One suggestion was that police may find it easier to issue a penalty notice for an offence that might otherwise be appropriately dealt with by caution or warning if the latter involved having to explain the offence and warning to a person with difficulties in communicating.

We shall keep this issue under scrutiny, and look for any evidence that addresses these concerns.

7. Issues for NSW Police, courts and associated agencies

Have administrative savings been achieved for NSW Police, courts and other agencies involved?

As the primary objective of these powers is to save time for front line police officers, it is essential that this aspect of the legislation's implementation be fully evaluated. Administrative savings have been argued as both the objective of and initial outcome from the trial. After the first six months of the trial, NSW Police said that the trial had seen police officers save up to 267 minutes in processing a "minor non violent offence".²⁴

The SOPs require that police properly investigate the alleged offence before issuing a CIN. From analysis of records maintained in the NSW Police Computer Operated Policing System (COPS), and interviews with officers, we will look at the nature and extent of the inquiries undertaken by police before issuing CINs.

While there are likely to be savings in not having to take matters to court, the current court election provision in the CIN assumes that police have gathered and recorded the evidence necessary to take the matter to court if the person so elects.

In previous Ombudsman research reports, we have noted the time consuming requirements in entering information into COPS. While police operational and intelligence demands justify these data entry requirements, they can take considerable time. We will examine the extent to which these demands are affected by the introduction of the CINs option.

We will examine the incidence of matters being taken to court, and the outcomes of those matters (ie: the imposed penalties) compared to those provided for CINs in the Act.

We will also examine the extent to which officers have to collect information in anticipation of a possible court election only for that option not to be exercised.

The new powers also are aimed at achieving savings for courts, particularly local courts, as they will not have to hear and determine relatively minor matters. We will look at this question through discussions involving the Attorney General's Department, and the Chief Magistrate.

²⁴Time saving based on calculation that "each CIN took police 50 minutes to process compared to 317 minutes for every charge". Quoted in *Police Service Weekly*. Vol. 15 No. 8. 3 March 2003. p.7.

Key Questions

- 17 Has the CINs trial achieved real administrative savings for NSW Police and the courts?
- 18 If so, what level of savings has been achieved, and how have these savings been redeployed?
- 19 What is the nature and extent of inquiries undertaken by police officers prior to issuing a CIN?
- 20 What proportion of matters is taken to court at the election of the person who has received a CIN?
- 21 What are the outcomes, in terms of findings and penalties, for those matters taken to court?
How do court determined penalties compare with the penalties provided for CINs?

What is the impact on crime and policing?

Another key question for the evaluation is the extent to which the trial use of these powers has a positive or negative impact on crime in the local community. The argument that police will be 'freed up' to stay on the beat suggests that these powers are intended to play a part in NSW Police's crime reduction strategy. Using time trends, and by analysing comparable neighbouring commands, we will examine the changing trends and nature of crime in the pilot Local Area Commands.

We will speak to frontline police officers about their experience of using the powers, and the consequences for their day-to-day work. We will also examine the deployment of resources within the trial locations, compared to previous deployment within the command and across local area commands.

The objectives for the pilot, as set out in the NSW Police SOPs, also emphasise the potential benefits of reduced harm of injury and self-harm that might occur in arrest or detention. Another objective is the provision of a non-custodial alternative when dealing with indigenous people. Should such benefits be realised, this will obviously be a positive outcome of the new powers. Accordingly, this aspect of the implementation of the powers will be given particular consideration.

Key Questions

- 22 Has there been any impact on crime figures in the pilot local area commands compared to previous years and neighbouring commands?
- 23 If so, can this be attributed to the use of the CIN powers?
- 24 What do frontline police officers think of the new powers? Do they consider it assists them in their duties? Has it allowed them to undertake more work?
- 25 Are there any reported improper or unlawful uses of the CIN powers?
- 26 To what extent are CINs being issued in high profile policing operations such as Operation Viking? Do they assist in the conduct of these operations?
- 27 Has there been a reduction in the number of instances where injuries occur to persons dealt with by police or to police during arrest, or of injury or self-harm while in custody in the pilot areas? Can this be attributed to the trial of the new powers?
- 28 Has there been a reduction in the number of Aborigines and Torres Strait Islanders in custody in the pilot areas?

What impact do the new powers have on police discretion to intervene in matters?

We will examine what impact the new powers has on police decision-making regarding intervention and discretion in dealing with incidents that might result in a CIN.

The CIN option presents an intermediate option between issuing a caution or warning on the one hand and issuing a FCAN, CAN, or arrest and detention resulting in appearance at court. We will examine the impact that the availability of the CIN option has on decision making, and its value as an additional option for police in dealing with alleged offenders. This will be done through discussions with frontline officers.

Key Questions

- 29 Have there been any significant changes in the police use of their discretion to intervene in incidents by allowing the issuing of CINs?
- 30 Do police officers involved in the trial of CINs believe the CINs assist in the effective and efficient exercise of their duties and functions?

8. Future Directions

Given that the CIN pilot is being evaluated with an eye to its continuation and/or extension, some general issues will also be given consideration, and we invite submissions on these matters.

These include:

- Should the powers be extended State wide?
- Should there be additional offences for which CINs may be issued? If so, which offences?
- Should offences where the offender has discharged the penalty through payment be recorded and used as antecedents in any future appearance at court?

We welcome submissions and comments from any interested stakeholders and members of the community on their experience of the CIN trial in practice, or their thoughts on the issues raised in this paper or any other issues related to the CIN pilot.

Submissions and comments, which can be in the form of a letter or e-mail, may be forwarded to the NSW Ombudsman by **31st October 2003**. Contact details are as follows:

CIN Review
NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000

Phone: 02 9286 1000

Tollfree: 1800 451 524

Fax: 02 9283 2911

TTY: 02 9264 8050

Email: nswombo@ombo.nsw.gov.au

Web: www.ombo.nsw.gov.au

Appendix A

Maps of Local Area Commands where the trial is occurring

Albury



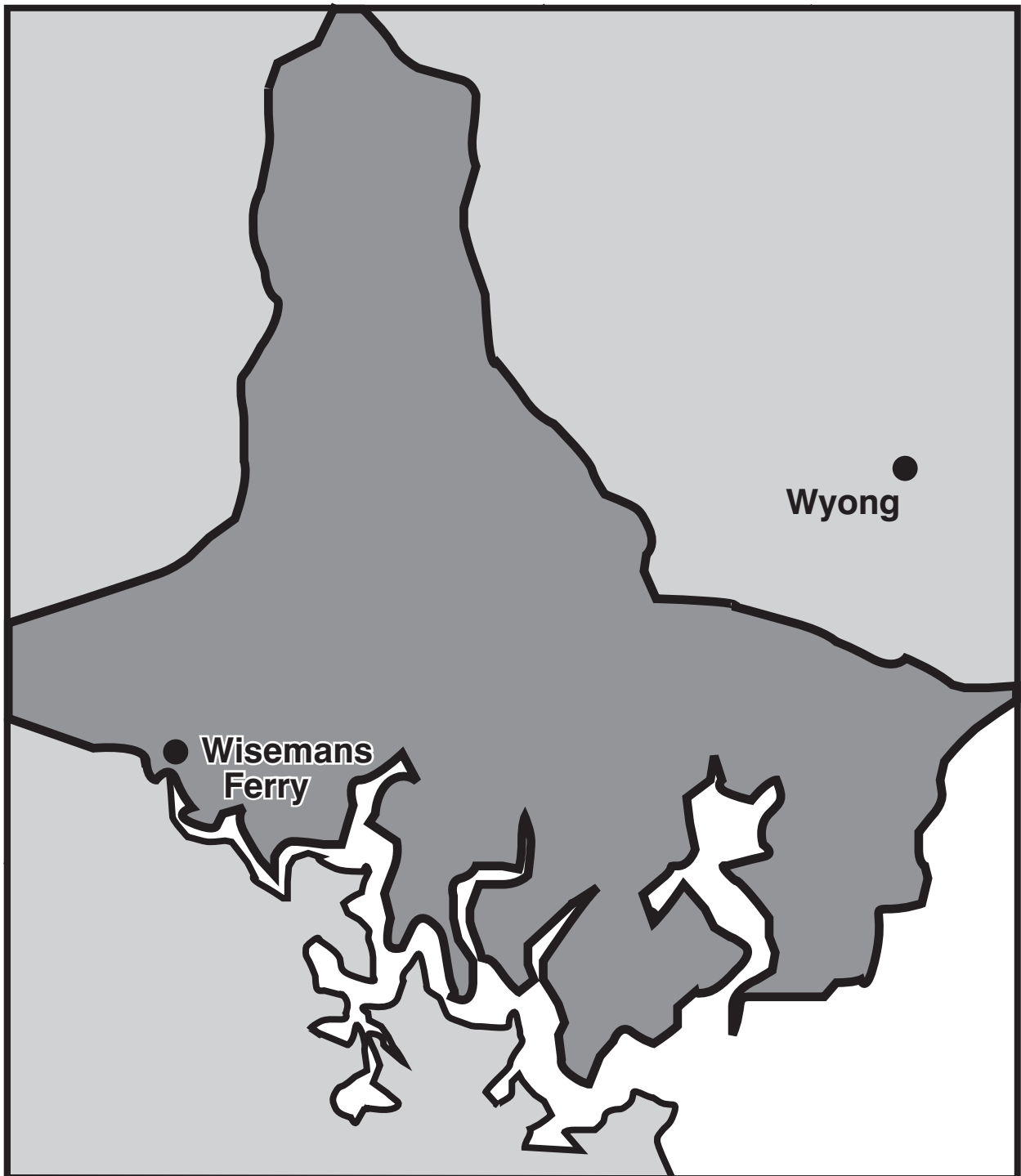
Bankstown



Blacktown



Brisbane Waters



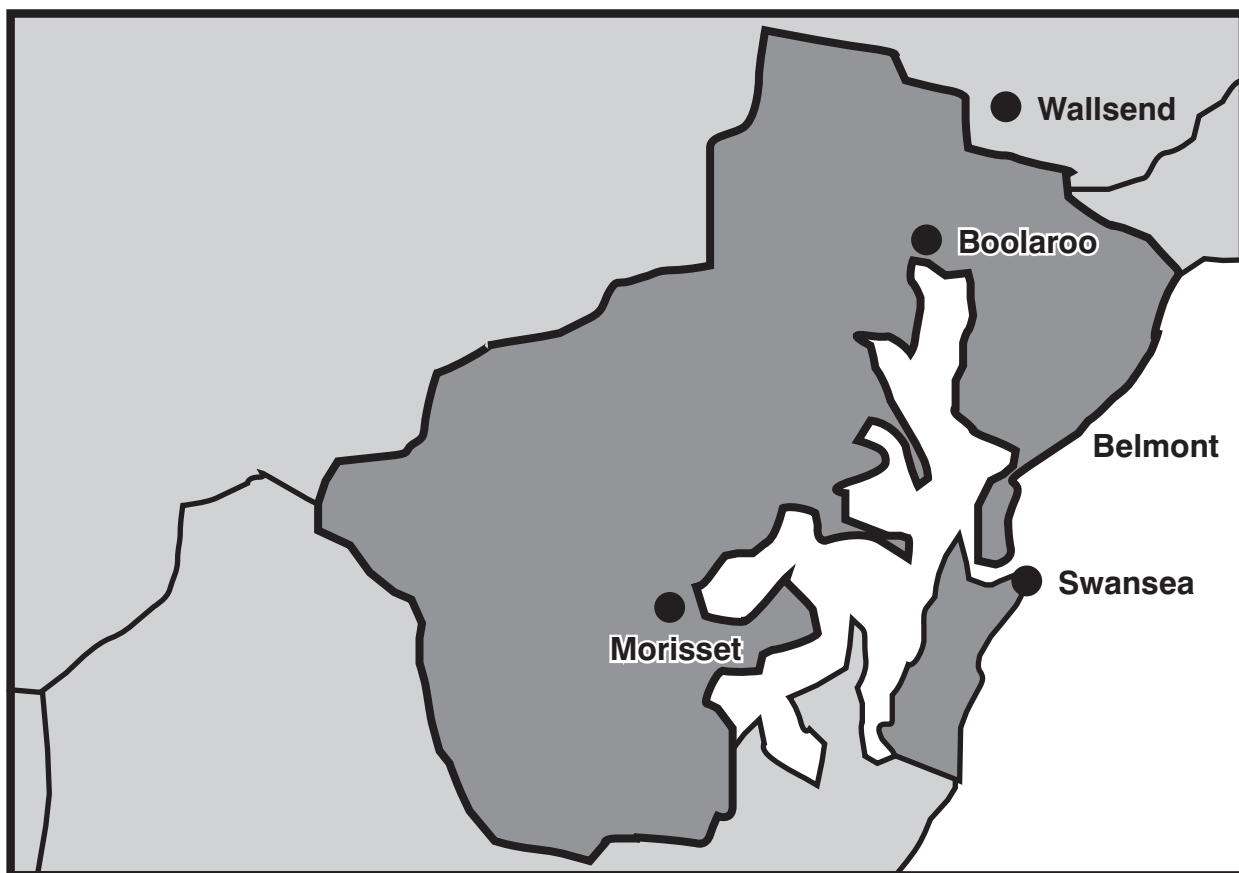
Sydney City Central



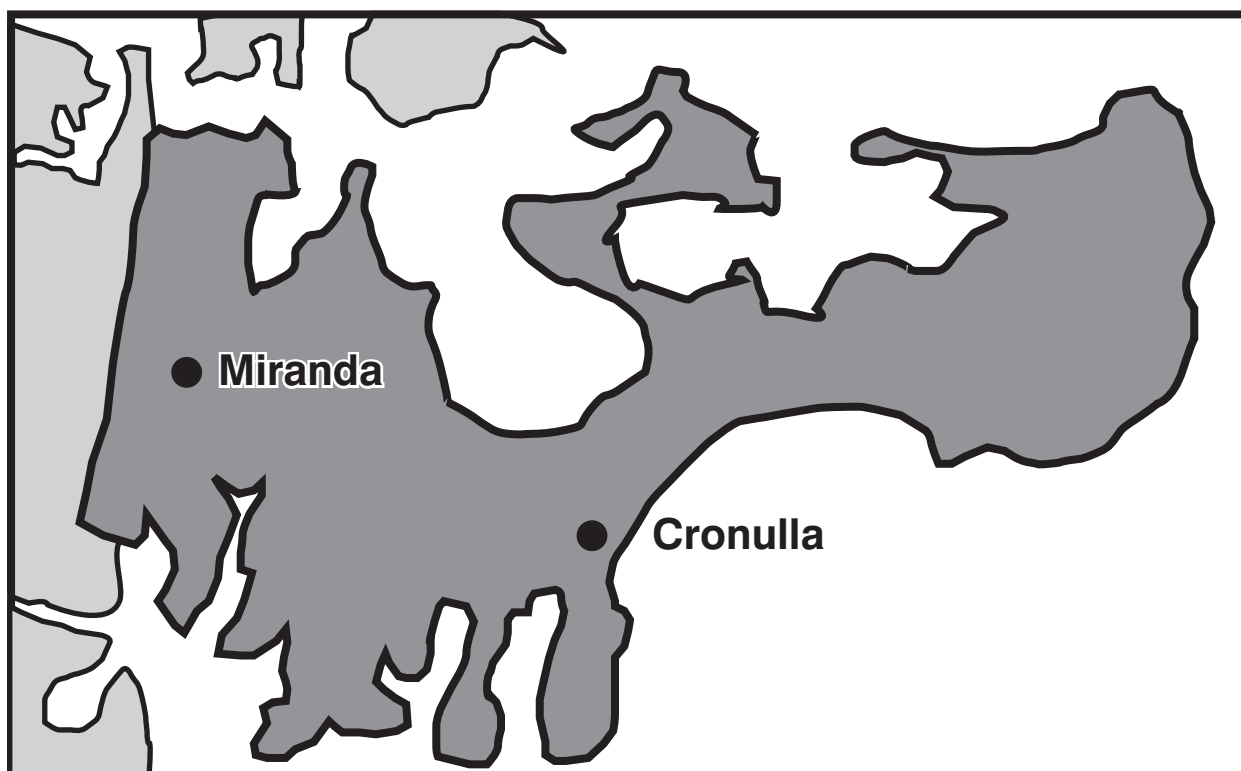
Lake Illawarra



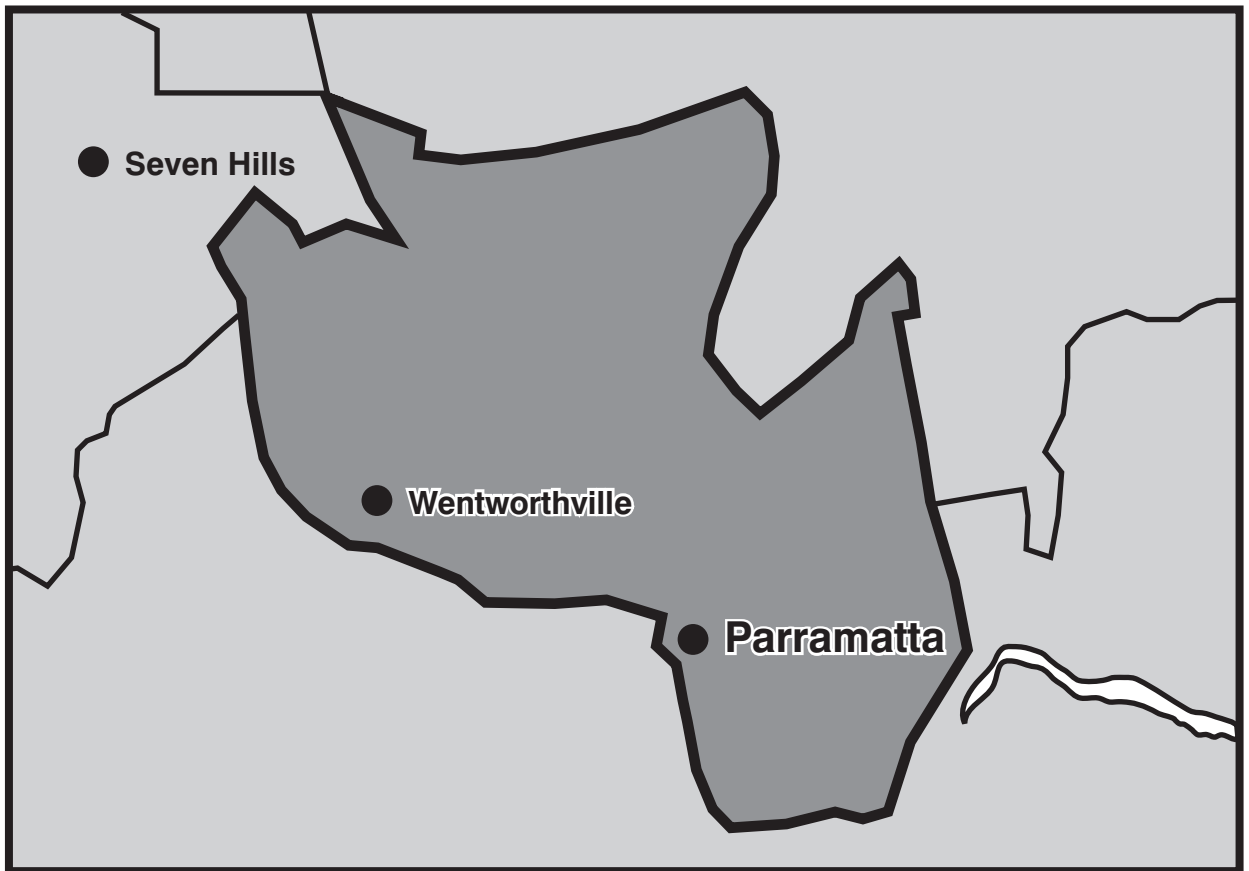
Lake Macquarie



Miranda



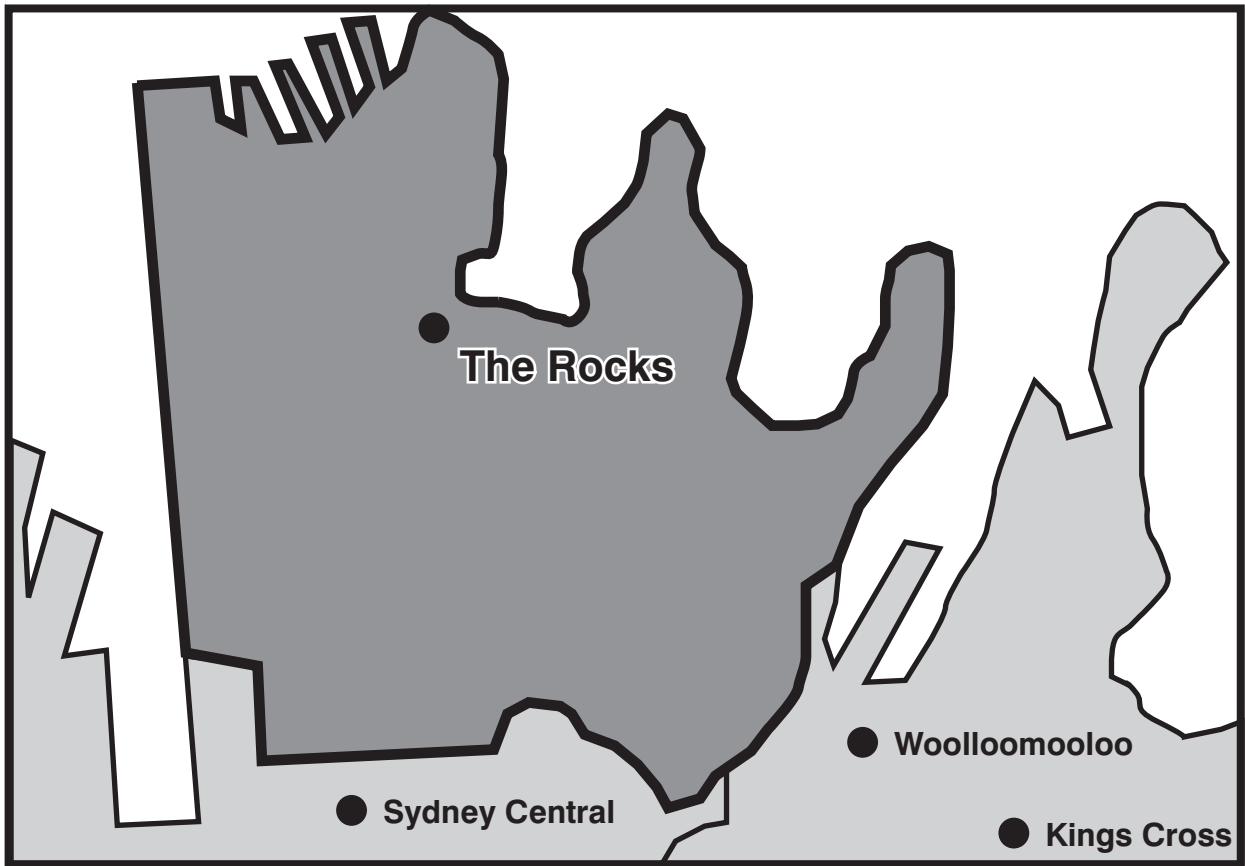
Parramatta



Penrith



The Rocks



Tuggerah Lakes



