

Teaching law and order: criminal justice and schools in New South Wales

Rebecca Neil*

Schools in NSW have become entangled in a popular debate about 'law and order'. Various measures, such as steps towards the re-criminalisation of truancy and increased police search powers, operate in conflict with the legal and ethical obligations of school staff. The trend towards increasing criminalisation of the school environment is evident not only in the policies of political parties and the legislative measures of government, but also in the internal mechanisms used by schools, both public and private, to administer discipline to students. There is a discernible law and order culture within schools and links between school discipline mechanisms and the juvenile justice system are gradually being strengthened. While the language of 'rights and responsibilities' gains increasing currency in the area of school discipline, the concept is construed in a way which effectively accords no rights to young people.

This paper will examine areas in which the criminal justice system and schools interact: police search powers; truancy; school violence; school discipline; and drugs. The first three areas will be examined in light of various law and order measures in NSW in the 1990s and in light of the March 1999 NSW state election campaign. The latter two areas will be examined with reference to an increasing culture of law and order within schools and reference will be made to two case studies.

Law and order campaigning

'Law and order' has long been a favoured catch cry of politicians and the media. Russell Hogg and David Brown have referred to 'law and order common sense' as being based on popular and often recycled perceptions about the nature of crime.¹ These perceptions are usually entirely inaccurate, arising from tensions within society. They are often amplified by inaccurate or sensationalist media reporting of issues. Constant repetition and emphasis gives 'law and order common sense' a

* Principal Solicitor, National Children's and Youth Law Centre. The opinions expressed are those of the author.

1 Hogg R and Brown D *Rethinking Law and Order* (Pluto Press, 1998) p 18.

certain authority. Common elements within the law and order sphere include: the perception that crime rates are higher than they ever have been; tougher penalties and increased police powers are required; the criminal justice system is soft on crime; and victims of crime should be entitled to exact revenge on offenders.²

Hogg and Brown refer to particular contradictions evident in law and order common sense where young people are involved. For example, the *Children (Parental Responsibility) Act 1994* (NSW) (Parental Responsibility Act) resulted from public outrage at family and institutional abuse of young people and simultaneous calls for tougher controls on street kids.³ In popular ideology these two philosophies seemed to refer to two separate groups of children. There appears to be no doubt, however, they were in fact the same group of children.⁴

These inherent contradictions in juvenile justice policy have been evident throughout the 1990s in NSW and it seems that there have been two parallel trends.⁵ The *Young Offenders Act 1997* (NSW), which implemented a system of restorative justice measures for dealing with juvenile offenders is an example of a well considered, rational progression in juvenile justice, seeking to divert young offenders from the justice system in recognition of the fact that most young people who offend will not re-offend. On the other hand, however, there have been measures such as the *Children (Parental Responsibility) Act 1997* (NSW) and various measures to increase police powers which might be seen as government reactions to popular law and order sentiment against young people.⁶ Both major political parties have variously pursued both trends.

Police powers and schools

In 1998 the Government legislated to increase police powers in various respects. Section 11C of the *Summary Offences Act 1988* (NSW) was added to make it an offense for a person to possess a knife in a public place or school without a reasonable excuse. The legislation provides that it is the responsibility of the person

2 Above, note 1, p 21.

3 See Jones M and Basser-Marks L 'Mediating Rights: Parents, Children and the State' (1996) 2(2) AJHR 313-327.

4 Above, note 3.

5 Anderson T, Campbell S and Turner S *Youth Street Rights: A Policy and Legislation Review* (University of Technology Sydney's Community Law and Legal Research Centre and the Youth Justice Coalition, 1999) p 24.

6 Above, note 5.

in custody of the knife to justify why they are carrying a knife and a penalty of up to \$550 for a first offense may be applied. A parent who knowingly allows a child to carry a knife is guilty of an offense and can receive a fine of up to \$550.

Under s 28 of the *Summary Offences Act 1988* (NSW) a police officer has the power to search for knives or other dangerous implements if they have reasonable grounds to suspect that a person may be carrying such an implement. Under s 28A(1)(d) police have the power to search lockers at schools and any bag or personal effect in the locker. A student may, where reasonably possible to do so, nominate an adult who is on the school premises to be present during the search: s 28A(2)(d). It is an offense to fail to comply with a search: s 28A(7).

The NSW Minister for Police, in his reading speech to the Legislative Assembly outlined the objectives of the amendments. These included: to 'equip police with the laws and powers they need to make our streets safer'; 'help police tackle gang and knife crime'; and 'break the pattern of young people increasingly arming themselves when they go out just in case they get into a fight'.⁷

These provisions provide increased legitimacy for police intervention in schools. It is significant that during school searches the child can nominate an adult to be present, where it is reasonably possible. The *Summary Offences Act 1988* (NSW) therefore envisages teachers and other school staff being involved in the process. Although the section seems to provide for an adult support person for the child, school staff will presumably be responsible for initiating the police intervention. School staff assuming the role of a support person for the child could be seen as presenting a conflict of interest for the school.

Truancy

Another way in which police intervention in schools is increasingly legitimised is in the area of truancy. Historically, truancy has been variously treated as a criminal matter or a matter warranting welfare intervention. Carrington has described the way in which truancy laws acted as a measure of social control of young people and a way to deny them access to public space. In many instances schools acted as the

7 Second Reading speech by the Hon P Whelan MR (NSW Hansard, April 28 1998, pp 3968-72) on introducing the legislation into the Legislative Assembly, as cited in Murray S *Police Powers and Procedures under the Crimes Legislation Amendment (Police and Public Safety) Act*, October 1998. Ombudsman of NSW.

vehicle through which young people became involved in the welfare and juvenile justice systems and thus became institutionalised.⁸

On 27 January 1999, while the NSW election campaign was well underway, and just before children and young people throughout the State were to go back to school for the year, the Government announced a new measure to address truancy. It was announced that police were to be given the power to take truants off the streets and back to school. The *Daily Telegraph*'s front page described the new measures in the following manner: 'Forced back to school: truants will be hunted by special police squads'.⁹ The story went on to describe the measures as a 'street sweeps program' which is 'part of tough new school discipline procedures aimed at reducing juvenile crime'. This was reported to be 'part of the State Government's law and order policy against juvenile crime' — the new measures were aimed at reducing juvenile crime.¹⁰

Department of Education and Training figures, reported by the media, suggested that less than 1 per cent of students were playing truant (less than 0.5 per cent was reported by the *Sydney Morning Herald*). However, Mr Carr was reported as saying:

If we can eliminate chronic truancy then we are going to solve a lot of other problems down the track ... It is when a boy or girl is chronically truant that they get caught up in petty crime and anti-social behaviour — we want to rescue them from that and enforcing school attendance is the way to do it.¹¹

Although Mr Carr expressed the problem of truancy in terms of saving young people from their own destructive behaviour, the measure was an attempt to gain points for being tough on juvenile crime. The measure was designed to complement new discipline policies for NSW Government schools due to commence operation at the beginning of the first term of 1999.

The truancy measures were essentially aimed at addressing the perception that young people truant from school in order to commit property offences, particularly break and enter. However, given that, as reported, less than one per cent of students truant, the fact that the social causes of truancy remain unaddressed and the fact that

8 Carrington K *Offending Girls: Sex Youth and Justice* (Allen & Unwin, 1993) Ch 4.

9 Beikoff K 'Forced back to school; truants will be hunted by special police squads' *Daily Telegraph* 27 January 1999, p 1.

10 Beikoff, above, note 9, p 2.

11 Beikoff, above, note 9.

increasing police involvement with young people is undesirable, the measure was counterproductive. Although truancy has been a criminal offense in the past, it has long been recognised that the management of truancy through juvenile justice agencies is inconsistent with the teaching objective of producing responsible citizens. The measure provides another direct link between schools and policing and makes students as a category subject to police scrutiny.

School violence

Debates around school violence demonstrate a third way in which schools have been drawn into the law and order debate, this time regarding violent crime. A *Sydney Morning Herald* article on 9 March 1999 ran the headline: 'Dramatic increase in school attacks'.¹² The article reported that there had been an increase in reported violence in schools. Although it was noted that the rate of violent crime which occurred in schools was still less than that which occurred in the general community, The Hon John Aquilina, Minister for Education, responded by stating that teachers and principals had been given more power to deal with unruly, violent or disruptive students through new suspension and expulsion procedures. The new discipline policies of the Department of Education and Training were thus brought into the public arena as a way of calming fear of crime and allocating credit to the Government for being tough on crime. School discipline policies are in this instance clearly being portrayed as complementary to the criminal justice system to deal with juvenile crime.

In April 1999 two students from Columbine High School in the US planned and executed a massacre of many of their fellow classmates with high-powered firearms and bombs. Although there are many significant factors which make such an incident extremely unlikely in Australia, there was considerable media speculation about the possibility of such an occurrence in Australia.¹³

On 13 May 1999 Mr John Aquilina, Minister for Education, told Parliament that there had been death threats against teachers and students in seven schools throughout NSW. The *Daily Telegraph's* front page story lead with the headline 'Death lists — students threatened at seven schools' on 14 May 1999. A large photograph on the front page showed police officers walking towards the camera

12 Jamal N 'Dramatic increase in school attacks' *Sydney Morning Herald* 9 March 1999, p 3.

13 See for example, Wilson P 'Son of a gun, this is an American problem' *The Australian* 23 April 1999, p 13 and Patty A 'I fear a massacre in our schools' *Sydney Morning Herald* 13 June 1999, p 3.

and a group of students gathered in the background. At Campbelltown Performing Arts High School six students were expelled for writing a supposed 'death list' which the students claimed was a prank. In the days that followed, the media reported the use of apprehended personal violence orders by teachers and students at various schools for protection against students. The media attempted to draw links between the Campbelltown Performing Arts High School incident and the Columbine High School incident by pointing out that the students involved in the Campbelltown incident were 'revealed to be members of a Marilyn Manson gothic rock inspired band'.

Internal school discipline — policy framework

A Ministerial Statement called 'Good Discipline and Effective Learning' provides that the overriding priorities of the public school system are raising educational standards and levels of educational achievement, the provision of quality education for all and the care and safety of the students in its charge.¹⁴

An analysis of the 1999 Department of Education and Training 'Procedures for the Suspension and Expulsion of School Students', intended to be read in conjunction with the Ministerial Statement, demonstrates the increasing role of police in schools and the overlap of school discipline and criminal justice processes. According to the procedures, school principals are required to call the police when illegal substances are found at the school, as '(t)he Government firmly believes that schools must be places which are absolutely free of illegal drugs'.¹⁵ The procedures provide for the police to be called immediately if a student is found in possession of a prohibited weapon. Where criminal behaviour is suspected the police are to be notified by the school. As well as being dealt with by police, these actions will lead to the student being suspended or expelled from the school, or in extreme cases, from the government school system. These procedures reflect a zero tolerance approach to criminal activities, as any criminal behaviour, even presumably where it is trivial or minor, will lead to police involvement.

In the weeks prior to the NSW state election school discipline policies were emphasised as effective law and order measures. The *Daily Telegraph* reported that 38,000 students

14 Department of Education and Training, 'Student Welfare, Good Discipline and Effective Learning' (NSW Department of Education, 1996) p 3.

15 NSW Department of Education and Training, 'Procedures for the Suspension and Expulsion of School Students' (released October 1998 for implementation in Term 1 1999) p 6.

were suspended from NSW schools last year. Mr Aquilina was reported as saying that the techniques adopted for dealing with discipline 10 years ago were no longer effective and therefore it is necessary to keep upgrading discipline techniques. He stated: 'We have given teachers and principals more power to deal with unruly, violent or disruptive students.'¹⁶

Most private schools systems do not have policy statements regarding the discipline and welfare of students, leaving it to each individual school to formulate policies or statements of philosophy.

Case studies

Schools, both public and private, have become integrally involved in the process by which young people may come to the attention of the police. Perhaps in response to this, schools are increasingly adopting a 'law and order' approach to discipline. Two case studies provided by the National Children's and Youth Law Centre illustrate the complexity of the issues involved. In both cases the young people concerned had committed fairly serious offences, however the punishment they received from the school was, in the end result, more severe than any penalty a court would have imposed.

The case of a school break-in

Three boys aged 14-15 were in Year 10 at a suburban NSW Government high school. One night they broke into the school. The police arrived and arrested them. None had previous records of offending and none had had any previous contact with the police. They were referred by the police to attend a youth justice conference under the *Young Offenders Act 1997* (NSW). In addition, they were placed on a long suspension from school by the principal and notified that the school was considering expulsion. A conference date was organised. The conference convenor from the Department of Juvenile Justice advised the boys to think about what sort of penalty they could offer to make amends to the school. They decided to offer to do various manual tasks at the school and make an apology.

The day before the conference was to be held all three boys received letters from the school stating that the school had decided to expel them. At the conference both the deputy principal and the principal of the school were in attendance and efforts were made to change their minds about expelling the boys from the school. However, they refused, stating that they must make an example of the boys to the rest of the school.

16 Morris R '38,000 students suspended' *Daily Telegraph* 11 March 1999, p 3.

The police officer agreed with both the deputy principal and the principal that the expulsion was a separate matter to the conference and was not a penalty that could be taken into account in determining an appropriate penalty. The school staff had a high degree of influence over what alternative schools the boys will be able to attend and therefore exert considerable power at the conference.

The case of theft at school

A 17 year old girl, Angela, was in Year 11 at a private school. Her boyfriend and several of his friends, also students at the school, stole items from the school during school hours. Angela came to know about the theft and allowed the stolen items to be transported in her car at the insistence of her boyfriend.

The school suspected Angela's boyfriend was involved in the theft. They took Angela out of school one day and two male teachers questioned her intermittently during the day, as well as during the next two days. Angela was not allowed to call her parents, despite asking many times that she be permitted to do so. She was not allowed to have contact with other students during these three days and was kept out of class. She was forced to write and sign statements outlining her involvement and that of her friends in the theft. The police were called to the school. Angela received a formal caution from the police and the school expelled her.

The teachers who questioned Angela used various threats and inducements, including that they would call the police if she did not co-operate with them. They said that the police would treat her much worse than they were. She was considerably distressed throughout the time she was questioned.

Both these case studies reflect close links between the criminal justice system and schools in both the private and public spheres, as well as the way in which schools are taking on the responsibility of promoting and enforcing a culture of law and order in schools. In the first case, the boys' offense was serious, but it occurred outside school hours and it was a first infringement by otherwise well-behaved students. The principal and deputy principal attended the youth justice conference as the victim of the offense, whereas it is arguable that the crime was not of a personal nature as it occurred in a public building. The principal and deputy principal effectively obstructed the conference process by refusing to accept that it was a one-off occurrence which was unlikely to be repeated.

In Angela's case two male teachers actively took on a law enforcement role, interrogating and punishing her for her minor role in an offense, without regard for the rights which she would have been entitled to invoke if the police had been conducting the investigation.

Both cases involved property offences. The offences were conducted without personal violence. Ironically, it is the writer's experience that much violent crime perpetrated by students on other students is not treated in such a serious manner and rarely leads to exclusion from school.

In both cases the students received a punishment which was much more severe than that any court would have imposed. As well as being punished through school discipline processes, the children were all dealt with by the criminal justice system. Significantly, both cases involved the use of diversionary processes under the *Young Offenders Act 1997* (NSW). It could be argued that the aims and objectives of that Act, particularly the principle that young offenders are to be dealt with in the least restrictive way possible in the circumstances¹⁷ and that they should be dealt with in their communities in order to assist their reintegration and to sustain family and community ties,¹⁸ were subverted in these cases.

Drugs and schools

The way in which drug use issues are dealt with in schools, both public and private, is an example of the way in which students are treated more severely in school than they would be if they were dealt with by the criminal justice system. It also reflects the way in which schools are increasingly taking on a law enforcement role.

Several recent incidents of drug use by students in private schools in Sydney, NSW have received much media attention. The expulsion of nine girls of compulsory school age from Pymble Ladies College in late March 1999 for allegedly possessing or buying marijuana was a notable example and one in a series of such exclusions from exclusive private schools. On 1 April 1999 Prime Minister John Howard called for all schools to expel students caught taking drugs and supported the stance taken by the principal of Pymble Ladies College.¹⁹ Significantly, the police were reported to have decided not to take any action against the girls, after the school reported the incident to the police. While the incident was not sufficiently serious to warrant police action, it was deemed serious enough to warrant the most severe school discipline penalty.

The statements by the Prime Minister clearly demonstrate the political pressure placed on schools to be tough on drug use by students. At a time when a drug

17 *Young Offenders Act 1997* (NSW) s 34(1)(ii).

18 *Young Offenders Act 1997* (NSW) s 7(e).

19 Television interview with Mike Munroe, *A Current Affair*, Channel Nine, 9 April 1999.

summit has recently been held in NSW,²⁰ the impetus for which originated partly from a *Daily Telegraph* photograph of a young person injecting heroin, the pressures on schools in this regard are greater than ever.²¹

Schools' duty of care

Australian courts have held that schools have a high duty of care towards students. In the writer's view it is conceivable that schools could face legal liability if they negligently fail to alert a student to their legal rights and the student suffers a detriment. It follows that schools, which take on a law enforcement role, face a potential conflict of interest. Their primary responsibility is to act according to their duty of care.

Increased police involvement in schools and pressure to adopt zero tolerance approaches to drug use and property offences places schools in a serious predicament, where the objective of schooling in providing education is compromised by the need to enforce the law and order demands of government and the wider community.

Much of the debate around school discipline has become focused on the concept of 'rights and responsibilities'. While the rights of children have been recognised internationally through the *International Convention on the Rights of the Child*, ratified by Australia in 1991, the rights of children are not recognised in domestic legislation (with few exceptions). With regard to young people, the claim to 'rights and responsibilities' has come to mean that if they do not act responsibly, they forfeit their rights. However, the nature of human rights is that rights are inherent and inalienable and cannot be diminished by a person's misconduct. The misconduct merely allows society to correct that breach of responsibility without denying the rights of the person.²² During the 1999 NSW state election campaign the rights of school students was drawn into the law and order debate through the release of a publication by the National Children's and Youth Law Centre called 'Know Your Rights At School'.²³

Mr John Aquilina, Minister for Education, advised school principals not to place the kit in their schools.²⁴ Much of the outcry against the kit focused upon the perceived

20 The drug summit took place 17-21 May 1999 at Parliament House in Sydney, resulting in the *Drug Summit Communique* available from the NSW Government.

21 'MPs snap at teen heroin photo' *The Australian* 1 February 1999.

22 Anderson T et al, above, note 5, p 9.

23 Crowther M, Robinson K and Shea K *Know Your Rights At School* (2nd ed, National Children's and Youth Law Centre, 1999).

24 'Students told teachers have no rights' *Daily Telegraph Mirror* 3 March 1999.

need for the emphasis of responsibilities as well as rights and the need for greater consideration of the rights of parents and teachers.

Conclusion

This paper has examined a number of trends towards criminalisation of the school environment. There are, however, many more developments which deserve attention, such as the establishment of police liaison officers at schools, which have not been the focus of this paper. Police intervention in schools is increasingly legitimised through legislative changes such as those outlined above. This, as well as increasing hysteria about violence and drug use in schools, has led to a culture of law and order in schools, with school discipline policies serving as a mechanism for community outrage.

Angela's case shows the extent to which schools are becoming the investigation and enforcement arm of the police for some criminal offences. The other case study is an example of the way in which schools can undermine the more enlightened measures of the juvenile justice system. Both are examples of the contradictions now evident in the provision of school discipline.

The criminalisation of the school environment is therefore an internal and an external process. While young people and the school system are increasingly drawn into law and order campaigning, this is filtering down into the way students are dealt with at school. The result is an inherently contradictory situation. The duty of care of schools means that they should strive to insulate children from the criminal justice system. However, government policies and political and societal pressures demand closer links with the criminal justice system. The negative impact of these trends on children and young people is, and will continue to be, great. ●