

COMMUNITY SERVICES COMMISSION



Changing the face of community services



The drift of children in care into the juvenile justice system

Turning victims into criminals

A discussion paper by the Community Services Commission
December 1996

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1. Introduction

1.1 The Community Services Commission

The Community Services Commission was created under the *Community Services (Complaints, Appeals and Monitoring) Act 1993*. It was established in 1994 with the aims of changing the culture, quality and reputation of community services in NSW and empowering the consumers of these services.

Our services are for consumers who are receiving or who are eligible to receive community services from the NSW Departments of Community Services and Disability and Ageing, non-government community services funded by the Minister for Community Services and Ageing and Disability, and the Home Care Service of NSW. Our Act directs us to give priority to the needs of consumers who are least likely or able to complain or protect their own interests.

Children and young people are vulnerable to not having their needs, wishes and rights considered, both individually and collectively, for a variety of reasons: they cannot express their views through the normal democratic or political processes available to adults; they are often dependent for their well being on individuals, organisations or systems which may have competing or conflicting interests; and they often lack the skills and confidence to express their views and assert their rights. As well, their needs and views are often considered to be appendage or subordinate to those of more powerful (usually older) individuals, e.g. parents, teachers, workers. The commission's role with children and young people involves:

- dealing with complaints from children or involving children who are receiving or are eligible to receive community services;
- carrying out reviews of individual children in residential care or foster care;
- coordinating Community Visitors, who advocate on behalf of children in full time residential care of the Department of Community Services (DCS) or funded non-government services;
- advising the Minister about systemic problems and issues in the delivery of community services to children;
- educating service providers about best practice in handling complaints from their consumers;
- informing children about their rights to complain
- supporting and encouraging advocacy services for children.

Information collected by the commission in its two years of operation indicates that children and young people in out of home care for whom the Minister of Community Services is guardian are some of the most vulnerable consumers of community services. Indicators further suggest that this vulnerability is compounded by contact with the juvenile justice system.



2. Background to the project

This discussion paper attempts to examine some of the problems around children in state care who come into contact with the juvenile justice system. It draws on information from: relevant and recent research; the commission's complaint, review and community visitor functions; focus groups held with advocacy groups and peak organisations; and a survey of 52 departmental "case files" involving wards who have had contact with the juvenile justice system. Much of this information is qualitative and anecdotal. While some analysis, including statistical analysis, has been undertaken, it is of a preliminary nature.

Nevertheless, the discussion paper highlights that the issues are complex and that quick and easy remedies are not likely. Even with the most committed staff and improvements to practices and procedures, the problems that contribute to some children in care moving in and out of the juvenile justice system will not be resolved overnight.

Given the need for further information collection and analysis, the paper highlights issues and strategies for further exploration, rather than making definitive findings and recommendations. The Community Services Commission is interested in comments on the issues raised in this discussion paper, the preliminary proposals for prevention in Section 6, and other views and ideas to achieve positive change. We welcome comments by young people within and outside the care and justice systems, service providers, departmental officers, legal practitioners and other interested parties.

Submissions should be sent by February 28th 1997 to :

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3. Context

There are many reasons why the state might intervene in a family and decide that the children should no longer live with the parent(s). These include physical, sexual or emotional abuse of the child, neglect of the child or the inability of the parent to care for the child due to illness, imprisonment or substance abuse. In some cases, parents may seek assistance in caring for their child.

Once a child is declared a ward by a children's court magistrate, the Minister for Community Services is responsible for all decisions relating to the care and upbringing of the child, including arranging a foster placement or accommodation in a residential unit or youth refuge. The Minister delegates this responsibility to the Department of Community Services (DCS) which is also required to address any emotional disturbance which occurs as a result of abuse or neglect.

Wards are not the only children in care as some children and young people drift in and out of respite care or temporary foster care without being declared wards by the Children's Court. This discussion paper limits itself to examining the position of wards only as data is more readily available on this group. However the commission recognises that other children in care are subject to the same risks as wards, without perhaps having the same legal status and protections.

Wards may come into contact with the juvenile justice system :

- As a result of homelessness, which may follow breakdown in care arrangements or rejection by carers. Such mobility may cause failure to appear in court or failure to make appointments.
- After committing crimes of survival such as fare evasion, theft, break, enter and steal.
- Following a minor infringement, but where offences escalate due to a lack of support, intervention and advocacy.
- As a result of offending behaviours which are linked to emotional disturbances such as property damage, substance abuse or assault.

The Department of Community Services was unable to advise how many wards are currently in the juvenile justice system. Advice from the Department of Juvenile Justice shows that as at 30th June 1996, there were 12 wards currently in Juvenile Justice Centres in NSW (DJJ Monthly Executive Report). This represents 2.6% of the entire juvenile justice population at that time. At the end of October 1996, there were 16 wards in juvenile justice centres out of a population of 474. Other information received from the Department of Juvenile Justice shows that in 1995/96, 5.6% or 243 out of 4373 court reports written were prepared for wards. Of the 6714 admissions into Juvenile Justice Centres in 1995/96, 2.7% or 181 admissions were for wards however some individuals are admitted more than once in a year. Finally, of the 4179 community based orders supervised by the Department of Juvenile Justice, during 1995/96, 172 (4.1%) were wards.

These figures do not represent the total number of wards who have had contact with the juvenile justice system as statistics are unavailable for those wards who are charged or cautioned by police but not found guilty. For example, there must be a finding of guilty before a court report is ordered by a magistrate, so out of 14,759 children's court appearances in 1995/96, only 4373 court reports were written¹.

¹ NSW Department of Juvenile Justice Information Package, 1995/96



Obviously, these figures do not represent those crimes committed by wards which go unreported, due to issues of privacy, fear or feelings of futility, confusion or pity on the part of the victim. Non reporting is an issue which has been widely discussed in relation to juvenile crime and there is even evidence that many kinds of victims such as the homeless, NESB youth and young women are reluctant to report incidents to the police.² If this is the case, it is likely that crimes committed by wards against other wards such as assaults within residential care centres may go unreported due to peer pressure and fear of reprisal.

Given that the statistics available represent only a proportion of the problem of wards engaging in criminal activity, it is not surprising that wards make up roughly 3% of the population within Juvenile Justice Centres. While 3% may not sound a significant proportion of that population, it needs to be remembered that wards in NSW aged 10-18 numbered only 1494 or 1.8% out of 846,632 males and females in NSW aged between 10-19 at the time of the 1995 Census. Thus 3% is significantly disproportionate to their representation within the broader population.

When examined in terms of the number and rate of admission of individuals to Juvenile Justice Centres, the comparison becomes stark. When we look at the number of admissions per year, we can see that wards are readmitted more often than non-wards: in 1993/94, there were 70 wards admitted once and 205 admissions of wards more than once, making a total of 275 admissions by wards into juvenile justice centres. When compared with the rest of the juvenile population in detention centres for the same period, there were 2527 'once only' admissions and 3645 admissions of young people more than once, making a total of 6172 admissions. This means that out of all ward admissions in 93/94, 70% are for wards who re-offend, while for the admissions of the general population, 59% are for re-offenders.

Similarly, the rate of admission of individuals to Juvenile Justice Centres in 93/94 was 5.84 male admissions (0.67 female admissions) per 1000 young people aged 10-18, whereas the rate of admission of male wards per 1000 wards was 75.1 (23.3 for females). This means that if a young man is a ward, he is almost 13 times as likely to enter a juvenile justice centre than if he was not a ward. If a young woman is a ward, she is almost 35 times as likely to enter a juvenile justice centre than if she was not a ward. If we look at the combined rate for males and females, 3.32 admissions out of 1000 young people in the general juvenile population compares with 49.8 admissions out of 1000 wards. **This means that wards are 15 times more likely to enter a juvenile justice centre than the rest of the juvenile population.**³

Inadequacies of Data Collection

Advice from the Department of Juvenile Justice indicates that data collection regarding wards is limited in relation to wards aged 16-18 and ex-wards over 18 because if a young person aged 16 years or over enters the juvenile justice system for the first time, any previous wardship status is not recorded. In addition, there is no management directive to include wardship details in relation to court reports whereas there is a directive for wardship details of detainees to be entered in the system. This means that the number of wards recorded as having contact with the juvenile justice system is less than would be expected if wards aged 16-18 were recorded in juvenile justice centres

² For a summary of the debate, see *Juvenile Crime in NSW: A Review of the Literature*, Crime Prevention Division, Attorney General's Department, 1996, pp.1-2.

³ Source: Juvenile Justice Client Information System



and if Juvenile Justice Officers consistently reported wardship details for young people involved in community sentencing options and in the preparation of assessment reports for court. We recommend an extension of the data collection in this regard and more public reporting of data regarding wards collected by the Department of Juvenile Justice. It is unfortunate that wardship data does not feature in the Department of Juvenile Justice Annual Information Package publication.

The commission's view is that it would also be useful to know how many wards are currently in juvenile justice centres from the Department of Community Services Client Information System to enable the Minister to be aware of the situation of some of his most vulnerable charges. We recommend that an 'accommodation/ custodial status' category and a juvenile justice supervision order category be included in any future changes to data collection methods. These requirements would also assist District Officers in enabling wards to fulfil bail conditions.

4. Reasons for concern

Once a ward is charged with a crime, the responsibility and care for the child can shift from the Department of Community Services to the Department of Juvenile Justice. Such a transfer means that more attention is paid to the young person's crime, punishment and rehabilitation than their 'welfare' needs such as accommodation, emotional disturbance and physical and mental health. For some young people, this drift in care is a form of systems abuse which turns the victim into the criminal.

4.1 Recent reports from other bodies

In May 1992 the NSW Parliament's Standing Committee on Social Issues released its report, *Juvenile Justice in NSW*. The Committee did not set out to examine the issue of state wards but noted that:

wards are a particularly vulnerable group to involvement in the Juvenile Justice system. The Committee considers that the Department of Community Services and the Office of Juvenile Justice should continue to monitor the numbers of state wards in the Juvenile Justice system with a view to developing strategies as to how best such young people might be diverted from contact with that system.⁴

The Committee went on to examine some of the factors which put young people at risk of involvement in the juvenile justice system, many of which are characteristics shared by the ward population. Factors identified were unstable accommodation or homelessness, family breakdown and abuse, education difficulties, unemployment, limited leisure facilities or opportunities.⁵ The Committee made a number of recommendations which have not been implemented four years after the release of the report.

Even before the introduction of the *Community Services (Complaints, Appeals and Monitoring) Act 1993*, Official Visitors to DCS residential facilities for wards reported their concerns to the Minister.

The introduction to their 1992 Annual Report to the Minister stated:

Failures or inadequacies within the practices of substitute care programs can and do lead to what is widely referred to as the phenomenon of "welfare drift" -where children and young people are lost to the system and end up drifting from care and protection facilities into incarceration.

The *Longitudinal Study into Wards Leaving Care* conducted by Judy Cashmore and Marina Paxman released in January 1996 did not focus specifically on the issue of contact with juvenile justice, however two young men of the original 47 wards interviewed were in correctional institutions when monitored twelve months after leaving care⁶. This study provides important information about the effects of placement instability and lack of departmental support for wards and interesting comparative statistics regarding wards and the general youth population:

⁴ Standing Committee on Social Issues Report No. 4, p.54.

⁵ *Ibid*, pp.31-48.

⁶ Cashmore & Paxman, 1996, p.146.



...young people in wardship were more likely to have spent time in a detention centre than young people in general. Nine of the 91 state wards leaving care (9.9% overall: eight males, 21.6% and one female, 1.9%) had spent time in juvenile detention centres (source: Office of Juvenile Justice 1993). Most were aged 15 or more when first detained and had a number of admissions (e.g. five or more). In contrast at the same time in 1992, only .07% of the general male population in New South Wales between the ages of 10-17 and .003 per cent of females had been in a juvenile detention centre.⁷

In 1993, the Interim Review Committee (IRC), a sub committee of the Minister for Community Services Advisory Committee on Substitute Care made a *Report on the Status and Progress of State Wards Leaving DCS Residential Care Since July 1993* in order to monitor the movement and progress of children who were affected by the closures of departmental residential care facilities. Of the 39 children who had moved into contracted non-government residential care services and who were reviewed by the IRC, at least 21 children had contact with the juvenile justice system since leaving DCS residential care. The IRC went on to say:

It must be said that generally, this does not concern us. It was virtually inevitable that such an increase would occur. To set the context: very disturbed, systems-abused children: subject to highly institutionalised forms of behaviour and social control; moved out of these institutions en masse after a period of some 12 months of uncertainty; into community based settings where previously they had lived on massive acreage; to services where workers emphasised the development of external controls and self-responsibility; where the young people needed to test the boundaries and limits of their new environment and carers ... in this context the number of offences that have occurred are probably less than one would expect⁸.

Such findings and analyses raised concerns for the commission because they suggest: a group of already vulnerable young people in the care of the state may be further disadvantaged within the system that is supposed to support and assist them; a prevailing view that such contact is inevitable and little can be done to prevent it; and a range of systemic issues and causes that need to be identified and addressed to ensure better outcomes for children at risk of incarceration.

4.2 The commission's information

Complaints

The commission has not received any complaints from children or young people in care concerning their slide into the juvenile justice system, nor many from other interested parties on behalf of the child/young person. This is not surprising given: the small number of complaints the commission receives where the child/young person is the complainant; the powerlessness of many wards to advocate on their own behalf; the lack of advocacy services for children/young people to assist them complain; and the fact that many are estranged from their families or receive only limited support from them. As well, the commission does not have jurisdiction over juvenile justice matters. While many of the complaints received by the commission concern children and young people who have had contact with the juvenile justice system, this has not tended to be the focus of the complaint.

⁷ Cashmore & Paxman, 1996, p.117.

⁸ IRC, p.18



The commission's view is that the lack of complaints from and about this sector of the population in care highlights their extreme vulnerability, their lack of access to support and advocacy, and the fact that they can fall between the responsibilities of two departments and miss out on the services that they need.

This view is supported and informed by the observations of Community Visitors, information gathered through reviews of children and young people in care, and our work and consultations with community legal centres, youth services and advocacy and peak organisations such as the Youth Justice Coalition and the State Network of Young People in Care.

Reviews of Children in Care who have had Juvenile Justice Contact

The commission has conducted 17 reviews of children in care in its two years of operation. These are initiated following a complaint or referral from a Community Visitor, through monitoring admission and discharge information from Minali and Ormond, and at the request of advocates and other interested parties. Of the seventeen reviews undertaken, nine young people have had contact with the juvenile justice system, some as a result of property damage or assaults on residents or staff when in residential care. Of the remaining eight young people who have been reviewed, two have been directly involved in assaults while in care but neither was charged due to their intellectual disability.

The following table sets out the rate of occurrence of some of the common characteristics and circumstances of those nine young people who were reviewed who were wards of the state and who had contact with the juvenile justice system. It should be noted that one child was the subject of two reviews due to a further deterioration of his situation, hence the totals of ten in some cases.

Characteristic	Number of Reviews with JJ contact
History of unstable, inappropriate placements	8
Lack of advocacy	10
Challenging/self injurious behaviour	10
Police called to deal with challenging behaviour	5
Ambivalent feelings towards the young person from family	8
History of abuse	8
Lack of counselling and support	10
Young person labelled as difficult, workers refusing responsibility	8
Family restoration attempted without appropriate supports	5
History of poor educational achievement/problems at school/ expulsions and suspensions	10
In care but not attending school or involved in any education program	4

In relation to the last two characteristics, it is interesting to note that research by the Interdepartmental Committee on Juvenile Justice suggests that wards who have had contact with the juvenile justice system are more likely to leave school well before the legal age and have poor literacy and numeracy skills and high illiteracy rates. In contrast, wards who have not had this contact appear to report more positive educational experiences.



Robert's Story

Robert is 14 years old. His parents are from a non-English speaking background and have separated. He has been in care since the age of 6 and, in the past 8 years, has been in foster care, an adoptive placement, and five Department of Community Services Residential Care services. Robert's placement history has been chequered and disrupted, with the majority of his placements either temporary pending permanent placement, or planned as long term but failing. The longest period of time he has spent in any single place has been 2 years. He has very little family contact and does not have a good relationship with his mother's de facto husband. Robert's situation was brought to the attention of the Community Services Commission by a Community Visitor. The Commission decided to review the situation of Robert.

Robert has been diagnosed as having a conduct disorder, and has generally been labelled as behaviourally and emotionally disturbed. Several assessments suggest that Robert is "functioning at a mild level of intellectual disability". His inappropriate behaviour is a major consideration in placement planning and includes physical and verbal aggression, assaulting staff, and spitting at people.

Robert has been subject to criminal charges on numerous occasions. The charges include: assault; malicious damage; and break, enter and steal. Some of these resulted from incidents within DCS residential care settings. Some of the charges were later dismissed by the Children's Court under the NSW Mental Health (Criminal Procedures) Act 1990. The Magistrate acknowledged that Robert's conduct disorder, borderline developmental disability and disrupted history played a major part in his behaviour.

After examining files, case conference minutes, psychiatric reports, medical records and other relevant documentation and interviewing Robert and others involved in his care, the commission made a number of findings which included:

- Robert's disturbed behaviour is one of the reasons he is in the care of the department - it is inappropriate then that departmental staff are responsible for pressing charges against him as a result of his need for care.
- There appears to be no consistency among staff as to when police intervention is warranted in response to Robert's behaviour.
- there appears to be a double standard in the use of police intervention and pressing of charges. Robert has been charged with assault of other residents or staff, and damage to property. However allegations of staff assaulting Robert have been handled by internal investigation only, with no police involvement or investigation.
- Contact with the juvenile justice system is unlikely to be of any assistance in changing Robert's behaviour. Instead, it is likely to make it increasingly difficult to develop appropriate support services to meet his needs.
- Criminal action is inappropriate given the view of the Department of Community Services Principal Psychologist (and later supported by the Children's Court following an assessment) that Robert cannot be held fully responsible for his actions.

The commission made a number of recommendations aimed at facilitating appropriate management of Robert's behaviour, more support and assistance to both Robert and staff in dealing with these behaviours, assisting Robert to accept his rejection by his family, and less reliance on police intervention as a crisis response.

Robert's circumstances highlight the extreme vulnerability of some children in the care system to systems abuse, incarceration, marginalisation and an uncertain future because of a range of factors that are outside their control. Without intensive and appropriate intervention and support, children like Robert can easily end up in the juvenile justice system and ultimately the criminal justice system.

* Names and circumstances have been altered to protect Robert's identity, but key events of this case are factual.



Reviews also highlight that in some instances, placement in a juvenile justice facility was seen by workers as providing a stable and secure care environment and was regarded as a solution to a complex problem. The case study on the previous page ('Robert's story') is drawn from a review undertaken by the commission which highlights the complexities involved in the circumstances of many children in care, and how failure to deal with these can lead to juvenile justice involvement.

Community Visitors

Under the Community Visitors' Scheme, 35 people visit government and non-government residential services for children and young people, children with a disability and adults with a disability in order to advocate on behalf of residents and to monitor services. The scheme officially started in October 1995 and in the period to June 30 1996, a total of 890 visits were conducted to 460 services. Services for children and children with a disability make up 17% of the total number of visitable services, however they received 32% of the visits because they rated highly in terms of the vulnerability of residents.

The fourteen Visitors assigned to services for children in care have frequently raised the ongoing problem of children who act out their frustrations via property damage or assaults on residents or staff. These actions can result in police intervention and possible charges. Particular concerns have been expressed by Community Visitors who attend the large residential facilities providing congregate care for children and young people. Often children are placed in these facilities on a short term basis but end up staying for much longer periods of time. Sometimes it can appear that they have been "forgotten" by their District Officer who is supposed to find an alternative placement. Health and educational needs are not seen as a priority. The institutional environment, the lack of training and support to staff, residents' confusion about their future, the mix of very vulnerable and challenging residents, limited support services available and the "us against them" mentality, mean that resident to resident assaults, resident/staff assaults, property damage, absconding and consequent police involvement are common. Community Visitors report that such an environment can sometimes precipitate contact with the juvenile justice system. The following 'story' comes from a Community Visitor's contact and involvement with a young woman in residential care.

Barbara's Story

After a number of breakdowns in placements with foster families, 15 year old Barbara (not her real name) moved into a small non-government residential service in rural NSW, where supervised access visits with members of her family could be arranged with relative ease.

Difficulties arose in the management of the service and it was ultimately closed. During these difficulties, Barbara was moved to a service in Sydney where she felt very insecure about her future and began hurting herself by cutting her arms and swallowing soap powder. She said she wanted to go back to her home town.

After a supervised visit to her family, she ran away. She was found by police camping in the by then closed service in the small country town. Barbara was taken to a closely supervised unit for young people in Sydney run by the Department. This was meant to be a temporary measure but she was still there six months later. The Community Visitors met her there. During her time in this facility, Barbara spent some time in a section where she was the only girl amongst a group of boys. She said they hit her and "took their anger out on her".



She also spent time in a more secure unit when she needed “protection” after threats from a female resident. This unit was sparsely furnished, with harsh lighting and an entrance through a heavy, locked door that would be unlocked by staff after a buzzer was pressed.

Several of the staff in this secure unit said they felt inadequately trained to deal with the volatile and distressed young people in their care and felt unsafe themselves. Even though many of the young people are traumatised on arrival, there is no counsellor or counselling service on hand and the psychologist’s position had been unfilled for some time.

After a series of disappointments, including the failure of her district officer to find her a place to live in her home town, Barbara again began to hurt herself. She drank a head lice treatment and tried to swallow thumb tacks. After an unexplained fire in the unit, Barbara felt blamed by staff and threatened to swallow glass and hurt other residents. Dressed in black with the words ‘killer’ written up her arms in red texta, Barbara says she went ‘full blown schizo’.

A mental health team was called but failed to attend and many hours later, they advised staff at the service to take Barbara to a local psychiatric unit in a public hospital. When she refused to go, an ambulance was called and the Deputy Manager gave permission to take Barbara forcibly to be scheduled at the Psychiatric Unit. The ambulance officer refused to do this so the police were called on the basis that she had slammed a door shut and smashed a tile in the process causing “malicious damage”.

Instead of being taken to the hospital, Barbara was taken to the police station where police said she had some outstanding warrants for fines as the result of assaulting police and resisting arrest in her home town- each worth \$70. Barbara thought they had been paid and, in any case, she believed she had enough ‘Programming Money’ back at the service to pay the fines. However, this money was unavailable on a weekend, and as a result she spent a day and a night in a juvenile justice facility.

According to Barbara, this was her second time in a juvenile justice facility, spending four days there once before as a result of another malicious damage charge when she kicked in the side of a bus at the DCS service. She has to go to court again to face another malicious damage charge relating to a burnt carpet and broken doorknob at the DCS facility, assessed as \$150 worth. At her last court appearance she received a good behaviour bond.

Eventually, Barbara returned to the DCS unit where she remained for some weeks. During this time, she left without permission twice, each time threatening to kill herself. She is reported to have spoken about death a lot.

She was moved from the residential facility back to her home town and placed in a caravan in her mother’s backyard. While she and her mother were hopeful that this situation would work, the Community Visitor who continued to keep in contact expressed concerns to Barbara’s carers that, without ongoing support and assistance, the placement would fail. This has proved to be the case and Barbara’s District Officer is now attempting to locate alternative accommodation.

The sequence of incidents described here raises serious concerns about the capacity of residential staff in the DCS service to identify and manage escalating and predictable self-destructive behaviour; and to obtain competent professional advice for themselves and their clients at the time when it is needed. Despite the involvement of staff from Department of Community Services, the mental health team, the Police Service and Juvenile Justice no-one was able to take responsibility for decision making in a way that was compassionately and professionally responsive to the needs of a young person in the care of the Minister. Barbara’s

story highlights the following concerns:

- *the restricted range of residential care options, especially in country areas;*
- *the lack of training for residential care workers in city and country regions in order to deal with challenging behaviours, contributing to the drift of children into the juvenile justice system*
- *the failure to deal adequately with safety issues for staff;*
- *the lack of therapeutic services for young people in care;*
- *the lack of timely and adequate debriefing and professional support for staff;*
- *the unsuitable physical design of some accommodation services;*
- *the need to review polices for co-ordinating the work of varied agencies;*
- *and the need to separate guardianship and advocacy from the role of service provision.*

4.3 Information from Advocates and Service Providers

In late 1995 and early 1996, the commission held a number of consultations and discussion groups with representatives of ten organisations involved in care, advocacy and rights for children. The anecdotal evidence and observations from these people with expertise in and commitment to issues for young people in care who have had contact with the juvenile justice system supported information from other sources.⁹ While the views expressed at these forums have not been explored or investigated in detail, they are listed here for their useful insight into different aspects, and failings, of the system from people close to that system:

Legal Issues

- Children who are in need of care tend to be more visible to the police, particularly those who are not in residential care and are actively trying to avoid the DCS. This increases the likelihood of police attention, court action and refusal of bail.
- Refusal of bail by police and courts will often be on the basis of lack of community ties and often children in need of care do not have community ties of the type recognised by the Courts.
- Bail may be made conditional on the provision of appropriate supervised accommodation and DCS may fail to provide such accommodation, resulting in the child being placed into a detention centre.
- It may be argued in court that such children are safer in detention than being on the streets and so detention “is in their best interests”.

⁹These consultations were conducted by Anita Tang on December 7th 1995 with Therese O’Sullivan (Marrickville Legal Centre), Kate Lindsay (SNYPIC) and Jenny Bargin (Youth Justice Coalition/ University of NSW) and on January 30th 1996 with Anthony Bendall (Burnside), Caroline Juratowitch (Macquarie Legal Centre), Julie Sinclair (Child Protection Council), Shane Brown (South Sydney Youth Services), Ferry Grunseit (Child Advocate), Richard Funston (Inner City Legal Centre) and Kris Broekema (Caretakers Cottage). These comments are recorded without comment or investigation by the Commission. Thanks to all concerned.



- Some young people may be held in a detention centre but could be released on bail subject to appropriate accommodation. These children end up staying in a detention centre longer than necessary simply because of lack of accommodation.
- Some magistrates have a tendency to impose a punishment of criminality, even whilst acknowledging that the 'offence' was primarily a disciplinary matter. The argument of making the young person aware of, and responsible for, the 'consequences' of their actions is often used.
- There is a tendency for state wards to be charged and taken into custody more readily because of a paternalistic, 'best interests' attitude, especially where they are perceived to be homeless or 'at risk', or engaging in dangerous or self-abusive behaviour.
- Departmental staff influence the court outcome via background reports and recommendations presented by District Officers, and the options which DCS can make available to the child. For example if a child is appearing before the court and the department provides no accommodation options for the child, either because there are no vacancies in either Ormond or Minali or because DCS has been unable to contain a child in that setting before, the Magistrate is left with little option but a detention centre.
- It is unclear whether DCS is obliged to provide independent support in police interviews and to ensure independent legal representation and advice for children who appear before the Courts. It appears that service staff are obliged to inform a District Officer or a case worker whenever there is contact with the juvenile justice system, but it is not clear whether this must be within a specified time frame, whether this obligation is required after hours, or indeed whether the District Officer or case worker is required to come and support the child at the time of the incident.
- It was noted that the duty solicitors' scheme was of limited value for young people in care who were coming before the courts on criminal matters due to the fragmented approach used by the duty solicitor rosters.
- If magistrates were confident that statutory care orders were adequate to provide for a young person, they may not be so compelled to impose criminal sanctions. Magistrates may be compensating for failures of the care system.
- There is a need for independent advocacy for young people, particularly legal advocacy. It was noted that there had not yet been any test cases on civil action for breach of duty of care or negligence.
- Issue of court support - youth workers can often provide background reports for court, but with little understanding or experience. District Officers generally do not go to court with the young person and duty solicitors may not be aware of a child's wardship status.



Care Issues

- Following an instance of aggressive behaviour, a child in a residential service may be charged with malicious damage or assault and comes before the court on that basis.
- Children may abscond from services or from homes, and then participate in activities such as stealing cars or in some other way come into contact with the police.
- A young person who absconds from a facility such as Ormond or Minali is often automatically placed in detention because it is considered that DCS can no longer contain them. It was noted that this criminalises the act of absconding without addressing the issues which may have led to the children running away in the first place.
- The move from care to juvenile justice can often be through a series of accidents and circumstances. A young person may make a small mistake or unknowingly commit a criminal act, and then become further embroiled in the justice system without adequate support or advocacy. For example, a young person goes for a ride with some friends in a car, without realising it is stolen, is apprehended and charged, fails to appear in court or appears and is bailed, breaches the bail order, and may finally end up with a more serious sentence than is warranted by the original offence.
- When a child's foster placement breaks down and the child absconds, DCS has been known to put out a warrant for the child. The child can be apprehended and can be taken to a place like Ormond or Minali or placed in detention.
- Children who are in care and residing at Minali receive \$10 a week pocket money (at ages 12-15) which most children find inadequate to meet their needs for cigarettes. Again this can lead children and young people into activities such as shoplifting which will bring them to the attention of the police.
- There have been situations where children in care are returned to a residential facility under bail conditions after a court hearing. These bail conditions may involve keeping to a curfew or staying within a particular facility. If a child breaches these conditions, staff may report these breaches to the police which may then result in detention. It is unclear whether staff have a role in assisting wards to fulfil bail conditions.
- In refuges, there are often two classes of young people - those who are 'green' and clean, with no history of offending behaviour; and those who have experienced prior contact with the justice system and have a history of offending. Peer group pressure, a gang mentality and the need to identify with a group and belong, can lead the "green" kids into offending behaviour.
- District Officers are meant to be advocates for individual children and yet those children are likely to present a problem to the department so District Officers are operating under a conflict of interest.
- The problem of a fragmented approach to service delivery - people don't take a holistic approach to children in care. For example, it appears that often nobody accepts responsibility to tell wards about the legal process.



Differences between wards and children living with families

- Many wards who come into contact with juvenile justice have no access to advocacy services or other independent support. This compares unfavourably to children who live with their own families who would, for the most part, accompany them to the police station and make sure that their rights were known and observed.
- Higher expectations are often imposed on children in care for their behaviour e.g. children attending and participating in case conferences, a formality which is not normally expected of children. This is coupled with a lower level of tolerance for difficult or deviant behaviours and results in unreal expectations for children.
- Many of the diversion options which would keep young people out of detention centres require the support and participation of parents - this discriminates against young people in care (e.g. youth conferencing in some areas).
- In many instances, behaviours in group homes leading to charges are those which would be disciplinary matters in a family home. They may also be long standing behaviours which simply haven't been dealt with appropriately.
- The issue of mobility of children in care or in need of care - they have no stable place of living and so fail to appear in court, fail to meet appointments, do not get social security notification regarding homelessness etc., factors which can contribute to their criminal record.
- Parental Responsibility Act has given police additional powers in relation to young people but can also be seen to disadvantage those young people who are not living with parents.

Service issues

- Staff may be required to make a statement to the police in order to lodge a claim for victims compensation, which may be an incentive for staff to contact police in matters of physical aggression and assault.
- It may be interesting to look at whether there is a pattern of police contact from services such as Ormond and Minali after hours, as after hours crisis and management support for staff may be lacking.
- Many funded services have explicit policies about using the police, as a 'natural consequence' and as a substitute for imposing their own disciplinary action.
- Funded services having the greatest difficulties with young people in the 'high intensity units,' where lack of funding means that some staff are simply 'not up to it', and as a result seek assistance from the police to deal with the behaviour of young people.
- Charges can arise from incidents in group homes such as malicious damage and assault. Staff call police, and an altercation takes place which then results in additional charges of resisting arrest, assaulting police and offensive language.



Aboriginal issues

- Aboriginal children tend to be more visible to police and therefore likely to become a source of police attention. It also appears that placement options for Aboriginal children are far more limited within the DCS system.

Health issues

- Many children who have had contact with juvenile justice have been labelled as having Attention Deficit Disorder (ADD). Issues include whether or not such children received appropriate medication, whether the medication is regularly reviewed and by whom, and lack of assistance for and monitoring of such children. Often the medication appears to be on a trial and error basis. These problems are compounded by the fact that such children tend to have a fragmented placement history which results in changes of doctors, changes in staff and therefore loss of continuity and ongoing responsibility for a child's medication and condition.
- The cause of much of the behaviour of young people in care relates to their life history - a build up of anger, unaddressed trauma and grief about their early life circumstances, their removal from their families and their current circumstances. Children in care seem to receive little counselling or specific therapy such as trauma support programs or sexual abuse/sexual behaviours case work.
- Substance abuse issues - the use of drugs and alcohol places young people in the public vision, often because the dependency will be manifested in specific behaviour e.g. working The Wall. The initial offence then may not be serious (e.g. smoking marijuana), but the accompanying behaviour leaves police with more discretion to decide whether to charge the young person or divert from the system.
- A number of services are available through the Department of Juvenile Justice which young people in care need, but are unable to access until they are charged and convicted (for example, the sexual offenders program). These services are needed before the young person reaches offending stage.
- Therapeutic services are required at an early stage to prevent young people developing 'offending' behaviour.

These issues highlight the complexities of the problems, their systemic nature and the difficulties faced by those seeking solutions.



5. Survey of wards with juvenile justice contact

5.1 Survey Methodology

The Department of Community Services and the commission began co-operating on a survey earlier this year, aimed at gathering information to enable a closer examination of a sample of children in care who had had contact with the juvenile justice system. The survey attempted to look at the circumstances of the child/young person's involvement in juvenile justice, attempts at prevention/early intervention, services available to them while at risk, co-ordination between the Departments of Community Services and Juvenile Justice, and the short and long term needs of the children.

The commission designed the survey in consultation with departmental officers (A copy of which is included at Attachment A). A Project Officer from the Adolescent Unit, Child and Family Services Directorate, Department of Community Services then administered it in liaison with District Officers. The Project Officer provided the following description of her method in implementing the survey:

80 files of wards or children in care who have had contact with the Juvenile Justice system were selected at random from the CIS (Client Information System).

The interview process was to talk to the District Officer in charge of the nominated case file. The interviews generally lasted one hour. At times the District Officer did not know the file very well because it had only just been allocated to them or the file had been closed years ago. In these instances, the District Officer was asked to talk about a file that was current but some District Officers did not have the same number of relevant case files available. So the total number of interviews completed only amounted to 54 instead of 80.

5.2 Survey Limitations

It needs to be pointed out that there are some limitations with the interview schedule and the data collected:

- open ended questions make it more difficult to group answers into categories. As well, some answers relate to a number of contacts with the juvenile justice system while others relate to only one contact so the totals are variable and percentages can be difficult to compare.
- The size of the sample means that even where the data can be categorised, the numbers in each category are small and caution must be exercised in drawing conclusions on this basis. Of the 54 schedules forwarded by the Department, two were incomplete and could not be used which reduced the sample to 52.



- The methodology used means that the survey is not a random selection as some District Officers had a role in selecting the interview subjects. This may mean that the survey is skewed in favour of 'high profile' cases, that is, those remembered by the District Officer perhaps because of their involvement or the greater difficulties or successes of the case.
- The fact that the information is being gleaned from a file indicates that we are only getting the "official story" and an incomplete one at that, as files do not always reflect the whole story.

5.3 Survey Strengths

Bearing in mind the above limitations, the data presents a useful source of qualitative information about the lives of some of the most vulnerable and at risk children in the care system. The findings should not be regarded as definitive but should be seen as indicators of the effectiveness of the system in caring for vulnerable children and young people, areas of weakness, and the implications of these for individuals in care and those working in the system.

5.4 Directions for Further Research

The survey should be regarded as an initial source of information for a more comprehensive study or studies involving :

- interviews with wards both inside and outside the juvenile justice system
- consistent file reviews with comparisons to the above reported experiences
- comparisons with young people who were not wards but who had had some juvenile justice contact (both in refuges or home situations)
- comparisons with wards who had no juvenile justice contact
- interviews with District Officers, direct care workers in care settings and juvenile justice settings and relevant lawyers, advocates and magistrates
- further research on wards with health issues such as ADD or substance abuse, to determine their role in precipitating contact with the juvenile justice system
- further research on the educational experiences of wards who have had contact with the juvenile justice system, where the educational system is failing and strategies to improve educational outcome for this vulnerable group.

The Inter Departmental Committee on Juvenile Justice may wish to consider the benefits of initiating such a study given the paucity of 'official statistics' collected by the Departments of Community Services and Juvenile Justice and the NSW Bureau of Crime Statistics in this field.



5.5 Is the Survey Sample Representative?

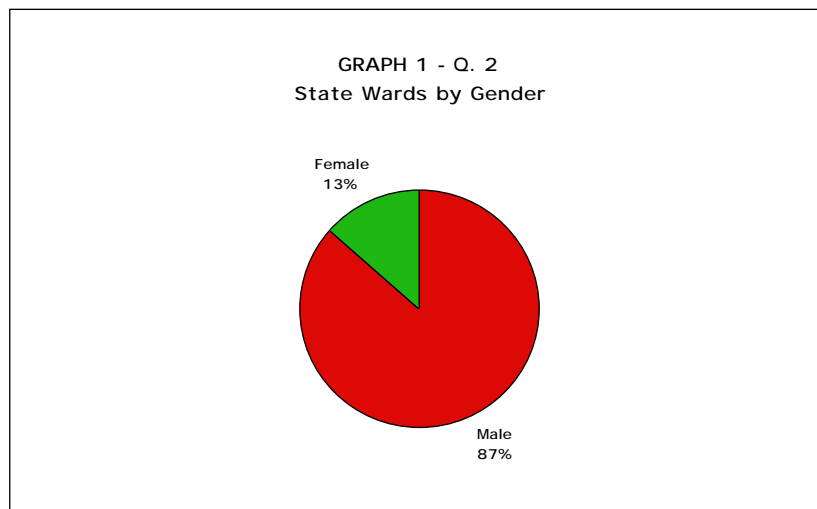
Given the non-random nature of some of the survey responses, it is important to examine whether this group of 52 young people is representative of:

1. The ward population¹⁰.
2. The juvenile justice population¹¹.
3. The general population in that age range¹².

(a) Gender

Our survey sample has 45 males (87%) and 7 females (13%). The ward population aged between 10 and 17 in 1995 had 765 males (51%) and 729 females (49%). Of wards who appeared before the Children's Court and who had a juvenile justice assessment in 1995, there were 293 males (83%) and 58 females (17%). The total number of males having a juvenile justice assessment in 1995 numbered 4,934 (87%) with 712 (13%) females. Some 1995 census information is available from the Australian Bureau of Statistics which shows that there were 412,856 (49%) females and 433,776 (51%) males aged between 10 and 19 in the general NSW population.

In summary, the sample is representative of the total juvenile justice population in 1995 but slightly skewed in favour of males in comparison to all wards who had juvenile justice contact. The sample clearly has an under representation¹¹ of females when compared with the ward population and the general population.



(b) Age

Our sample ranges in age from 10 to 17 with 16 (30%) young people aged 10-12, 23 (44%) aged between 13-15, and 4 (7%) aged 16-17 with 8 unknowns. Of the 1494 wards aged over 10 years in

¹⁰ Data from the DCS Information and Planning Group.

¹¹ Data from Department of Juvenile Justice Client Information System.

¹² Data from ABS 1991 census.

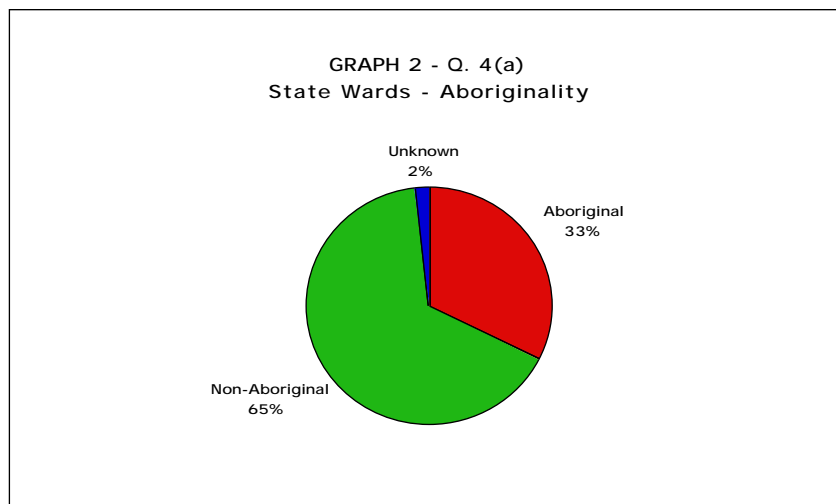
1995, 516 were aged 10-12 (35%); 626 were aged between 13-15 (42%) and 352 were aged between 16-17 years (24%). Of those 5646 young people who had a juvenile justice assessment in 1995, 163 were aged between 10-12 (3%), 2107 were aged between 13-15 years (37%), 2972 were aged 16-17 years (53%), and 354 were aged 18-20 (6%) with 50 unknowns. ABS statistics have only two relevant age categories totalling 428,170 10-14 year olds and 418,462 15-19 year olds in NSW in 1995.

This means that the sample is slightly younger than the ward population aged over 10 years and much younger than the juvenile justice population.

(c) Aboriginal background

Our sample has 17 Aboriginal respondents (33%), 34 non-Aborigines (65%) and 1 unknown. The 1995 ward population aged between 10 and 17 was made up of 133 Aborigines (9%) and 1,361 (91%) non-Aborigines. Of wards who had received a juvenile justice court assessment in 1995, there were 131 (37%) Aborigines and 220 (63%) non-Aborigines. The total number of Aborigines with a juvenile justice assessment in 1995 was 1,178 (21%) compared with 4,468 (79%) non-Aborigines. Projections made in June 1994 by the ABS show that there were 17,009 Aboriginal and Torres Strait Islanders between the ages of 10-19 who made up 2% of the total NSW population in that age range.

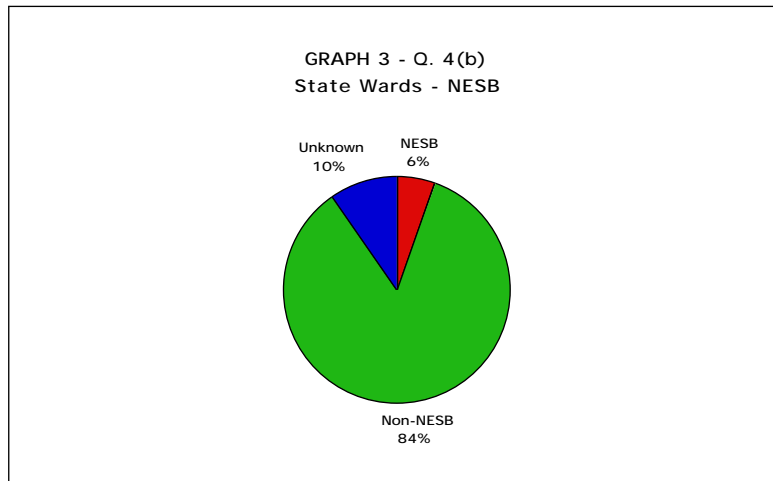
This means that our sample is roughly representative of all wards who have had juvenile justice contact but over-representative of Aborigines within the ward, juvenile justice and general populations.



(d) Non- English Speaking Background

This category is interpreted and collected differently by different organisations so comparing the data is not totally reliable. Our sample contained 3 respondents of Non-English speaking background(6%) , 44 of English speaking background (85%) and 5 unknowns. There were 97 wards of non-English speaking background (6%) and 1,397 of English speaking background (94%) aged between 10-17 in NSW in 1995. Of those wards who had received a juvenile justice assessment in





1995, there were 188 of “anglo-Australian background” (54%) and 163 others (46%). The latter category included 131 Aborigines and 16 Tongans amongst others who may have spoken English at home. There were 3,206 “anglo-Australians” (57%) and 2,440 (43%) “others” in the total number of people who had juvenile justice assessments. The largest groups represented amongst the “others” are Aborigines, Vietnamese, Lebanese and Fijians. There were no wards amongst the latter three nationalities. The ABS does not collect data on people from Non- English speaking backgrounds, asking instead for respondents to nominate if they were born in a non-English speaking country. In August 1991 there were 854,851 people of all ages born in non-English speaking countries in NSW representing 15% of the total NSW population. This figure is not necessarily applicable to the younger population.

Comparisons in this category are problematic, nevertheless, the sample appears to be representative of the ward population and probably under representative of the juvenile justice and general populations.

Bearing in mind the above limitations, the following observations have been made based on analysing the survey data. Supporting data in relation to questions that can be quantified are set out in graphs. Following each observation, comments and proposals for further investigation or research are suggested in italics.

5.6 Health Issues (Question 5)

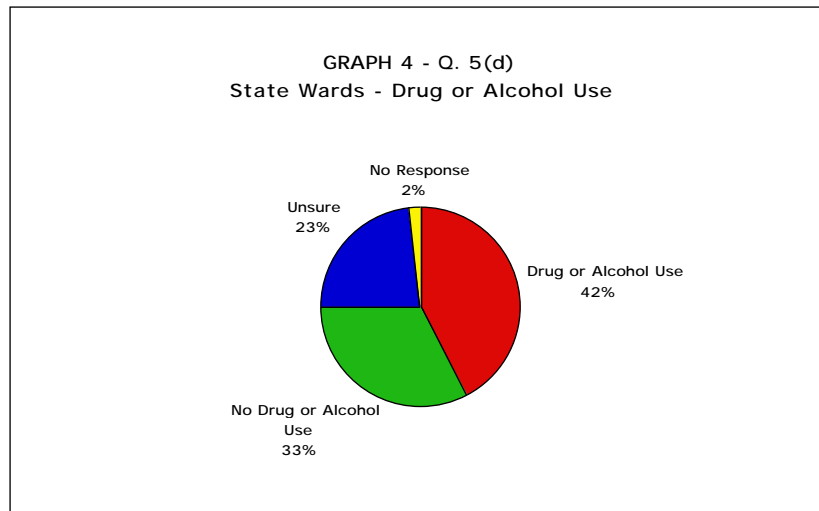
(a) Overview

42% of the sample were recorded as having been professionally assessed or diagnosed as having used drugs and alcohol, some in combination with Attention Deficit Disorder/conduct disorder/intellectual disability or mental illness. 35% were recorded as being assessed as having ADD or conduct disorder; 12% were recorded as having an intellectual disability and 10% were recorded as having a mental illness. For a larger proportion of the sample, district officers appeared unsure as to whether there was an assessment regarding a health issue of this nature.

(b) Drug and alcohol use

The question for drug and alcohol use is very general and does not specify the extent of use or type of dependency known by the District Officer. More useful data is available from the Department of Juvenile Justice 1993 Census in relation to drug use among young detainees which showed



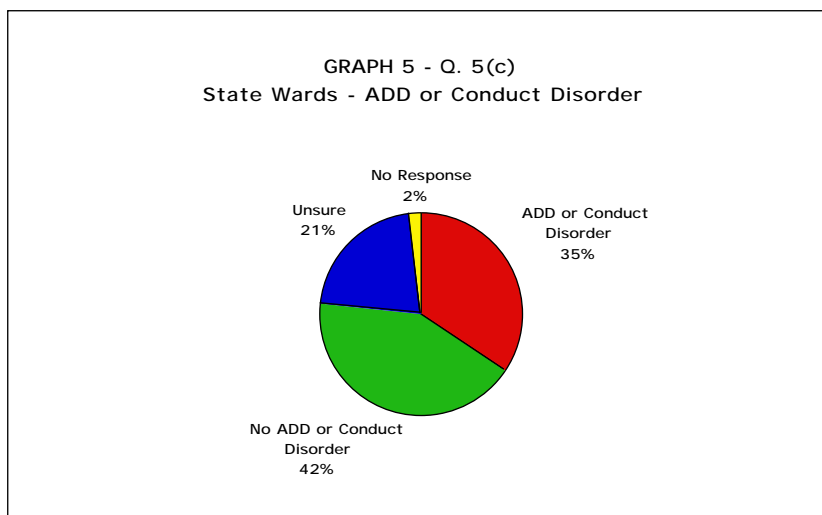


that 90% of the sample of 279 detainees had tried alcohol, tobacco, cannabis and pain relievers; 19% had tried heroin; 33% had tried amphetamines; 24% had injected drugs and one third of these had shared needles; and approximately one quarter of the sample perceived themselves as suffering from a current alcohol or other drug problem.¹³

Wards may not be drug and alcohol users to the same extent as other detainees however it is likely that they are subject to some of the same pressures, risks and low self esteem associated with drug and alcohol problems. It is recommended that the Department of Community Services conducts a similar survey or census of children in care to determine the extent of the problem amongst that population.

(c) Attention Deficit Disorder/ Conduct Disorder

The finding of 35% of the sample being diagnosed as having attention deficit disorder or conduct disorder is alarming when compared with the general population. Although there is no data for



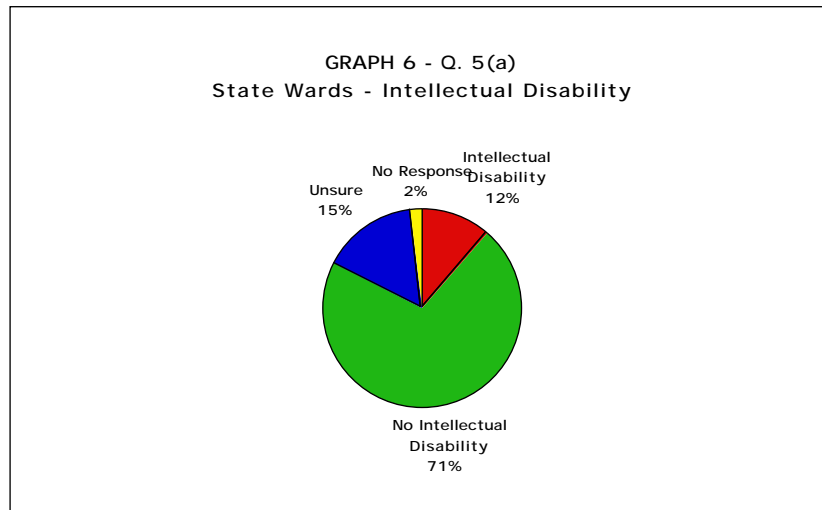
¹³ Ernie Zibert, Julie Hando, John Howard, *Patterns of Drug Use and Indicators of Harm among Persons detained in NSW Juvenile Justice Centres (1993)*, A Report prepared for the NSW Department of Juvenile Justice, June 1994, pp. 6-7.

the adolescent population in NSW, the only available data is from Western Australia and New Zealand which points to about 6% of under ten year old in the general population being diagnosed with ADD which gives us some indication of the likely occurrence in the adolescent population. This research also points to a male to female ratio of approximately 4:1.¹⁴ Our sample had sixteen boys and two girls who had been diagnosed with ADD and seven out of the eighteen are aboriginal. Out of the 18, 14 had entered care due to neglect/ parental abandonment or inability to care. This may indicate a need for more intensive family support for families where young people have been diagnosed with ADD. 13 out of the eighteen had seven or more placements throughout their period in care.

Dr Phillip Hazell, Psychiatrist, and others have conducted recent research which shows that a large number of children receiving medication for ADD in NSW are not being adequately monitored in terms of changing needs and the possibility of over-medication¹⁵. If this is a problem for children living with their parents, then it is likely to be a problem for wards who may display other behavioural problems or receive inconsistent care and not be subject to regular medical check-ups.

(d) Intellectual disability and mental illness

12% of the sample were recorded as being diagnosed as having an intellectual disability and 10% as having a mental illness. This data cannot be compared with the general ward population as the Department of Community Services does not keep any aggregate data in regard to these issues and the Department of Health does not keep data in relation to NSW adolescents. Another Western Australian study discovered that around 18% of 4-16 year old suffered a mental illness or a mental disorder¹⁶. In relation to intellectual disability, recent Australian research suggests that approximately 13% of the NSW prison population and 25% of those appearing before the Local Courts have an intellectual disability.¹⁷



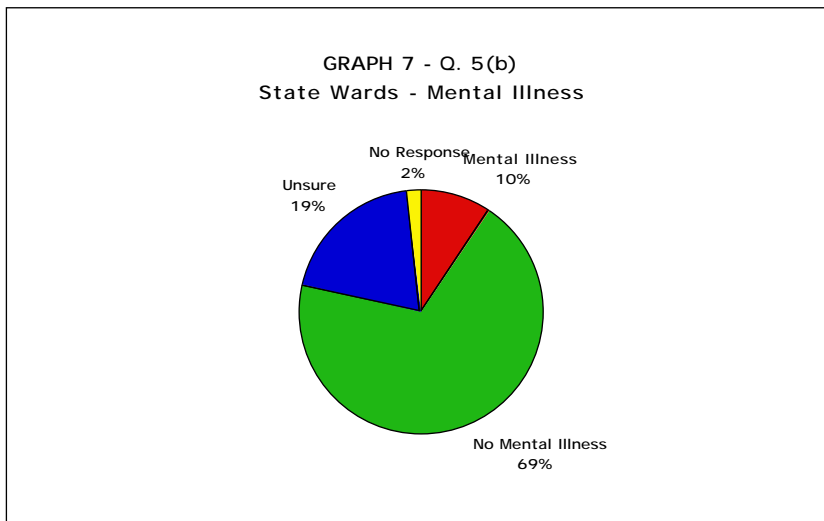
¹⁴ Dr. Phillip Hazell, Department of Psychiatry, University of Newcastle

¹⁵ P.L. Hazell, M.J. McDowell, J.M. Walton, 'Management of Children prescribed psychostimulant medication for attention deficit hyperactivity disorder in the Hunter Region of NSW', *MJA*, Vol. 165, 4/11/96

¹⁶ *Western Australian Child Health Survey: Developing Health and Wellbeing in the 1990s*

¹⁷ See S. Hayes and D. McIlwain, *The Prevalence of Intellectual Disability in the NSW Prison Population: An Empirical Study*, UNSW.





COMMENT: The figures for drug and alcohol use and Attention Deficit Disorder are alarming and suggest the need for more attention and scrutiny in relation to further research, monitoring of medication and support, preventative and early intervention programs for families and foster families containing children at risk. The fact that for a large percentage of the sample (at least 15%) District Officers were unclear if there had been diagnoses regarding health issues is disturbing. This suggests that staff do not have the necessary expertise in these matters, nor access to expertise within the Department of Health. Greater co-ordination may be required.

5.7 Care Background (Questions 6-12)

(a) Age of entry

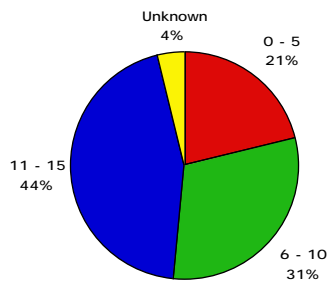
The age of coming into care (Graph 8) and the age of being made a ward (Graph 8) was slightly older in our sample than the age at entry for the general ward population as at December 1995 as set out below:

	0-5 years	6-10 years	11-15 years
Sample- entry	21%	31%	44%
All wards- entry	37%	27%	36%

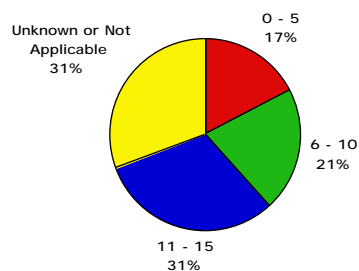
COMMENT: Does this mean that wards who have had contact with the juvenile justice system are often those wards who have come into care at a later age? Is it their 'offending behaviour' which makes them more likely to come into care or are older wards less likely to be fostered, less settled in a care placement, less supported and as a result more prone to juvenile justice activities?



GRAPH 8 - Q. 8
Age of Coming into the Care of DOCS



GRAPH 9 - Q. 9
Age of being made a ward of the state



(b) Reasons for care

The descriptive answers to question 7 regarding reasons for coming into care do not appear to be any different from the data provided by the Department of Community Services for the general ward population. That is, the highest categories for children entering care are Child at Risk; actual harm/injury to child; child neglect; significant family breakdown; and carer unwilling to care for child. As at 30th June 1996, there were 609 wards aged 10-16 years. Most entered care due to significant family breakdown (25%), due to actual harm or injury to the child (20%) or because the child was at risk (18%). All of these reasons appear to be well represented in our sample.

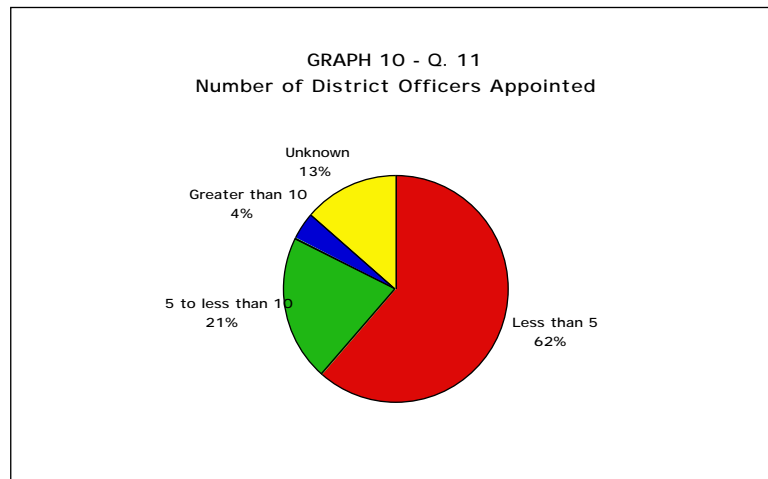
(c) Placement history

Similarly, the answers to Question 10 regarding the history of care placements should be compared with general wardship data. Of those wards aged 10-16 years in care as at 30 June 1996, 28.7% had 0-4 placements, 42.5% had 5-10 placements, 15.9% had 11-15 placements, 6.6% had 16-20 placements and 6.3% had 21 and over placements. Unfortunately our sample does not lend itself to a straight count of placements as many District Officers included juvenile justice centres, periods of homelessness and movements around family members while others only listed foster carers, youth refuges and residential care centres. Clearly, some young people have had enormously unsettled care, with two boys in the sample are recorded as having over thirty placements each.



(d) Number of District Officers

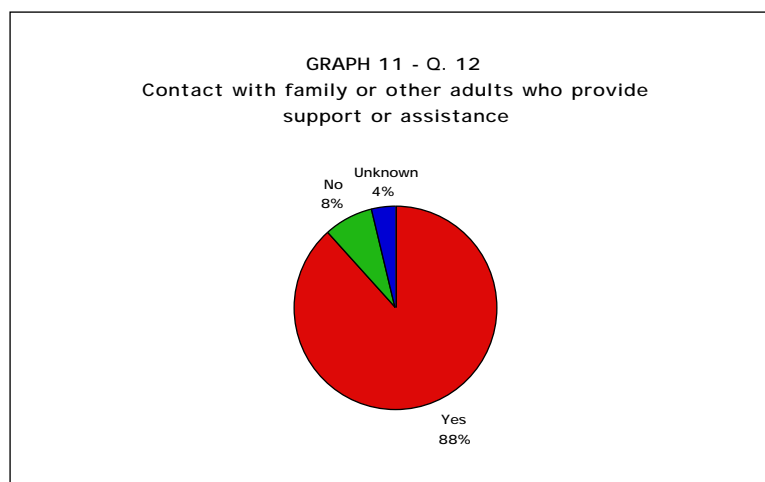
Graph 10 shows that the number of District Officers does not appear to be a factor in relation to a child's contact with juvenile justice as 62% of the sample had fewer than five District Officers during their care and only 4% had more than ten District Officers. This may be a feature of the non-random sample selection as District Officers may have chosen cases with which they had a long and stable association.



(e) Family contact

46 out of the 52 wards in our sample had some contact with family members who could provide support or assistance as set out in Graph 11. The descriptive answers to Question 12 show that contact for some is more regular and more positive than for others.

COMMENT: Positive contact with family members may be an opportunity for departmental staff to engage in education programs for families of children at risk of juvenile justice contact. For example, family members may be appropriate to accompany children to court and act as informal advocates if appropriate.

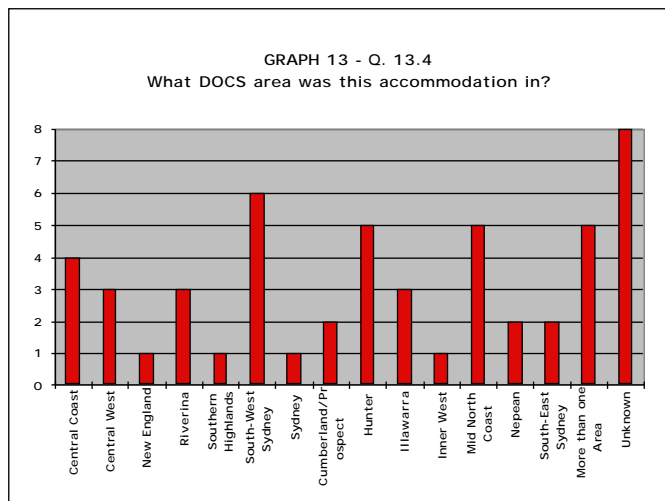
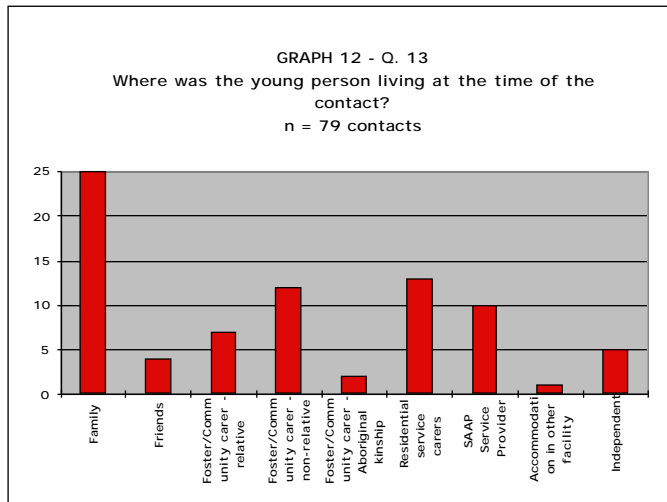


5.8 Circumstances surrounding contact between children in care and juvenile justice (Questions 13-23)

(a) Accommodation

Graph 12 shows the accommodation of the young person at the time of the juvenile justice contact: out of 79 contacts, 25 (32%) occurred whilst living with their families, 21 (27%) occurred whilst in foster care, 13 (16%) occurred when in residential care and 10 (13%) occurred when in SAAP funded services.

When these figures are compared with the accommodation arrangements of the general ward population aged 10-16, 43.5% are in foster care, 17.7% are in residential care, 13.2% are in the care of family members and 10.2% are in SAAP funded services. It would appear that the sample has a higher proportion of children in family care or that for many wards, incidents leading to contact with the juvenile justice system occur during access visits, periods of self-restoration to families or inappropriate restoration without adequate supports.



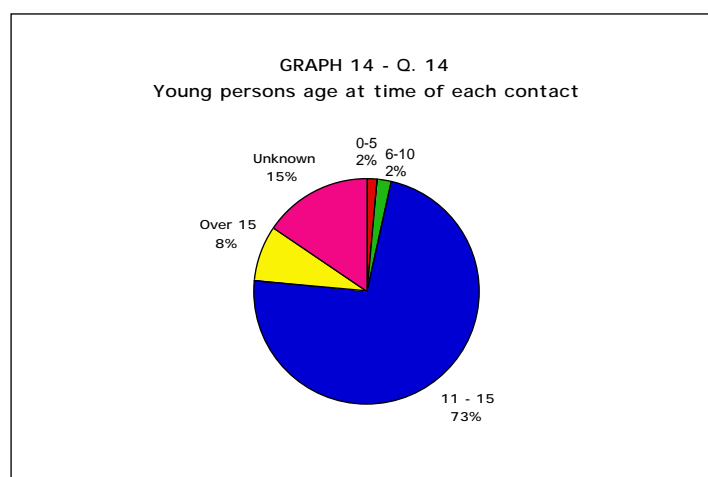
(b) Age

Graph 14 shows that 73% of the sample were aged between 11-15 at the time of the juvenile justice contact. When examined in greater detail, the major period of activity is during ages 12-14: 30% were aged between 10-12; 44% were aged between 13-15 and 7% were aged 16-17. This suggests that wards have contact with juvenile justice at a much younger age than the rest of the juvenile justice population. Our sample slightly exaggerates this tendency because most of the sample were under 15 at the time of the survey since current care was a requirement, however the Juvenile Justice Assessments Register supports the finding to a lesser extent when looking at current wards and ex-wards:

1995 Assessments Register¹⁸

Age	Wards	Non-wards
11-15	47% (164)	40% (2106)
16-18	53% (187)	59% (3101)

COMMENT: The notion that wards have contact with juvenile justice earlier than the rest of the population may need further research to verify.

**(c) Crimes**

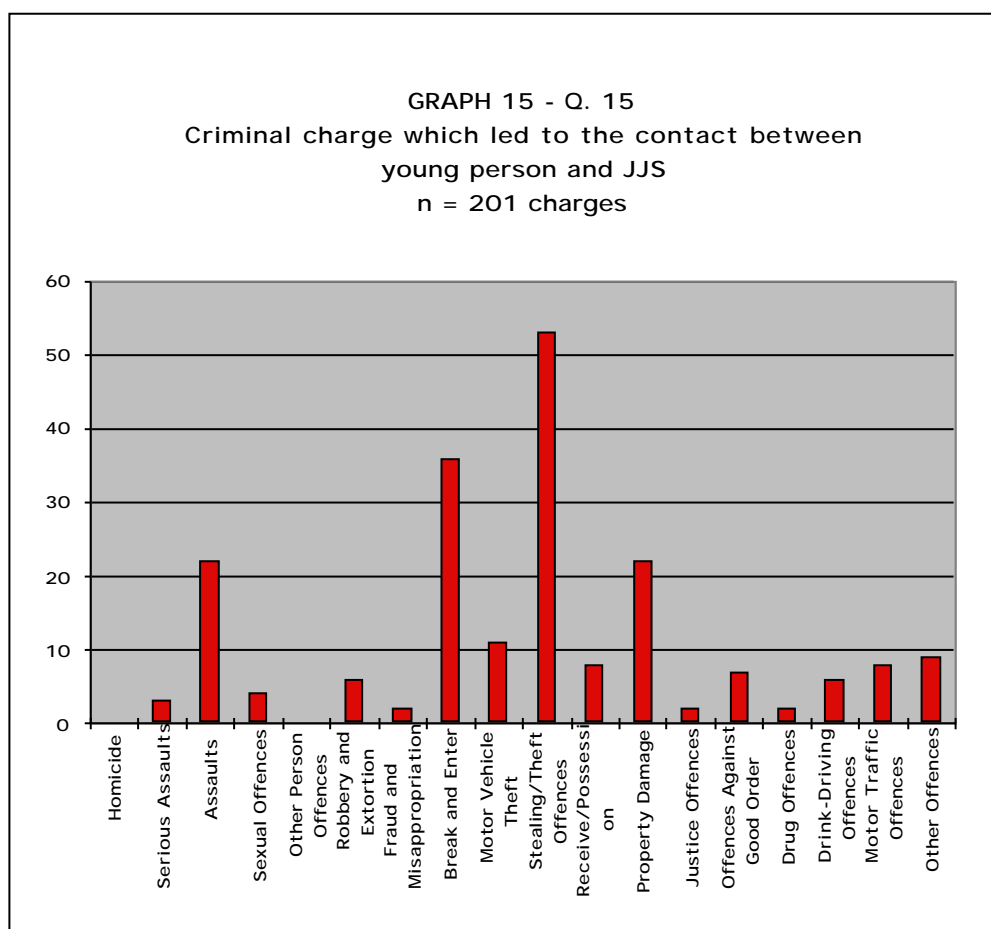
Graph 15 shows that out of 201 charges, the most common charges amongst the sample were stealing/theft (53 charges); Break and Enter (36 charges); Assaults (22 charges); and Property Damage (22 charges).

The rates of offences determined for criminal matters before the Children's Court show that in 1994/95, the highest categories were: offences against the person (including homicide, attempted homicide and non-sexual assault) (18.4%); breaking and entering (13.6%); Motor vehicle theft (11%); other theft (10.9%) and property damage (7.9%)¹⁹. The sample appears to indicate that wards may have a greater tendency to commit 'crimes of survival' such as stealing/theft and break and enter. Further data to explore this hypothesis may be available from the Department of Juvenile Justice Client Information System.

¹⁸ Department of Juvenile Justice Client Information Service

¹⁹NSW Criminal Courts Statistics 1995: Children's Courts, p.43.





(d) Contributing circumstances

The descriptive answers to Question 16 regarding the circumstances of the incident leading to the charge are read in conjunction with the answers to Question 13.3 regarding issues about the living arrangement which may have contributed to the incident as there appears to be some blurring of the differences in these questions by the respondents. 35 out of the 52 cite that issues about their living arrangement may have contributed to their contact with juvenile justice such as parenting inadequacies, peer pressures and behavioural problems. Some of the most common issues arising in the 49 answers to question 16 regarding the circumstances of the incident are:

Circumstances	Occasions cited
sexual abuse in care (by relatives or foster carers)	7
physical abuse in care (by stepfathers, adoptive parents)	3
inadequacy of natural parents to care (e.g. drug and alcohol abuse etc.)	7
behavioural problems (e.g.. aggression, suicide attempts, drug/alcohol abuse, self mutilation,sexual problems, poor sense of consequences)	20
peer pressure (e.g. gangs, car theft in groups)	13
homelessness/survival crimes	5
inadequacies of placement (other than parental)	5
prostitution/paedophile activity	3
confusion about Aboriginal identity	1



COMMENT: The range and extent of behavioural problems is enormous and clearly case planning does not manage to address the emotional and psychological needs of many wards. Individual programming may require greater attention especially for wards with challenging behaviour, and/or special needs such as disabilities, health, drug and alcohol problems and those with therapeutic needs.

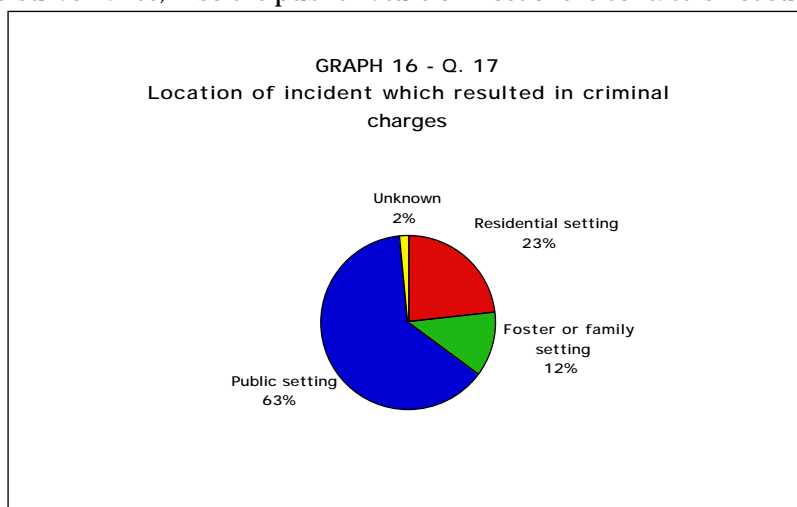
Peer pressure is impossible to control via bureaucratic means however some District Officers mentioned that young people could be introduced into the 'wrong crowd' through inappropriate placements. Clearly thought should be given to the practice of placing inexperienced young people with others who may be more habitual offenders..

The inability of natural parents to deal with a restored young person is not surprising given that the young people being restored are wards. This is an extremely complex issue as young people often restore themselves to inadequate family situations for a number of reasons including issues relating to self identity. The Department of Community Services then accepts that there is little that they can do to stop young people from returning to their families after they reach a certain age and maturity. On other occasions, the Department makes a conscious decision that restoration to the family is preferable to living on the streets or in inadequate residential care. , despite the family care being inappropriate or unable to ensure the safety of the young person. This points to a need for more flexible options for adolescent care, greater support for family access when in care and greater family support following restoration.

(e) Location of incident

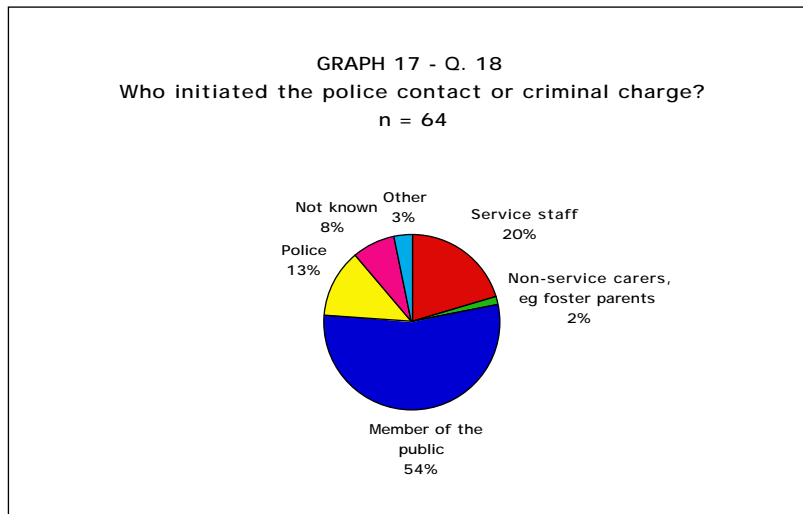
Graph 16 describes the location of the incident which resulted in criminal charges and out of 65 incidents, 63% occurred in a public setting; 23% in a residential setting and 12% in a foster or family setting. These results correlate quite directly with the original initiators of police contact set out in Graph 17, namely members of the public were responsible for 54% of the initiated contact; service staff for 20% and police for 13%.

The literature shows that juvenile crime is often "episodic, unplanned, opportunistic and related to the use of public space in areas like public transport and shopping centres where there is more visibility and surveillance,"²⁰ so the public nature of most of the contact is not surprising.



²⁰ *Juvenile Crime in NSW: A Review of the Literature*, p.3



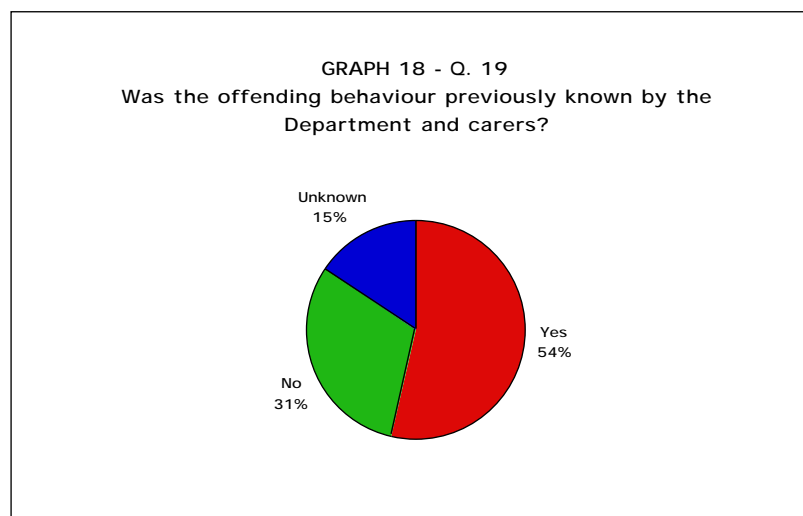


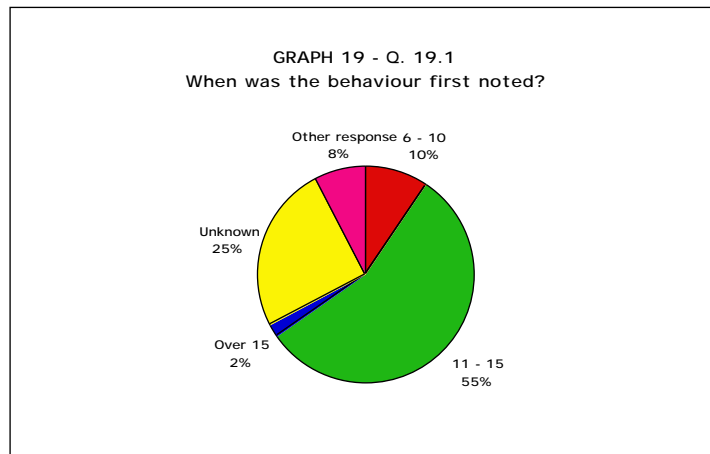
COMMENT: It is concerning that in 20% of cases, service staff initiated police contact. Further exploration of this issue is required to establish if there is consistent policy and practice regarding police contact such as whether it is a response of last resort by staff and if earlier intervention could have prevented police contact.

(f) Recognition of offending behaviour

Graph 18 shows that the offending behaviour was previously known to the Department and carers in 54% of the cases. Graph 19 shows that the behaviour was first noted at age 11-15 in 55% of the cases which correlates to the main age range for at-risk behaviour for wards.

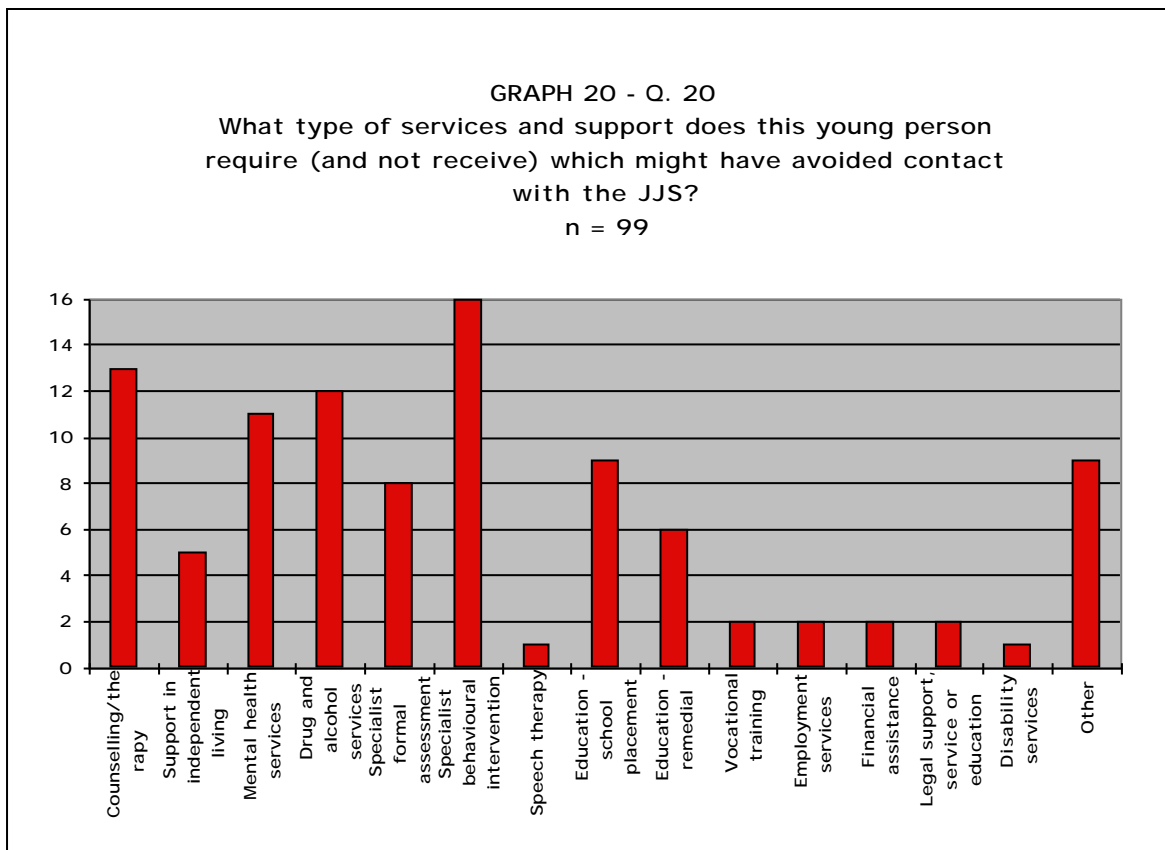
COMMENT: Given that the behaviour was identified earlier in the majority of cases, this gives hope for the success of preventative programs for young people, at risk of contact with juvenile justice given adequate resources, support and encouragement.





(g) Required services

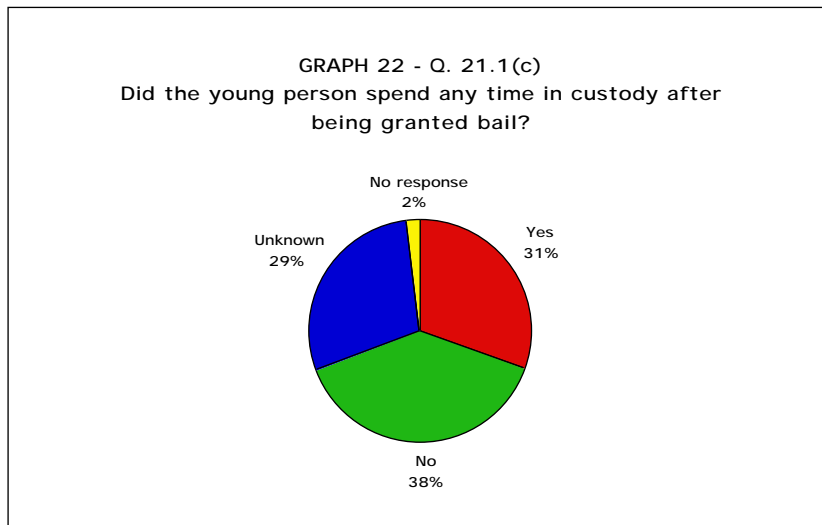
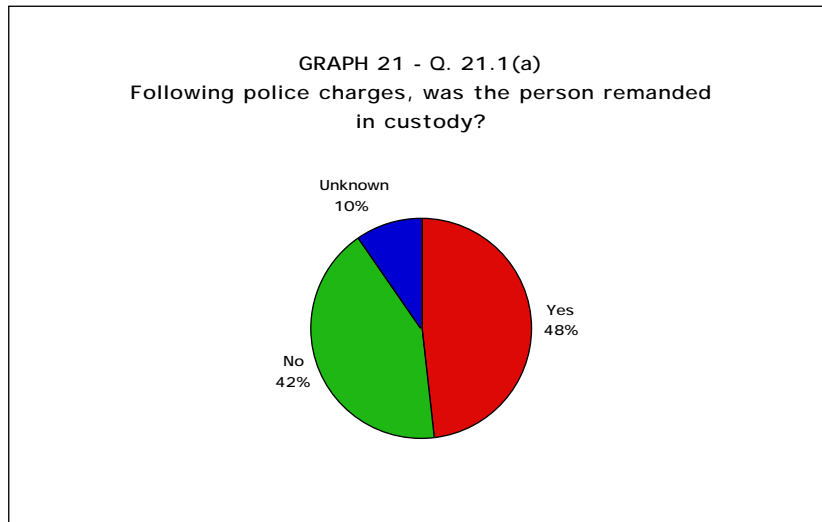
The descriptive answers to Question 19 indicate that counselling was attempted but failed in the majority of cases. Despite this, Graph 20 shows that counselling has been cited in 13 out of 99 entries in answer to the question about the types of services and support required but not received by the young person which may have avoided juvenile justice contact. The most frequent service cited by 16 respondents in relation to this question was specialist behavioural intervention. The next highest categories were drug and alcohol services (12); mental health services; and school placements.



COMMENT: Given that these are services cited by District Officers, the Department of Community Services may need to liaise more closely with the Departments of Health and School Education about the availability of these services for young people at risk of contact with the juvenile justice system. Specialist behavioural intervention may address many of the circumstances surrounding the incidents leading to contact with the juvenile justice system cited in the table above.

(h) Custody on remand and on bail

Graphs 21 and 22 show that 48% of the sample were remanded in police custody following police charges and in 31% of the cases, remained in custody for a short period after being granted bail. The descriptive answers to Question 21.1a show that most respondents were remanded in custody due to previous offences. A failure by the Department of Community Services to provide accommodation has been cited in three cases. On one occasion the ‘failure’ was more like a ‘refusal’ to grant accommodation because the young man had been charged with an assault which had taken place in a residential care unit and the staff of that unit refused his readmission. This caused the young man to be remanded for two days until he could be taken to Minali from the Wagga Detention Centre.

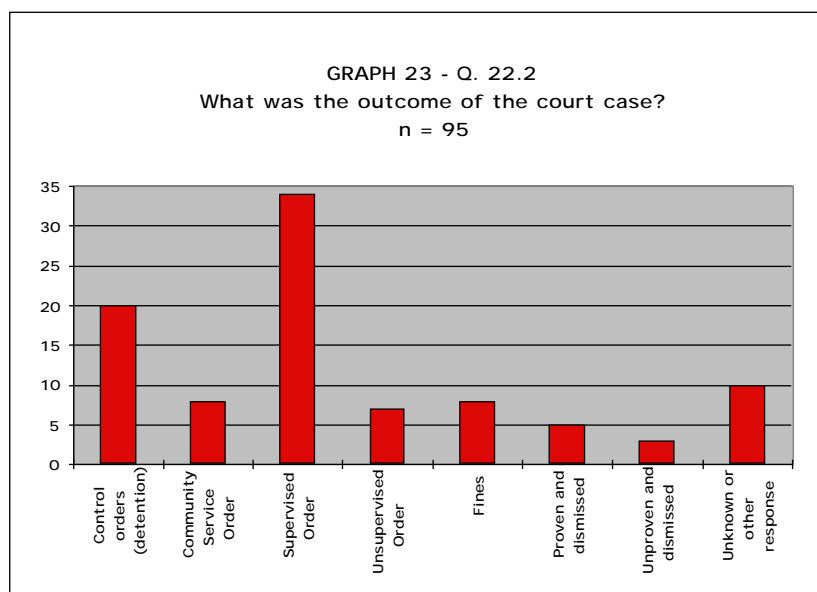


COMMENT: Although accommodation difficulties are cited in only three cases, wards should not be incarcerated at all due to a failure of accommodation choices. District Officers have explained in their survey answers that when trying to locate appropriate placements for young people who have been labelled as 'difficult', they may try thirty or so non-Government services before resorting to Minali and Ormond. Young people who have been granted bail are simply one group of adolescents out of many in care who need more flexible accommodation options.

Residential care staff need training in conflict resolution and behaviour management strategies to equip them for caring for young people with violent behaviour. It is significant that many of the staff of Minali and Ormond are casual and/or inexperienced and yet they have to care for young people who are considered to have the most 'challenging' behaviour amongst the ward population.

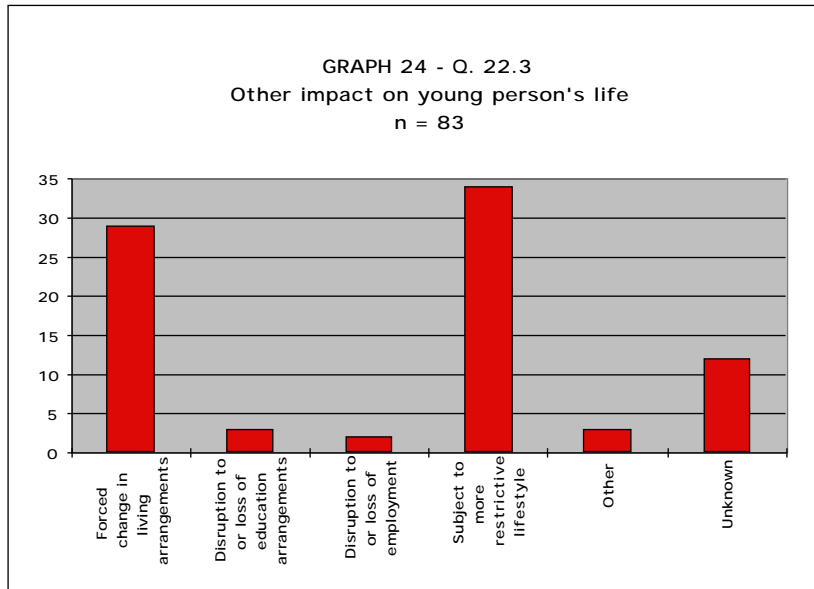
(i) Court outcome

Graph 23 depicts the outcome of the court case for the survey sample and shows that out of 95 charges, 34 resulted in Supervised Orders (36%), 20 resulted in Detention (21%), 8 resulted in fines (8%) and 8 in Community Service Orders (8%). When compared with the outcomes of charges before the Children's Courts in 1994/95, 19.9% received Recognizance (or Supervision Orders); 14.9% received fines; 13.4% were dismissed and cautioned; 12.8% received probation and only 6.8% were subject to Control Orders or detention.



COMMENT: On the surface it appears that wards receive Detention Orders at a rate higher than the rest of the population but this survey has not controlled for the kinds of crimes committed so such a comparison can only be made with caution. In addition, the non-random nature of some of the responses may mean that those wards who received detention for their offences were more likely to be remembered by their District Officers as high profile cases. This may require further research by the Department of Juvenile Justice.



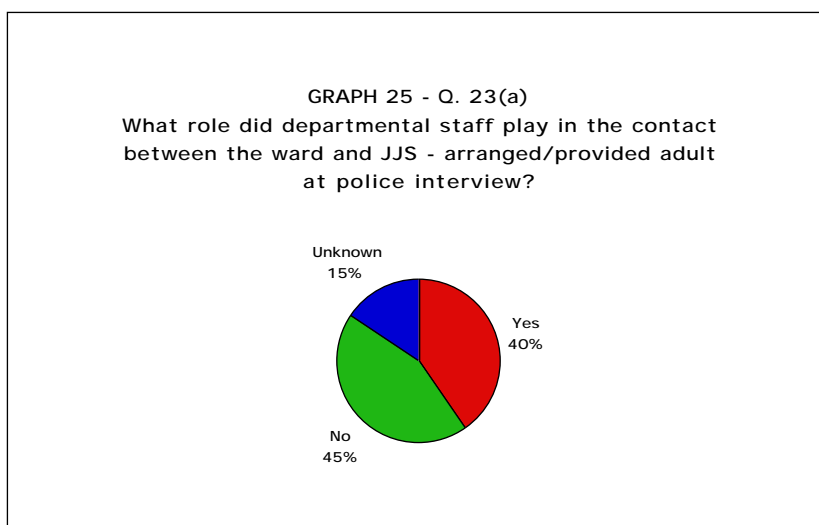


5.9 Cooperation between the Department of Community Services and the Department of Juvenile Justice (Question 23)

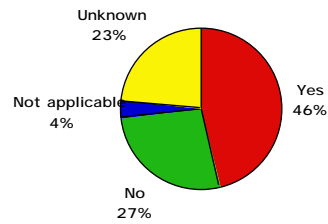
(a) Department of Community Services Involvement

Graphs 25 to 31 depict the responses to questions about the role played by DCS. In general there are fairly high percentages of departmental involvement in the police and court process. This could be expected given the non-random selection by the District Officers as they may be more likely to use examples where they have been most involved. There are, however, a significant number of wards who do not receive the support of their guardian's representative through the legal process.

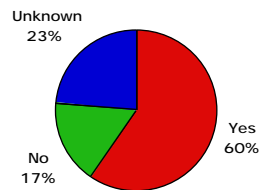
COMMENT: This points to the need for a clarification of the District Officer's role in regard to criminal matters and support throughout the legal process and a need for independent advocacy services for all young people including wards.



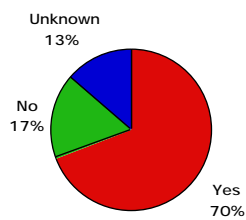
GRAPH 26 - Q. 23(c)
What role did departmental staff play in the contact between the ward and JJS - arranged police bail conditions to be met?

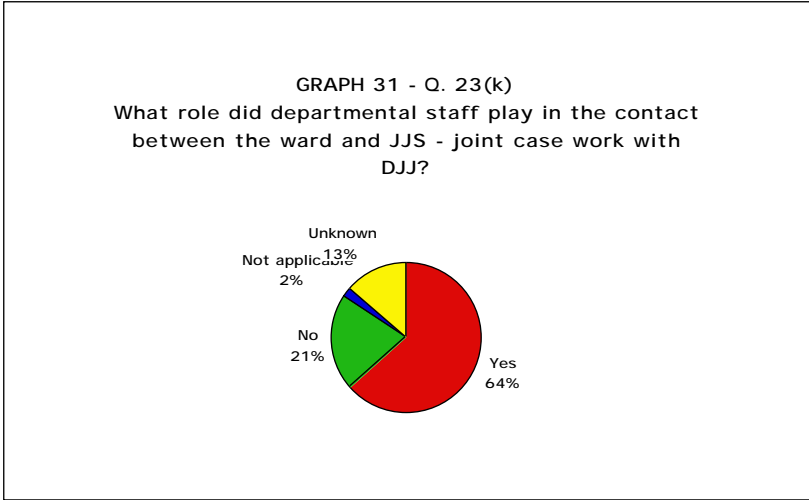
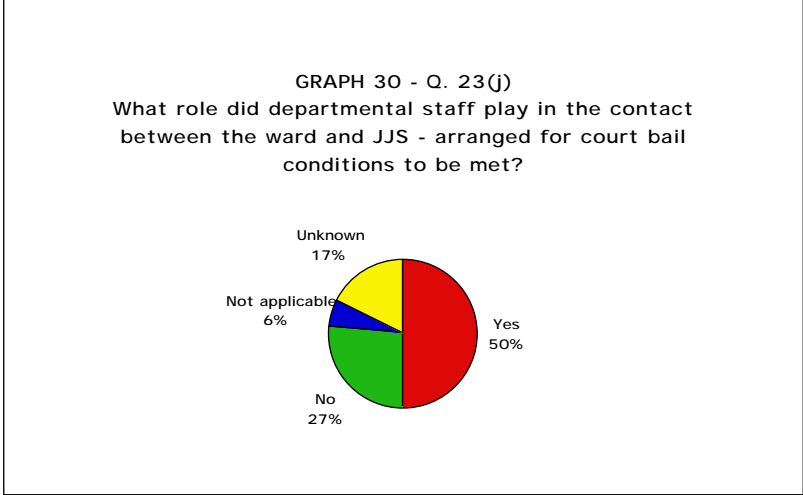
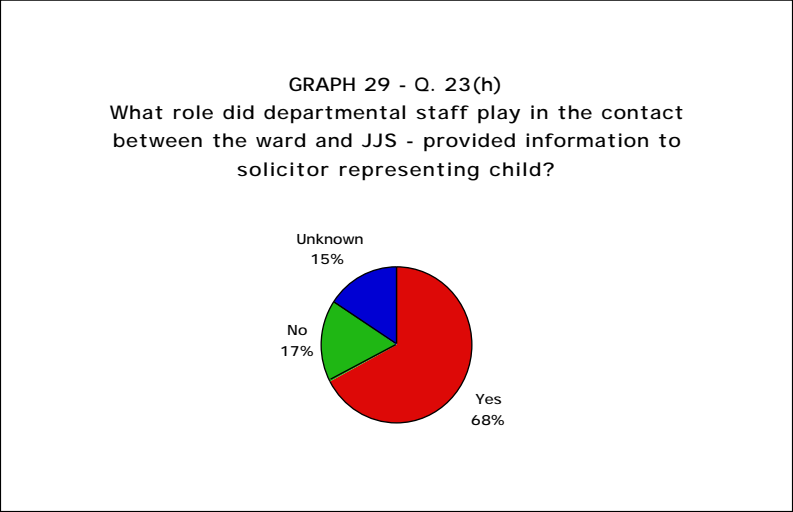


GRAPH 27 - Q. 23 (d)
What role did departmental staff play in the contact between the ward and JJS - provided background report for court of JJ?



GRAPH 28 - Q. 23(f)
What role did departmental staff play in the contact between the ward and JJS - arranged for or provided support for court attendance?



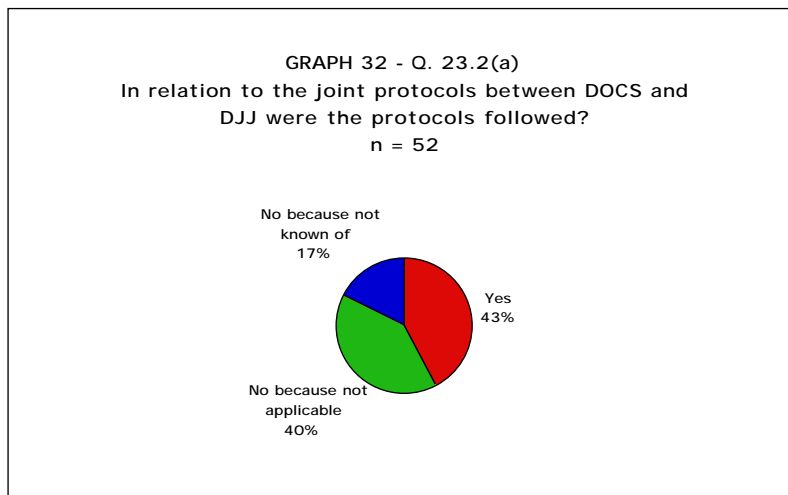


(b) Joint protocol

Graph 32 and the descriptive answers to Question 23.2 indicate that in a significant number of cases, district officers did not know about the joint protocol between the Departments of Juvenile Justice and Community Services.

A number of respondents cited poor communication between the two Departments however two rural respondents praised the communication which existed in small country towns between the relevant workers.

COMMENT: This is an issue both departments will need to address to ensure that there is effective understanding, co-operation and liaison between staff.



6. Proposals for prevention

The information, from a variety of sources, set out in this discussion paper and our analysis of the survey data suggest that the care system may be failing some of our most vulnerable children, and that more attention needs to be given to systematic, on-going intervention and strategies to prevent those “at risk” from drifting into repeated contacts with juvenile justice.

Obviously, the problems are complex and not easily solved with a single solution. At this stage, the commission is reluctant to make final recommendations regarding strategies for reducing the number of children in care who have contact with the juvenile justice system. For this discussion paper we have not consulted fully with young people, service providers and other stakeholders about causes, effects and strategies. Nevertheless, our preliminary research points to some proposals, for consideration and further exploration, aimed at achieving better outcomes for those children and young people at risk of exposure to the juvenile justice system.

6.1 Care Environment and health and education needs

Identified problem:

Wards need more stable placement options which provide for their changing needs throughout adolescence. Services should not “abandon” young people who they find difficult to manage or place in appropriate care settings. Young people in care need greater access to programs which address issues such as education and health needs, self esteem, challenging behaviour, management of emotions such as fear, frustration and anger, and the lack of stability and support in their lives.

Proposals for consideration by the Departments of Community Services, Health and School Education

- (a) There are not enough flexible options for accommodating and supporting adolescents with challenging behaviours. The Department of Community Services needs to develop and fund models which provide additional accommodation such as temporary respite services, emergency accommodation for young people on bail in order to avoid incarceration and other long term accommodation options which are more suitable than the ‘last resort’ placements of Minali and Ormond for young people at risk of contact with the juvenile justice system. The impact of unpleasant conflictual institutional settings on vulnerable young people should not be underestimated. Similarly, inappropriate family restoration as a last resort for a young person at risk may provide an unstructured, sometimes abusive environment conducive to challenging behaviour.
- (b) The Department of School Education needs to develop specialist education programs, employ specialist staff, provide flexible options and demonstrate a commitment to increase educational opportunities and support for young people who are vulnerable or at risk of entering the juvenile justice system. This is particularly important in residential care settings such as Ormond and Minali. Schools attached to these facilities need to be adequately resourced to deal with difficult young people who have a history of poor educational achieve-



ments, negative educational experiences and high support needs. There needs to be a cooperative relationship between schools and residential care units to ensure a consistent and coordinated approach to the young person's well-being.

- (c) The Department of Health needs to undertake further work on the contribution of health issues, such as drug and alcohol abuse, ADD and mental illness, to the challenging behaviour of "at risk" children and young people, and identifying appropriate prevention and management strategies. A co-ordinated, strategic, inter-departmental approach, involving the Departments of Health, School Education and Community Services, to developing strategies and accessing necessary services and expertise, needs to be implemented rather than leaving individual services and workers to "cope" in isolation.
- (d) The Departments of Community Services and School Education need to ensure that staff in both educational and residential care settings have access to the necessary specialist skills to identify those children and young people at risk of juvenile justice contact and implement appropriate early intervention and preventative strategies. For example, children with Attention Deficit Disorder or drug and alcohol problems should have access to intensive support, therapeutic and rehabilitation programs before they reach the peak offending period of 11-15 years of age. Sufficient resources should be put into such programs on the basis that there will be less expenditure on incarcerating young people at a later stage.
- (e) Staff in care and education settings need to have various behaviour management options at their disposal so that calling the police after an incident in care is the last resort and used only in exceptional circumstances. Adequate staffing levels, on-going training, support and supervision of staff, clear policies and procedures, creative therapy approaches and a culture that supports and respects the young person are necessary for dealing effectively with challenging behaviour.

The work in progress document, *Standards For Substitute Care Services* issued by the Department of Community Services in August 1996 sets the minimum standard at 5.13 that each service must have a written behaviour management document. We believe that the Department should set a better example in both service provision and monitoring by determining Best Practice Guidelines surrounding the issues of behaviour management in residential care, conflict resolution, when to call the police and whether charges should be laid for assaults and property damage as a result of emotional disturbance. In their 1993 report cited earlier, the Interim Review Committee commented on the inconsistency of practice across different services (p.18) but their recommendation for a reassessment of casework practice in this regard has not yet been implemented.

The Department of School Education should also provide a clear policy, guidance and training for staff in dealing with challenging behaviour in the school setting.

- (f) The Department of Community Services should ensure that every young person in care has an up to date case plan and individual programming which address day to day issues, education requirements (if school is not appropriate or adequate, remedial teaching and life skills education should be undertaken), recreation opportunities, need for specialist behavioural intervention, as well as counselling, health care and medication needs, both in the short and long term. Such plans and programs should set out responsibilities, timeframes



and strategies to achieve identified goals. Young people and their families need to be involved in this process. Some agencies use a checklist regarding Accommodation, Health, and Education needs when forming case plans - the Department of Community Services should develop Best Practice Guidelines in this regard.

- (g) Wards and other children in care need regular reviews conducted into their care and circumstances by an independent body such as the proposed Children's Boards of Review. Such reviews would highlight problems relating to accommodation, education, health, advocacy, and the need for specialist behavioural intervention, and could assist with risk assessment for those vulnerable to juvenile justice contact. They need to be undertaken on a systematic basis, involve more than a file review and complement the department's own internal review and quality control mechanisms. An external body would lend a fresh eye, ensure that the child's or young person's interests are paramount and provide objectivity and accountability.
- (h) The Department of Community Services' new framework for child protection work places an increased emphasis on the provision of family support services as a preventative strategy. The Department should develop strategies and resources for use by family support workers on: behaviour management; drug and alcohol use; conflict resolution training for adolescents, staff and foster carers; and other issues affecting adolescents such as cross cultural issues, identity crises, grief over family separation etc.
- (i) Following the evaluation of the effectiveness of the Department of Community Services/ Department of Juvenile Justice protocol, staff need to be adequately trained in the proposed improvements and implementation.
- (j) The Department of Community Services care for Aboriginal children and young people, and problems that may contribute to their over representation in the juvenile justice population need to be examined and responded to as a matter of priority. Similarly, the Departments of School Education and Health need to examine where their services are failing to meet the needs of Aboriginal children and young people at risk of juvenile justice contact, and respond accordingly.

6.2 Legal Education and Advocacy

Identified problem

Children in care are often unaware of their rights and the legal process and can be unsupported and ill-informed throughout police interviews and court appearances.

Proposals for consideration by the Attorney General's Department, Cabinet Office, Department of Community Services and Department of Juvenile Justice

- (a) Young people and their carers should be provided with information/education in an appropriate form about their rights, the legal process, independent advocacy services and what to



do if they are charged by police. This can include who to ring and who to ask to attend police interviews, court appearances etc. The role of the District Officer and the potential for advocates should also be clarified in any education program. The Departments of Community Services and Juvenile Justice should cooperate with the Attorney General's Department or the Youth Branch of the Cabinet Office in developing such an education program.

- (b) Compared to other young people who have parents who may assist them through contact with the police, wards are often friendless. This survey has noted that the majority of wards retain some contact with relatives. Although this may not always be positive contact, where a reasonable relationship exists, this should be encouraged by the Department for its potential for informal advocacy and support for the young person. Foster Carers would also be obvious candidates for this role and would benefit from legal education about the rights of the children in their custody in contact with the police and the courts.
- (c) When young people in care commit crimes, they should have access to advocacy services which will ensure that they have someone representing their needs, wishes and interests throughout the process. A number of bodies, including this commission and the NSW Upper House Standing Committee on Social Issues, have highlighted the need for an independent, non government community based advocacy service for children and young people to be funded to provide advocates for children in all areas where they need assistance, e.g. children's court, family court, in their dealings with the Departments of Community Services, Health, Education, Juvenile Justice, Social Security. Such advocacy should be available to vulnerable children and young people as soon as they enter care, and for the duration, not just when they are in crisis. If they knew that they had the support and assistance of an independent person to represent their needs and wishes, they may feel less inclined to act out their anger in unproductive and damaging ways.
- (d) To increase access to advocacy and ensure greater monitoring of services provided to wards in the juvenile justice system, the Official Visitor Scheme should be expanded and taken out of the Department of Juvenile Justice to enable it to operate independently. One option which would have a number of financial and administrative benefits, and which would ensure the scheme's independence, would be to combine the Official Visitors' Scheme with the existing Community Visitors' Scheme administered through the Community Services Commission. Bringing these two schemes together would also mean that Community Visitors could perform their functions across the care and juvenile justice systems, thus providing consistency of service and on-going advocacy for those vulnerable children and young people who are wards and who enter the juvenile justice system.
- (e) Research and educative work needs to be undertaken with magistrates and lawyers around their attitudes to children in care, their understanding of this vulnerable sector of the population, and their knowledge of options available to them.



6.3 Improving Information Systems and doing further research

Identified problem

There is insufficient data collected about wards and about those wards at risk of contact with the juvenile justice system. Data collection across departments also appears to be inconsistent in terms of what is collected, how it is categorised, and how it is shared and reported. As well, there is a need for further research/information collection around particular issues and areas of specialist knowledge.

Proposals for consideration by the Departments of Community Services, Juvenile Justice, Education and Health

- (a) Specific proposals for improved and expanded data collection have been made elsewhere in this discussion paper (see Section 3: Context - Inadequacies of data collection, p.4). All relevant departments need to ensure, in consultation with each other, improvements to the collection and sharing of data about wards, wards at risk, and those in the juvenile justice system. Increased public reporting of this data is necessary for improved decision making and accountability.

Proposals about the need for further research on specific issues have also been made elsewhere in this report. (See sub-section 5.4: Directions for further research.) Some of this research will need to be undertaken by the Departments of Community Services and Juvenile Justice. Other areas/issues will require the Departments of Education and Health to take a lead role. Discussions at a senior level need to take place across portfolios to ensure commitment to and resourcing for such projects.

7. Conclusion

This Discussion Paper has attempted to describe some of the factors which are a feature of the high incidence of contact between wards and the juvenile justice system. The existing data shows that wards are fifteen times more likely to enter juvenile justice centres than other members of the juvenile population and this does not account for all those wards who are under supervision orders, who are between 16 and 18 years, let alone those wards who may commit crimes without being charged. Our survey was limited, involving a small sample only, but it has provided useful trend information, highlighted significant issues and, in some instances, indicated findings that are supported by information from other sources.

The history and circumstances leading up to and surrounding a ward's contact with the juvenile justice system create a picture of: unstable and inappropriate accommodation; high support needs arising from conditions such as Attention Deficit Disorder and drug and alcohol use; aggressive behaviours; poor educational experiences and outcomes; no or very limited access to specialist services or early intervention programs; and a lack of advocacy and support. These issues are too often inadequately addressed by the current care, health and education systems. The care of wards is particularly lacking when they exhibit challenging behaviour - often as a result of abuse or neglect suffered before being placed in care, or as a result of the inadequate and unstable care provided after wardship.

The situation is complex and calls for a range of responses to suit a range of individual needs. The proposals presented above are a first attempt at addressing the problems identified in relation to the inadequacies of the care environment, problems within the health and education systems, the necessity for legal education and independent advocacy services for children, and the need for increased inter-departmental co-ordination, research and improved data collection. We acknowledge that these proposals are not definitive and we welcome comments by young people within and outside the care and justice systems, service providers, departmental officers, legal practitioners and other interested parties in order to refine and improve them. We also welcome other ideas and potential solutions that better serve the needs of children and young people, that avoid the response of "blaming" the individual, and that will reverse the flow of victims into the criminal system.



Appendix





