

‘UNENLIGHTENED EFFICIENCY’:  
THE ADMINISTRATION  
OF THE  
JUVENILE  
CORRECTION SYSTEM  
IN  
NEW SOUTH WALES  
1905-1988

Thesis for Doctorate of Philosophy  
University of Sydney  
Peter Quinn, January, 2004

### **Certification**

I certify that this work has not been submitted for a degree to any other university or institution and, to the best of my knowledge and belief, contains no material previously published or written by any other person, except where due reference has been made in the text.

Peter Quinn

January, 2004.

## ABSTRACT

This work traces the history of the juvenile correction system in twentieth century New South Wales, focusing on the evolution of major reforms aimed at curbing delinquency. The study begins in 1905 with the Neglected Children and Juvenile Offenders Act. It concludes in 1988, when another set of significant reforms, designed to deal with perceived inadequacies of the established system, commenced. The main focus of the thesis is the government system of corrections. Although there was an active non-government correction system, this sector was increasingly absorbed by the larger public sphere.

The principal argument is that, although there were sporadic periods during which changes to the system were made, its progress through most of the twentieth century was characterised by an underlying attitude which regarded the boys and girls it dealt with, particularly those committed to institutions, as belonging to an inferior, delinquent class. As such, they were treated as the progeny of a criminal class destined for the most part to remain part of that class. This idea of a delinquent class coloured all aspects of the way juveniles were treated, specifically lack of resources, the dominance of economic considerations over the welfare of children, excessive regimentation, harsh discipline and illegal punishments. When management problems arose they were met with increased coercion. Although lip-service was paid to the ideal of child saving, reality did not match the rhetoric. Programs which ostensibly

were meant to individualise treatment so that it was tailored to suit each child, were carried out perfunctorily. Periodic and well-meaning efforts at reform were stifled by bureaucratic inertia, political considerations, and the entrenched belief that incarceration was preferable to treatment.

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## ABBREVIATIONS

HMSO	Her Majesty's Stationery Office
JLC	Journal of the Legislative Council of New South Wales
JRAHS	Journal of the Royal Australian Historical Society
JVPLCLA	Joint Volumes of Papers presented to the Legislative Council and Legislative Assembly of New South Wales
ML	Mitchell Library, Sydney
NSWPDLA	New South Wales Parliament Parliamentary Debates: Legislative Assembly
NSWPDLC	New South Wales Parliament Parliamentary Debates: Legislative Council
V&PLANSW	Votes and Proceedings of the Legislative Assembly of New South Wales
V&PLCNSW	Votes and Proceedings of the Legislative Council of New South Wales
NSWPP	New South Wales Parliamentary Papers
SCRB	State Children's Relief Board
SMH	Sydney Morning Herald
SR	State Records of New South Wales



## CHAPTER 1

### INTRODUCTION

The juvenile corrections system in Britain and Australia underwent radical reform throughout the nineteenth century. Up to the middle of the century, both in Britain and Australia, children convicted of criminal offences were imprisoned in adult gaols. In 1833, there were more than ten thousand children under the age of sixteen years in such prisons in Britain.<sup>1</sup> Legislation to establish separate corrective institutions, exclusively for children, was introduced in England in 1854.<sup>2</sup> Similar laws were enacted in New South Wales in 1866.<sup>3</sup> The effect of this change, in both Britain and New South Wales, was that juvenile offenders, as well as those thought to be in the early stages of delinquency, were increasingly detained in large congregate care institutions for juveniles, instead of prisons.

New South Wales was not alone in taking this course. It was much the same in other Australian colonies, where, in the 1860s, hulks began to be used for boys in Victoria, South Australia and Queensland.<sup>4</sup> Barrack style institutions were established for both boys and girls in all Colonies by the 1860s. This was done for reasons of economy, in preference to placement in the community or the use of cottage homes in charge of a married couple (often referred to as the 'family system'). This

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<sup>1</sup> J A F Watson & P M Austin The Modern Juvenile Court Shaw & Sons, London, 1975, p 1

<sup>2</sup> Youthful Offenders Act, 1854 (UK).

<sup>3</sup> Industrial Schools Act, 1866 (NSW) and Reformatory Schools Act, 1866 (NSW).

<sup>4</sup> A R Shorten 'Nautical School Ships in Australia 1850- 1920', Journal of Australia New Zealand History of Education Society vol. 5 no 2 ,1976.

was despite the fact that the family system had been used at Red Hill, a reformatory in London, at Mettray in France, as well as at the Rauhe Haus in Germany. Family systems had also been successful in America in the 1850s.<sup>5</sup> As Constance Davey and Margaret Barbalet have shown, there were those who protested at this, pointing to the European experience which favoured cottage homes, but their protests fell on deaf ears.<sup>6</sup>

In the latter part of the nineteenth century, this situation also began to change. Just as the contaminating effects of putting children in prison had been condemned, reformers began to claim that large institutions harmed children they housed.<sup>7</sup> This led to the emergence of the boarding out system, under which deprived children were placed in foster care instead of institutions. In Australia, boarding out was first used as an alternative to congregate institutional care in South Australia in the 1860s, under the influence of social reformer Catherine Helen Spence.<sup>8</sup> Other Colonies followed. In New South Wales, boarding out began in the 1870s with the efforts of a group of women, followed by the establishment of the State Children's Relief Board by legislation in 1881.<sup>9</sup> The new system was a great success. Within a few years, some very large charitable institutions had been closed. In association with boarding out,

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<sup>5</sup> Evidence given by Matthew Davenport Hill and George Bunsen: 'Report from the Select Committee on Criminal and Destitute Children', 1852 -53, British Parliamentary Papers, Crime and Punishment, Juvenile Offenders, vol. 3, p. 44 and p.174. Rev. Sydney Turner, chaplain at Red Hill also gave evidence that both systems had been tried at Red Hill and that the family system was greatly preferable. See 'Report from the Select Committee on Criminal and Destitute Children', 1852 -53, British Parliamentary Papers, Crime and Punishment, Juvenile Offenders, vol. 3, p. 247. In relation to America, see A M Platt The Child Savers, University of Chicago Press, Chicago, 1977, p. 63; L Ashby Saving the Waifs: Reformers and Dependent Children 1890- 1917, Temple University Press, Philadelphia 1984, p.39.

<sup>6</sup> C M Davey Children and their law-makers, Griffin Press, Adelaide, 1956, p.5. See also M Barbalet Far from a low gutter girl: The forgotten world of state wards, South Australia 1887-1940, Oxford University Press, Melbourne, 1983, p.188.

<sup>7</sup> 'Second Report of the Royal Commission on Public Charities of the Colony' 29 May, 1874, V&PLANSW 1873-1874, vol., p. 40.

<sup>8</sup> L Brown et al., A Book of South Australia: Women in the First Hundred Years Rigby, Adelaide, 1936, p. 136.

there were also attempts to accommodate those children for whom institutional care was necessary, in small cottage style homes, known as the 'family system'.<sup>10</sup>

The period from the 1880s until the first decade of the new century was an era of progressive reform. In this work, several people are referred to as 'progressive'.<sup>11</sup> This term refers to their desire to find innovative solutions to old problems. In the case of Sir Charles Mackellar, his advocacy of probation and children's courts are examples of his attempts to divert children away from institutional treatment, with its detrimental effects. It is not intended to suggest any analogy with 'progressivism', which flourished in America at the beginning of the twentieth century.<sup>12</sup> Stuart McIntyre and Michael Roe have suggested that there was an echo of this movement in Australia, but there is no hard evidence of any direct connection with child welfare reform in New South Wales.<sup>13</sup>

The reforms were driven initially by Arthur Renwick, the foundation President of the Board, and then by his successor, Charles Mackellar. They culminated in the passage of the Neglected Children and Juvenile Offenders Act of 1905. The significant

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<sup>9</sup> W Phillips 'James Jefferis in Sydney, His Ministry at Pitt Street Congregational Church 1877-1889' Church Heritage vol. 2., no. 2, September, 1981, p. 135. The legislation was the State Children Relief Act, 1881 (NSW).

<sup>10</sup> Dr. A Renwick, Annual Report, State Children's Relief Board, 1883, V&PLANSW 1883, vol. 2, p. 867.

<sup>11</sup> The expression is used in relation to Sir Charles Mackellar, President of the State Children's Relief Board at the beginning of the twentieth century. Charles Wood was also progressive, in his attempts to promote greater co-ordination between government and non-government child welfare services. William Langshaw also qualifies, because of his attempts at diverting children away from both institutional care and from the judicial system, in the 1970s.

<sup>12</sup> For details of the progressive movement, see S P Caine 'The Origins of Progressivism' in L L Gould (ed.) The Progressive Era Syracuse University Press, New York, 1974; B P de Witt The Progressive Movement Macmillan, New York, 1915; P G Filene 'An Obituary for the "The Progressive Movement"' American Quarterly vol XXII Spring 1970 no 1; L L Gould (ed) The Progressive Era Syracuse University Press, New York, 1974; J M Holl Juvenile Reform in the Progressive Era Cornell University Press, London, 1971; G C Mowbray The Californian Progressives University of California Press, Los Angeles, 1951; D K Pickens Eugenics and the Progressives Vanderbilt University Press, Nashville, 1968; S Schlossman & S Wallach 'The Crime of Precocious Sexuality: Female Delinquency in the Progressive Era' Harvard Educational Review February 1978, Vol 48, no 1.

<sup>13</sup> S McIntyre Winners and Losers: The pursuit of social justice in Australian history Allen & Unwin, Sydney, 1985; See also M Roe Nine Australian Progressives: Vitalism in Bourgeois Social Thought 1890-1960 University of Queensland Press, Brisbane, 1984.

reforms of this period included State intervention to rehabilitate dysfunctional families through the probation system, the creation of alternatives to institutional care, children's courts, professional assessment of children, individualisation of treatment, and better classification.

The importance of the reforms of this era have been seen by a number of historians as laying the foundations for the twentieth century system of juvenile corrections in Australia.<sup>14</sup> This thesis contests this view. It argues that, after Mackellar retired as President of the Board in 1914, the process of innovation and progressive reform ceased. As the Board was slowly weakened and its activities were absorbed by the bureaucracy, the administration of the juvenile correction system reverted to the institutional practices more characteristic of the middle of the nineteenth century.

Ramsland claims that the barracks system was the main official child saving method until 1881, when the boarding out program intensified.<sup>15</sup> There is no denying the impact of the boarding out system on the care of dependent children, but institutional treatment remained the preferred treatment for delinquent children. Barrack institutions continued to operate after 1881 at Parramatta, South Head, Cockatoo Island, Eastwood and on the industrial school ships in Sydney Harbour, despite the opposition of reformers like Mackellar to this kind of institution. Just before Mackellar retired in 1914, a decision was made to establish a very large new barrack institution at Gosford. After his retirement others followed at Raymond

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<sup>14</sup> R Van Krieken Children and the State Allen and Unwin, Sydney, 1991, p. 112; R Van Krieken 'State Bureaucracy and Social Science 1915-1940' Labour History no 58 May, 1990, p. 18; S Garton 'The Rise of the Therapeutic State: Psychiatry and the System of Criminal Jurisdiction in New South Wales 1890-1940' Australian Journal of Politics and History vol. 32, no 3, 1986, p. 382; J Ramsland Children of the Back Lanes: Destitute and Neglected Children in Colonial N S W, NSW University Press Sydney, 1986, p 164; J Ramsland & G A Cartan 'The Gosford Farm Home for Boys Mt. Penang, 1912-1940' JRAHS vol. 75 part 1 June 1989, pages 76 and 78.

<sup>15</sup> J Ramsland Children of the Back Lanes: Destitute and Neglected Children in Colonial N S W, p. 183.

Terrace, Yanco, La Perouse and Narara, even though preference for cottage homes remained official policy. When, later in the twentieth century, cottage homes were claimed to have been established, the ideal of a 'family system' was dissipated by considerations of cost. These homes were required to hold many more children than was consistent with family living.

The probation system, designed to keep children away from the damaging effects of incarceration, also became perfunctory. Assessment was often carried out by non-professionals, and covered only a small segment of delinquents. There was no effective treatment for severely disturbed children in institutions. Child inmates were subjected to very harsh, repressive regimentation. There were many instances of ill-treatment. Illegal punishment was endemic in the system, and persisted into the 1980s. Rebellious behaviour and absconding was dealt with by increased coercion, and frequently imprisonment, either in institutions (Tamworth and Hay) which were really juvenile prisons, or in adult gaols.

This study documents the way in which the reforms to the juvenile correction system promoted by Sir Charles Mackellar at the beginning of the century were ignored and reversed. Between 1914 and 1923, the State bureaucracy secured full control over what had previously been a dual system. Key bureaucrats such as Walter Bethel instituted a return to custodialism. Leading Departmental officials presented a facade of continuous improvement, increasing professionalisation, emphasis on 'character training' and the purported use of 'cottage home' accommodation, when in fact, the real agenda was to operate the system as cheaply as possible, while presenting a public appearance of effectiveness. Even the diversionary programs of the 1970s, while potentially beneficial, were driven by the need to save money.

Mary Tenison Woods, speaking of efforts to reform the juvenile correction system in New South Wales, observed: 'We ask for bread and are given stone'.<sup>16</sup> The noted reform activist's description of that system was an apt one for much of the twentieth century. There were some notable twentieth century attempts at progressive reform. Charles Wood tried to improve the professionalism of the system, and promote greater involvement of the non-government sector in the 1930s. William Langshaw in the 1970s provided non-institutional alternatives, as well as substantially reducing the standard period of detention. For the most part, however, bureaucratic considerations were dominant, driven by disdain for the delinquent class, as well as a continual preoccupation with the need for economy. This introductory chapter outlines some of the major historiographical interpretations of juvenile corrections in relation to the system in New South Wales. It begins by defining the concepts of 'juvenile' and the 'delinquent class' since these are central to an understanding of the evolution of the system in the twentieth century.

### *The meaning of 'juvenile'*

The concept of the juvenile, as it relates to delinquency and corrections, is a comparatively recent one. The boundaries between childhood, adolescence and adulthood have also been ill-defined and constructed in specific historical contexts. Under Roman law a child was regarded as legally incompetent up to seven years of age. This distinction seems to have been preserved under ecclesiastical law, since it was the age at which a child was regarded as being capable of committing sin.<sup>17</sup> Philippe Aries has claimed that, in medieval society, the idea of childhood did not exist. Thus,

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<sup>16</sup> SMH 5 February, 1944.

<sup>17</sup> D Nicholas 'Childhood in medieval Europe' in J M Hawes & N R Hiner (eds.) Children in historical and comparative perspective Greenwood Press, Westport, USA, 1991, p. 33.

as soon as a child was able to function without having to rely on its mother or a nurse, somewhere between five and seven, it was regarded as an adult.<sup>18</sup> According to Aries, it was not until the seventeenth century, when schooling became conventional for children of the upper and middle classes, that childhood began to be seen as extending into the adolescent years, another concept invented in the late nineteenth century.<sup>19</sup>

Aries' views have been criticised in recent years by a number of historians who have suggested that he relied too heavily on unrepresentative segments of society.<sup>20</sup> Urban Holmes has pointed out that, in the middle ages (contrary to Aries) there was a recognised progression from birth to adulthood, divided into three stages, birth to seven years, seven to fourteen and fourteen to twenty-one.<sup>21</sup> There is, however broad agreement among historians that childhood is a 'social construction, varying over time in accordance with...the changing views of various groups of adults'.<sup>22</sup> It also varies in accordance with 'class, gender and ethnicity'.<sup>23</sup> In a similar fashion to the emergence of childhood as a concept, adolescence also came to be regarded in the nineteenth century 'as much a cultural construct as childhood'.<sup>24</sup>

The age at which a minor became a full adult at law has also varied over time. In the middle ages in Europe, the 'age of majority' was commonly twelve years, but was raised by Papal edict in 1356 to eighteen.<sup>25</sup> However, in the modern era, the legal

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<sup>18</sup> P Aries Centuries of Childhood Jonathon Cape, London, 1962, p. 128.

<sup>19</sup> ibid., p. 331.

<sup>20</sup> J Kociumbas 'Childhood history as ideology' Labour History vol. 47, November, 1984, p. 13.; J M Hawes & N R Hiner (eds.) Children in historical and comparative perspective, p. 2; S R Johansson 'Centuries of Childhood/Centuries of Parenting; Philippe Aries and the modernization of privileged infancy' Journal of Family History, vol. 12, 1987, p. 343; C Heywood A History of Childhood, Polity Press, Cambridge, 2001, pp. 12-14; A Wilson 'The infancy of the history of childhood: an appraisal of Philippe Aries' History and Theory, vol. 19 1980, pp. 150-152; J R Gillis Youth and History Academic Press, New York, 1981, pp. 1-2; U T Holmes 'Medieval childhood' Journal of Social History vol. 2, 1968-69 pp. 164-172.

<sup>21</sup> U T Holmes 'Medieval childhood', p. 165.

<sup>22</sup> J Kociumbas 'Childhood history as ideology', pages 7 and 14.

<sup>23</sup> C Heywood A History of Childhood, p. 4. See also J R Gillis Youth and History, pp. 5-6.

<sup>24</sup> U T Holmes 'Medieval childhood' p. 164.

<sup>25</sup> D Nicholas 'Childhood in medieval Europe', p. 33.

ages under British law for marriage, military service, contractual capacity, succession, consent to sexual intercourse, voting, criminal offences, compulsory school attendance, have all been different over time, and have varied according to gender and class. The age at which a minor reached full age therefore depended very much on the nature of the activity and sometimes on the sex of the child. For example, up until the early nineteenth century in England, there was no fixed minimum age of marriage.<sup>26</sup>

Similarly, under common law,

the age at which minors might, under certain circumstances, leave home was different, depending on the sex of the minor. Boys could leave home at fourteen, girls at sixteen.<sup>27</sup> Thus it can be seen that the notion of the juvenile, and consequently the status of juveniles under the law, was still quite fluid in the nineteenth and twentieth centuries, and varied considerably, depending on which aspect of law was in issue.

The legal historian, John Seymour, has argued that the age of criminal responsibility reflected 'a vague feeling that the very young should be shielded from the rigours of the criminal law'.<sup>28</sup> For centuries, English law generally recognised that very small children should not be regarded as being capable of serious crime, although this was left to judicial discretion. By the seventeenth century, however, it had become accepted at common law that a child under the age of seven years was conclusively presumed to be incapable of committing an offence. This applied more strictly to felonies rather than misdemeanours.<sup>29</sup> It had also become accepted that,

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<sup>26</sup> Marriage Act, 1829 (UK) made any marriage where either party was under sixteen void. See Halsbury's Laws of England, 2nd edition, vol. 16, Butterworth, London, 1933, paragraph 843, p. 564

<sup>27</sup> See J C Litherland The Law Relating to Child Welfare, Affiliations and Adoptions Law Book Company, Sydney, 1940, p. 103. Litherland quotes Higginbotham CJ in the case of R v. Wigmore (1890) 16 VLR 123, and also ex parte McDonald (1898) 14 WN (NSW) 176 and ex parte Ashcroft (1908) 8 SR (NSW) 599. See also Halsbury's Laws of England, second edition, vol. 7, p 667.

<sup>28</sup> J A Seymour 'Aspects of Child Welfare Law in Australia' Proceedings of the Institute of Criminology, no 49: 'Child Welfare in the 80s', p. 12.

<sup>29</sup> A W G Kean 'The History of the criminal liability of children' Law Quarterly Review vol. 53, 1937, p. 364 et seq. See also P W Tappan Crime Justice and Correction McGraw Hill, New York, 1960, p. 387.



between the ages of seven and fourteen, children were presumed to be incapable of committing an offence, but this could be rebutted if it could be shown in evidence that the child acted with malice.<sup>30</sup> Thus, instead of an objective test of criminal responsibility, it was determined rather on the circumstances of the case, and the way the child behaved. Until the establishment of industrial and reformatory schools in Britain in the middle of the nineteenth century, the penalties prescribed by law for children convicted of offences were much the same as for adults.

Children convicted of offences in Britain were sent to prison and there mixed with adult criminals of all kinds. The same applied in New South Wales from 1788, since English common law was in force as soon as white settlement began. It was not until the passing of legislation establishing industrial and reformatory schools in New South Wales that the upper age of childhood (for criminal purposes) was fixed at sixteen.<sup>31</sup> This too followed the precedent set by similar legislation in England.<sup>32</sup> The minimum age of criminal responsibility was raised, from the common law age of seven, to eight in 1939 and ten in 1977.<sup>33</sup>

In New South Wales, the upper limit, fixed at sixteen in 1866, was raised to eighteen in 1923.<sup>34</sup> The significance of the upper age limit was that crime committed by a person under that age would generally be dealt with under the specific legislation relating to juvenile crime. Juveniles were still able to be punished as adults, at the discretion of the courts, but this usually was reserved for serious crimes. There are still variations in the upper age of juvenile jurisdiction in other States of Australia.<sup>35</sup>

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<sup>30</sup> G L Williams 'The criminal responsibility of children' Criminal Law Review 1954, p. 493.

<sup>31</sup> See Industrial Schools Act, 1866 (NSW) , section 4 , and Reformatory Schools Act, 1866, (NSW) section 4.

<sup>32</sup> Youthful Offenders Act, 1854 (UK).

<sup>33</sup> See Child Welfare Act, 1939, section 126; Child Welfare (Amendment) Act, 1977 (NSW) .

<sup>34</sup> See Child Welfare Act, 1923 (NSW), section 3.

<sup>35</sup> In New South Wales it was set at sixteen by section 5 of the Neglected Children and Juvenile Offenders Act, 1905 (raised to eighteen in 1923). For Victoria, Queensland and Tasmania it was

As to the age at which a child might be dealt with on non-criminal matters such as neglect or destitution in New South Wales, in the nineteenth century, the upper age had been fixed by the Industrial Schools Act, 1866, at sixteen. This was the same as the criminal limit. Both were raised to eighteen in 1923. The 1866 legislation set no minimum age. However, the Neglected Children and Juvenile Offenders Act, 1905, set a minimum age of five years, while preserving the maximum of sixteen. The minimum age of five was apparently set in the expectation that existing legislation such as the Infant Protection Act, 1904, would cover these situations. In practice, it created problems and there were complaints by the police and others, shortly after the 1905 Act came into force, seeking the removal of the lower limit, although this was not done until 1923.<sup>36</sup>

In summary, the notion of 'juvenile' was a fluid one, which had different values, depending on the particular aspect of the concept involved. It also changed in accordance with shifts in community attitudes. Throughout the nineteenth century, however, the efforts of reformers established conventions for distinguishing between infants who were free from criminal responsibility and juveniles who had a limited responsibility but were best dealt with in systems away from adult criminals.

### *The 'delinquent class'*

Changing societal attitudes to childhood and adolescence in the nineteenth and early twentieth centuries were reflected in the reforms made to juvenile corrections. There were, however serious differences between the official, 'child saving' aims of the

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seventeen, see section 2 of the Children's Court Act 1906 (Vic), section 2 of the Children's Courts Act, 1907 (Qld) and section 4 of the Children's Charter, 1918 (Tas). In Western Australia, the age was set at eighteen. See section 4 of the State Children's Act, 1907 (WA).

<sup>36</sup> See 'Amendments to Neglected Children and Juvenile Offenders Act' SR 5/7750.2. See also Section 3, Child Welfare Act, 1923.

system, and the way it was actually administered. In practice, juvenile delinquents were treated as inferior beings, a 'delinquent class' whose descent into a criminal life was likely. Such a concept could never be openly conceded by politicians or officials because it would have been contrary to humanitarian ideologies that dominated public discourse on child welfare reform. A good example of this appears in the Annual Report of the Girls Industrial School, Parramatta for 1914. The Superintendent refers to the girls there as 'a low-class human type --- a mere bundle of appetites of animalism', and then went on to argue that the program transformed them into worthwhile citizens.<sup>37</sup> Ministers and officials continued publicly to espouse the idea that every child was capable of being saved, if only the proper treatment could be found. The actions and attitudes of those who managed or operated the juvenile correctional system, however, belied the rhetoric.

The notion of a delinquent class was derived from Britain, where in the early nineteenth century, there was great public apprehension at a perceived increase in juvenile crime, and the creation of a dangerous, self-perpetuating class of professional criminals in the large cities, particularly in slum areas of London. The high concentration of Irish in areas like St. Giles and Seven Dials was blamed for their degenerate state.<sup>38</sup> The juvenile criminals who lived in these rookeries, as they were called, constituted 'a separate entity, with its own creed, language and symbols... out of the control and care of society's jurisdictions'.<sup>39</sup> There were similar developments in

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<sup>37</sup> A W Thompson Annual Report, Girls Industrial School and Training Home for Girls, Parramatta, NSW Government Printer, Sydney, 1914, p. 1.

<sup>38</sup> P Ackroyd London: the biography Random House, Sydney, 2001, pp. 137-143.

<sup>39</sup> H Shore, Artful Dodgers: Youth and Crime in early nineteenth-century London, Boydell Press, Woodbridge, UK, 1999, p. 1 and p. 35. See also W A Miles Poverty, Mendacity and Crime upon which the report was founded, Shaw & Sons, London, 1839, p. 45 and W D Morrison Crime and Its Causes, London, 1891, pp. 141-142, as well as evidence given to the Select Committee on Police, 1828, British Parliamentary Papers, 1828, vi, p. 45, quoted in J J Tobias Crime and Industrial Society in the Nineteenth Century, Pelican, London, 1967, p. 59-60.

America.<sup>40</sup> The situation in Sydney was perceived to be similar, based on the assumption that a substantial part of those transported were members of a criminal class which lived entirely off the proceeds of crime. That view has been challenged by Michael Sturma, who quotes evidence to support the view that most transportees were not members of such a class.<sup>41</sup> In the 1850s, Parliamentary Select Committees claimed that there existed in Sydney a 'criminal class' associated with lodging houses full of young men. The juvenile members of this class 'infested the streets of Sydney, and were growing up to be 'a curse to society', and the situation was 'pregnant with the most dangerous consequences to society'.<sup>42</sup> In fact, there was apprehension that, in the space of one lifetime, life on Sydney streets was reproducing all the worst features of life in the cities of the old world.<sup>43</sup>

In 1851, after transportation of convicts ceased, it was estimated that ex-convicts accounted for fifty per cent of those tried for serious offences.<sup>44</sup> Because six times as many men were transported as women, there was also a gender imbalance.<sup>45</sup> As a result, there was a contemporary perception that many convict women engaged in

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<sup>40</sup> P Parsloe *Juvenile Justice in Britain and the United States: The balance of rights and needs* Routledge & Kegan Paul, London, 1978, pp. 3-4. See also A M Platt, *The Child Savers*, pp. 27-34 and p. 139.

<sup>41</sup> See D Philips *Crime and Authority in Victorian England: The Black Country 1835-60* Croom Helm, London, 1977, p. 287, quoted by M Sturma *Vice in a Vicious Society*, University of Queensland Press, St Lucia, 1983, p. xi.

<sup>42</sup> 'Report of the Select Committee on the Proposed Nautical School' 24 November, 1854, *V&PLCNSW* 1854 vol. 2, pp. 137-138; 'Report of the Select Committee on Destitute Children', 1 December, 1854, *V&PLCNSW* 1854, vol. 2, p. 175; 'Report from Commission of Inquiry into the state of schools in New South Wales', *V&PLCNSW* 1855, vol. 1, p. 1024; 'Report of the Select Committee on the Condition of the Working Classes in the Metropolis' *V&PLANSW* 1859-60 vol. 4, p. 1267. See also Evidence of John McLerie, Superintendent of Police for the city of Sydney, 1 September, 1852, 'Progress Report of the Select Committee on Destitute Children', vol. 2, p. 1; 'Report of the Select Committee on the Condition of the Working Classes in the Metropolis', pages 6 and 12, also the evidence of the Inspector-General of Police, John Mc Lerie, at pp. 1289-90 and p. 1452. See also *SMH* 26 May, 1859.

<sup>43</sup> 'Report of the Select Committee on the Condition of the Working Classes in the Metropolis', p. 10. In 1863, when a Bill to establish reformatories was tabled in the New South Wales Parliament, its preamble referred to the 'prevalence of youthful depravity, vagrancy and crime in our cities'. Richard Sadleir, speaking on the introduction of a Bill for the establishment of Juvenile Reformatories, 29 December, 1863. See *SMH* 9 January, 1864.

<sup>44</sup> See evidence of Stuart Donaldson to Select Committee on Transportation(UK) *Parliamentary Papers*, 186, vol. 13, (286) p. 72.

prostitution, and passed on the tradition to their children. Robson estimated that about one fifth of all Irish females transported were prostitutes.<sup>46</sup> Not all historians agree with this view. Michael Sturma, for example, has disputed the incidence of prostitution, pointing out that the identification of prostitutes was shaped by the moral attitudes of the ruling class, which were very different from those of the lower orders. Thus, a woman living with a man outside marriage was still regarded as a prostitute.<sup>47</sup> The convict system was marked by extremes of violence by both convicts and their gaolers, so it was hardly surprising that those administering the juvenile correction system in the nineteenth century managed inmates of institutions by using a coercive system based on military discipline.<sup>48</sup>

There is also the fact that a significant proportion of those transported were Irish. In 1837, it was estimated that about a third of the population of New South Wales was Irish, nearly all of them convicts or emancipated convicts.<sup>49</sup> The Irish were commonly regarded by the English and colonial authorities as savages. Irish convicts regarded themselves as victims. Irish female convicts were very poorly treated because, as Dixon has pointed out, the standing of women generally in society in Ireland itself was extremely low and this tended to be reproduced in the new world, especially since they had to be seen as 'standing lower' than Irish male convicts.<sup>50</sup> Much of the evidence about juvenile delinquency given to select committees referred to that part of

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<sup>45</sup> L L Robson The Convict Settlers of Australia Melbourne University Press, Melbourne, 1965 (1994 edition) p. 4

<sup>46</sup> M Dixon The Real Matilda: woman and identity in Australia 1788 to the present Penguin, Melbourne, 1976 (1982 edition), p. 134. L L Robson The Convict Settlers of Australia p. 67.

<sup>47</sup> H Mayhew & H Bracebridge 'The Prostitution Class Generally' in H Mayhew (ed.) London Labour and the London Poor, London, 1862, vol. 4, pp. 35-36, quoted in M Sturma 'The eye of the beholder: The stereotype of women convicts, 1788-1852' Labour History no 34, May, 1978, p. 6.

<sup>48</sup> H Reynolds 'Violence in Australian History' in D Chappell et al (eds.) Australian Violence. Contemporary Perspectives Australian Institute of Criminology, Canberra, 1991, p. 13.

<sup>49</sup> J D Lang Transportation and Colonization, or the causes of the comparative failure of the transportation system in the Australian Colonies ; with suggestions for ensuring its future efficiency in subserviency to extensive colonization, A J Valpy, London, 1837, pp. iv-v.

Sydney in the Rocks and Kent Street areas, near the wharves, where there was a concentration of Irish. One survey undertaken by the police even included the religion of those surveyed. About 60 per cent were Catholic, a much higher percentage than in Sydney generally.<sup>51</sup> Thus the idea of a delinquent class was well established in colonial political culture. Entrenched fears of offenders, even juvenile offenders, shaped policing and punishment. This thesis argues that these attitudes continued to shape juvenile corrections throughout the twentieth century.

### *Scope of the thesis*

During the period covered by this thesis, the New South Wales juvenile correction system experienced a considerable increase in the numbers of children passing through it. In the first year of operations of the Neglected Children and Juvenile Offenders Act, 1905, only about twelve hundred children appeared before children's courts.<sup>52</sup> By the 1980s, annual figures of up to sixteen and a half thousand appearances were being recorded.<sup>53</sup> There was thus a very large expansion of the system during this period. By the 1980s, it amounted to a very large State undertaking.

Not a great deal has been written about juvenile corrections in the twentieth century, particularly the period from 1940 onwards. Most historians have regarded the

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<sup>50</sup> M Dixon *The Real Matilda: Woman and Identity in Australia 1788 to the present* pages. 143, 155, 167.

<sup>51</sup> Evidence by John McLerie: Return of Prostitutes and Vagrants under 16 years of age. 'Report of the Select Committee on the Condition of the Working Classes in the Metropolis', p. 1380.

<sup>52</sup> In the Annual Report of the State Children's Relief Board, it was recorded that between October, 1905 and 30th April, 1906, 728 children appeared before courts. An extrapolation of this figure to a full year yields about 1200. Annual Report, State Children's Relief Board 1906, *NSWPP* 1906, vol. 1, p 745 et seq., p. 19. The figures for 1907 were 1,608 and 1,401 for 1908. See *Annual Report, State Children's Relief Board* 1908, NSW Government Printer, Sydney, 1909, p. 26.

<sup>53</sup> Figures quoted in the Annual Report for 1987 were as follows: 1975: 19,500 appearances, 1985: 16,500 and 1987: 14,500. See Annual Report Department of Youth and Community Services 1987 *NSWPP* 1986-87-88, vol. 35, no 6565, p.22.

nineteenth century as the period of significant change.<sup>54</sup> Despite that emphasis, some have touched on aspects of juvenile corrections in the twentieth. This has often been in works dealing with much broader themes of child welfare, social welfare, poverty and the law relating to children.<sup>55</sup> A number of journal articles have dealt with particular aspects of the system, for example those which have referred to developments in juvenile corrections as they related to the wider fields of eugenics, criminal justice and State bureaucracy.<sup>56</sup> Others have dealt with the operation of selected institutions such as Gosford, Newcastle, Biloela and Parramatta, during particular periods of time.<sup>57</sup>

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<sup>54</sup> B Dickey "The Establishment of Industrial Schools and Reformatories in N S W 1850- 1875" JRAHS vol. 54 part 2 June 1968; R Van Krieken 'Children and the State: Child Welfare in New South Wales 1890-1915, Labour History, no 51, November 1986; G Scrivener 'Rescuing the Rising Generation'. Industrial Schools in New South Wales 1850-1910' Ph.D. Thesis, University of Western Sydney, 1996; J Ramsland, Children of the Back Lanes: Destitute and Neglected Children in Colonial N S W NSW University Press Sydney, 1986; J Ramsland 'Mary Carpenter and the Child- Saving Movement' Australian Social Work vol. 33, no 2, June, 1980; J Ramsland 'The Development of Boarding- out Systems in Australia: A Series of Welfare Experiments in Child Welfare 1860-1910' JRAHS vol. 60 part 3 September 1974; S Garton 'Frederick William Neitenstein: Juvenile Reformatory and Prison Reform in New South Wales 1878-1909' JRAHS vol. 75 part 1 June 1989;

<sup>55</sup> B Dickey No Charity There: A Short History of Social Welfare in Australia Nelson, Melbourne, 1981; R Van Krieken Children and the State; R J Lawrence Professional Social Work in Australia ANU Press, Canberra, 1965; D Peyser 'A Study of the History of Welfare Work in Sydney from 1788 to about 1900' JRAHS vol. 25, parts 1 and 2, 1939; E S L Govan 'Public and Private Responsibility in Child Welfare in N S W 1788- 1887' Ph.D. Thesis, University of Chicago 1951; A O'Brien, Poverty's Prison: The Poor in New South Wales 1880-1918 Melbourne University Press, Melbourne, 1988; C Picton & P Boss Child Welfare in Australia: An Introduction Harcourt Brace Jovanovich, Sydney, 1981; S Garton Out of Luck Allen & Unwin, Sydney, 1990; R D Blackmore The Children's Court and Community Welfare in New South Wales Longman Cheshire. Melbourne, 1989; J A Seymour, Dealing with Young Offenders Law Book Coy, Sydney, 1968.

<sup>56</sup> B Dickey, 'Care for Deprived, Neglected and Delinquent Children in New South Wales 1901-1915' JRAHS vol. 63, 1977; S Garton 'Sir Charles Mackellar: Psychiatry, Eugenics and Child Welfare in New South Wales 1900-1914' Historical Studies vol. 22 no 86 April 1986; S Garton 'The Rise of the Therapeutic State: Psychiatry and the System of Criminal Jurisdiction in New South Wales 1890-1940' Australian Journal of Politics and History vol. 32 no 3, 1986; R Van Krieken 'State Bureaucracy and Social Science 1915-1940'; M Mowbray 'Restructuring Child Welfare: Deinstitutionalisation and Austerity in the NSW Department of Youth and Community Services' Australian Social Work September 1983, vol. 3 no 3; J A Seymour 'Children's Courts in Australia' in A Borowski & J M Murray Juvenile Delinquency in Australia Methuen, North Ryde NSW, 1985.

<sup>57</sup> J Ramsland & G Cartan, 'The Gosford Farm Home for Boys Mt. Penang, 1912-1940' JRAHS vol. 75 part 1 June 1989; G Cartan 'Farm Home for Boys, Gosford 1912- 1939'. B. Ed Studies Thesis, University of Newcastle 1986; A R Shorten 'Nautical School Ships in Australia 1850- 1920'; N Williamson 'Hymns, Songs and Blackguard Verses' Life in the Industrial and Reformatory Schools for Girls in NSW Part I: 1867 to 1887' JRAHS vol. 67, part, March 1982; N Williamson 'Laundry Maids or Ladies ? Life in the Industrial and Reformatory Schools for Girls in NSW Part II: 1887 to 1910' JRAHS vol. 68, part, March 1983.

Nevertheless, no comprehensive history of the development of the system in the twentieth century exists, and it is this gap that the present work aims to fill.

*Different interpretations of the juvenile correction system*

There are a number of schools of thought in the historiography of juvenile corrections. The ones examined here are the child saving model, the social control model, a Foucaultian interpretation, the therapeutic approach and also a bureaucratic model. These schools are by no means mutually exclusive. For example, a leading historian of American child welfare, Anthony Platt, while paying due deference to the role of the child saving idealism of a number of reformers, claimed that systemic changes were fundamentally based on motives of social control. Nonetheless, dividing the historiography into various schools of thought helps clarify some of the major ways in which historians have seen the history of juvenile corrections.

The deliberate focus of this work is the juvenile correction system. That system cannot, however, be separated easily from the broader canvas of social welfare services. As the thesis shows, both criminal and non-criminal juveniles were mixed together in industrial schools, despite the legislative intent, embodied in the 1866 statutes, that this should not be the case. That legislation established the State, for the first time, as a major player in the provision of juvenile corrective services, a trend which was accentuated by the demise of the State Children's Relief Board in 1923. The new Child Welfare Department then began to expand into broader social welfare services. This inevitably led to a decline in the parallel services provided by the non-government sector, especially since all subsidisation for them ceased in 1922. With a



couple of exceptions, they avoided the juvenile corrections area and concentrated on broader social welfare activities, especially the care of dependent children.<sup>58</sup>

### *Child saving*

A number of historians have argued that the establishment of juvenile correction systems in the middle of the nineteenth century, both in New South Wales as well as other Australian colonies, was a consequence of the growth of a child saving ideal.<sup>59</sup> In the nineteenth century, a strong child saving movement developed in the United States and Britain. American child welfare historians have highlighted the conventional liberal view that the reforms to the juvenile correction system were generated by members of the child saving movement.<sup>60</sup> Other historians have also seen reforms at the beginning of the twentieth century such as juvenile courts as inspired by child saving humanitarian principles, linked to the Progressive movement in America.<sup>61</sup>

British historians have seen similar child saving ideals as instrumental in the reform of the juvenile correction system. To them, the nineteenth century child reform movement was humanitarian and evangelical in nature. These views tend to accept

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<sup>58</sup> The exceptions included the Magdalenes at Ashfield and Tempe run by the Catholic Church, and Pallister Girls Home, operated by the Anglican Church at Greenwich.

<sup>59</sup> See B Dickey *No Charity There: A Short History of Social Welfare in Australia* Allen & Unwin, Sydney, 1987, p. 99 and p. 119; J Ramsland 'Henry Parkes and the development of industrial and reformatory schools in colonial New South Wales' *Australian Social Work*, vol. 35, no 4, December, 1982, p.3; S Garton 'Frederick William Neitenstein: Juvenile Reformatory and Prison Reform in New South Wales 1878-1909', p. 53; J A Seymour, *Dealing with Young Offenders*, p. 49 and p. 186.

<sup>60</sup> A M Platt, *The Child Savers*, p. xiv; S Schlossman & S Wallach, 'The Crime of Precocious Sexuality: Female Delinquency in the Progressive Era' *Harvard Educational Review* February 1978 Vol. 48 no 1, p.68; L Ashby, *Saving the Waifs: Reformers and Dependent Children 1890- 1917* p. 39; P Parsloe *Juvenile Justice in Britain and the United States: The balance of rights and needs*, p. 107.

<sup>61</sup> A T Scull, *Decarceration: Community Treatment and the Deviant: a Radical View*, Prentice Hall, Englewood Cliffs, N J , 1977, pp. 146-149; S P Caine, 'The Origins of Progressivism' in L L Gould (ed.) *The Progressive Era*, Syracuse University Press, New York, 1974, p. 26; M J Sedlak, 'Youth Policy and Young Women 1870-1972' *Social Services Review* vol. 56 no 3 September, 1982, p. 456; C Kelsey, 'The Juvenile Court of Chicago and its work' *Annals of the American Academy of Political and Social Science* vol. 17 March 1901, p. 299; B Flexner, 'The Juvenile Court-Its Legal Aspect' *Annals of the American Academy of Political and Social Science* vol. 36, July-December, 1910, p. 49.

uncritically the accounts of participating reformers. This was despite the fact that in the period leading up to the major reforms of the mid nineteenth century, there was considerable evidence to support motives of social control being the dominant factor.<sup>62</sup> As late as 1946, in the official Curtis Report to the United Kingdom Government, child saving principles were still being emphasised.<sup>63</sup>

The child savers believed delinquent children were the product of undeserving and immoral families, exacerbated by poverty, alcohol, and slum life. They concluded that children could be saved by removing them from the evil influence of their environment and training them in habits of industry, which would enable them to become worthwhile adults. They pointed to the supposedly excellent results achieved in reformatories for delinquent children established in the early 1800s in a number of countries in Europe. Particularly influential were the Agricultural Colony at Mettray in France and the Rauhe Haus in Germany. By 1884, child savers in Britain had established almost two hundred and reformatories and industrial schools.<sup>64</sup> Politicians sympathetic to these ideals considered the child savers were responsible for a substantial reduction in juvenile crime. They were credited with ending the training of boys as professional thieves, and breaking up the gangs in London and the larger towns.<sup>65</sup>

Attempts to set up some form of juvenile correction system in New South Wales were inextricably linked to changes in the way juvenile offenders were dealt with in

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<sup>62</sup> M May, 'Innocence and Experience: The Evolution of the Concept of Juvenile Delinquency in the mid-Nineteenth Century' *Victorian Studies* vol. XVII no 1 September 1973, pp. 7-8 and p. 12; D E Lord, 'Changes in Attitudes Towards the Treatment of Juvenile Offenders in Great Britain 1823-1908' *Australia and New Zealand Journal of Criminology*, vol. 1, no. 4, December 1968, p. 201; P Parsloe, *Juvenile Justice in Britain and the United States: The balance of rights and needs*, p. 107; P Bartley, *Prostitution, Prevention and Reform in England 1860-1914* Routledge, London, 2000, p. 39.

<sup>63</sup> Great Britain Home Office, *Report of the Care of Children Committee* (M Curtis, chair), Cmd 6922, HMSO, London, 1946, p. 14.

Britain. Thus, the model of industrial and reformatory schools adopted for New South Wales followed the scheme used in Britain from the 1850s. There was, however, a major departure from that model, which otherwise served as the template for the local system. In Britain most industrial and reformatory schools were run by charitable organisations, with the government subsidising on a per capita basis. The same system might have been feasible here, but the move for establishment of reformatories coincided with a major sectarian conflict over the withdrawal of funding from church schools, and the establishment of a secular state education system. In part, the withdrawal of funds from Roman Catholic schools was fuelled by fears about the Irish element in the community. Antagonism to state funding of denominational education, and consequently church homes for children, persisted for more than a century. When the possibility of subsidising church homes to care for delinquent girls was raised in 1902, and later by Mackellar, it had to be abandoned because of sectarian opposition.<sup>66</sup> So, even though the 1866 legislation, like its English model, included nominal provision for private industrial schools, no funds were provided, and several proposals by the Catholic Church to establish them were refused.<sup>67</sup>

This was in marked contrast, not only to the system operating in Britain, but in all other Australian colonies. There, industrial schools, and some reformatory schools, were generally operated by non-government organisations, mostly churches, up to the

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<sup>64</sup> Great Britain Home Office, Report from the Commissioners on Reformatories and Industrial Schools 1884, British Parliamentary Papers: Crime and Punishment : Juvenile Offenders, vol. 4, Irish University Press, Shannon, 1970, p. ix.

<sup>65</sup> ibid., p. x.

<sup>66</sup> Sir Arthur Renwick and Sir Normand McLaurin. NSWPDLC 22 October, 1902, pp. 3652-54. See also C K Mackellar The Treatment of Neglected and Delinquent Children in Great Britain, Europe and America, NSW Government Printer, Sydney, 1913, p. 6.

<sup>67</sup> B R Wise, 15 October, 1902, NSWPDLC, p. 3355. See also Archbishop Polding to State Governor Sir John Young 16 September, 1861, SR 4/988.2; 'Orphan Schools, Parramatta' V&PLANSW 1885-86 vol. 2, p 801 et seq. ; E S L Govan 'Public and Private Responsibility in Child Welfare in New South Wales 1788-1887', p. 207.

middle of the twentieth century.<sup>68</sup> So the New South Wales system was one which featured State control, and as it expanded in the twentieth century, it became a large centralised bureaucratic unit.

There is no doubt that the latter part of the nineteenth century and the first few years of the twentieth have frequently been characterised as a period during which there was a movement in Australia directed towards 'child saving'.<sup>69</sup> A number of prominent Australian historians, including Brian Dickey, John Ramsland, Stephen Garton and John Seymour, have drawn attention to the child-saving origins of the child welfare reforms of the nineteenth century.<sup>70</sup>

Historians are however divided on when the child saving ideal began to wane. Robert Van Krieken maintains that the influence of the child saving ideal declined after 1914 and although the policies of Alexander Thompson sustained it through the 1930s, it was extinguished by 1940.<sup>71</sup> Many other historians have argued that the child saving ideal was influential until the 1970s. It was then that a 'new scepticism' encouraged governments to abandon the child saving ideal and embrace the juvenile justice model,

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<sup>68</sup> In relation to Victoria, see D Jaggs, Neglected and Criminal: Foundations of Child Welfare Legislation in Victoria, Phillip Institute of Technology, Melbourne, 1986, p. 72. See also M Carroll 'Juvenile Justice in Victoria' Criminology Australia, vol. 4, no 1, July/August 1992p. 2. For South Australia, see C M Davey Children and their law-makers, pp. 23-24. In relation to Western Australia, see F Tay, 'The Administration of Social Service Provisions for Under-privileged children in Western Australia 1947-54', in Roe J (ed.) Social Policy in Australia; Some Perspectives 1901-1975, Cassell, Sydney, 1976, p. 303. For Tasmania, see S Petrow 'Arabs, Boys and Larrikins: Juvenile Delinquents and their treatment in Hobart 1860-1896', Australian Journal of Legal History vol. 2, no 1, 1996, p. 51. For Queensland, see L Forde (Chair) Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions, Queensland Government Printer, Brisbane, 1999, p. 41, and also M Carroll 'Juvenile Justice in Queensland', Criminology Australia vol. 4, no 1, July/August 1992, p. 5.

<sup>69</sup> A M Platt, The Child Savers, p. xiv; D E Lord, 'Changes in Attitudes Towards the Treatment of Juvenile Offenders in Great Britain 1823-1908' pp. 201-206; M May, 'Innocence and Experience: The Evolution of the Concept of Juvenile Delinquency in the mid-Nineteenth Century', p.7.

<sup>70</sup> Dickey's remarks refer to the period 1880 to 1914. B Dickey No Charity There: A Short History of Social Welfare in Australia, p. 99 and p. 119; J Ramsland 'Henry Parkes and the development of industrial and reformatory schools in colonial New South Wales', p.3; S Garton 'Frederick William Neitenstein: Juvenile Reformatory and Prison Reform in New South Wales 1878-1909', p. 53; J A Seymour, Dealing with Young Offenders, p. 49 and p. 186.

<sup>71</sup> R Van Krieken, Children and the State, p. 111. For his views on Thompson, see R Van Krieken 'State Bureaucracy and Social Science 1915-1940', p. 32.

which emphasised parity with adults in sentencing and procedural fairness.<sup>72</sup> This work shows that child saving remained the official policy goal, underpinning all child welfare legislation from 1905 to the 1960s. The preservation of the child saving ideal was, however, superficial and there was a serious divergence between the official aims of the juvenile corrections system and the way it was administered.

### *Social control*

In contrast to the 'child saving' historians, a substantial body of historians have sought deeper motives behind publicly stated ideals. They see the desire for social control at the heart of juvenile correction policy. Stanley Cohen has defined social control as 'the organised ways in which society responds to behaviour and people it regards as deviant, problematic, worrying, threatening, troublesome or undesirable in some way or other'.<sup>73</sup>

A number of British historians have placed social control at the core of child welfare reform initiatives. They acknowledge the importance of the child saving and humanitarian ideals shaping reforms, but argue that social control was the dominant motive for the reforms of the mid nineteenth century.<sup>74</sup> The purpose of humanitarianism

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<sup>72</sup> J A Seymour, Dealing with Young Offenders, p. 163. In relation to Tasmania see M Carroll 'Juvenile Justice in Tasmania' Criminology Australia vol. 4, no 1, July/August 1992, p. 11. For Western Australia, see M Bosworth 'Child welfare and the law: "Dependent", "neglected" and "delinquent" children in Western Australia 1907-1990' in P Hetherington & P Maddern (eds.) Sexuality and Gender in History Optima Press, Perth, 1993, p. 256, and also M Carroll 'Juvenile Justice in Western Australia' Criminology Australia, p. 14. In relation to Queensland, see I O'Connor 'Juvenile Justice: New Queensland Legislation' Legal Service Bulletin vol. 10, no 2, April, 1985, p. 76. In relation to Victoria, see D Jaggs Neglected and Criminal: Foundations of Child Welfare Legislation in Victoria, p.2. See also S L R Anleu 'Lifting the Lid: Perspectives on social control, youth crime and juvenile justice' in C Simpson & R Hil Ways of Resistance: Social control and young people in Australia Hale & Iremonger Sydney, 1995, p. 24.

<sup>73</sup> S Cohen Visions of Social Control: Crime, punishment and classification Polity Press, Cambridge, 1985, p. 1.

<sup>74</sup> R Harris & D Webb Welfare, Power and Juvenile Justice: The Social Control of Delinquent Youth, Tavistock, London, 1987, p 7 & p. 11; S Magarey 'The Invention of Juvenile Delinquency in Early Nineteenth Century England' Labour History vol. 34 May 1978, p. 11; A Morris & M McIsaac Juvenile Justice ? The Practice of Social Welfare Heinemann, London, 1978, p. 7. Masud Houghghi, Peter King, Michelle Cale held similar views. M Houghghi 'Democracy and Delinquency: A note on increasing demand for secure accommodation for persistent delinquents' British Journal of Criminology vol. 18 (4) 1978, p 393; P King 'The rise of Juvenile Delinquency in England 1780-1840: changing patterns of

was to achieve a stable social order, deference to authority and social progress, through class co-operation rather than class conflict.

In the early nineteenth century in Britain, witnesses at Parliamentary inquiries claimed there were thousands of boys under seventeen years 'daily engaged in the commission of crime' in London.<sup>75</sup> Reformers feared that a dangerous class of professional criminals was being created. Such a class constituted 'a separate entity, with its own creed, language and symbols... out of the control and care of society's jurisdictions'.<sup>76</sup> Moreover, this class re-produced itself, because juvenile criminals were both the progeny and the progenitors of professional criminals.<sup>77</sup>

American historians, most notably Anthony Platt and Phyllida Parsloe, have also supported the social control approach, arguing that the ruling classes were alarmed by the existence of a criminal class.<sup>78</sup> In relation to the early twentieth century, David Rothman has drawn attention to the fact that adherents of the progressive movement were quite open about expanding social control in the interests of improving society generally.<sup>79</sup> Other historians, including Andrew Scull, have asserted that social control

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perception and prosecution' Past & Present no 160 August, 1998, . 165; M Cale 'Girls and the perception of sexual danger in the Victorian reformatory system' History 1993, vol. 78.

<sup>75</sup> 'Second Report from the Committee on the state of the police of the metropolis' (ordered to be printed by the House of Commons, July, 1817) British Parliamentary Papers, 1817 p. 327. See also British Parliamentary Papers 1819, vol. 7, pp. 158-162, quoted in L L Robson, The Convict Settlers of Australia, p. 14.

<sup>76</sup> H Shore, Artful Dodgers: Youth and Crime in early nineteenth-century London, p. 1 and p. 35. See also W A Miles Poverty, Mendacity and Crime upon which the report was founded, p. 45 and W D Morrison Crime and Its Causes, London, 1891, pp. 141-142, as well as evidence given to the Select Committee on Police, 1828, British Parliamentary Papers, 1828, vi, p. 45, quoted in J J Tobias Crime and Industrial Society in the Nineteenth Century, p. 59-60.

<sup>77</sup> H Worsley Juvenile Depravity, pp. 119-120. M Carpenter 'On the importance of statistics... with returns from female reformatories' Journal of the Royal Statistical Society, vol. 20, 1857, p. 35.

<sup>78</sup> A M Platt, The Child Savers, p. xx, pp. 27-34 and p. 139; P Parsloe Juvenile Justice in Britain and the United States: The balance of rights and needs, pp. 3-4; J M Holl Juvenile Reform in the Progressive Era, Cornell University Press, London, 1971, p. 13; K W Jones Taming the troublesome child: American families, Child Guidance, and the limits of psychiatric authority Harvard University Press, Cambridge, Mass., 1999, p. 35; S Schlossman Love and the American Delinquent University of Chicago Press, Chicago, 1977, p. 36.

<sup>79</sup> D J Rothman Conscience and Convenience, Little, Brown & Coy, Boston, 1980, p. 6.

motives were behind not only the reforms of the nineteenth and early twentieth centuries, but also the much later diversion reforms of the 1960s.<sup>80</sup>

Australian historians, including Anne O'Brien and John Seymour, have argued that the dominant motive behind the juvenile correction system in both the nineteenth and twentieth century Australia was social control.<sup>81</sup> In New South Wales in the middle of the nineteenth century there was a perception that there existed a class of incorrigibles that was beyond influence.<sup>82</sup> Certainly influential members of the British government regarded colonial society as a 'monstrous excrescence'.<sup>83</sup> It was claimed that, as in London, there existed in Sydney a 'criminal class', the juvenile members of which were growing up to be 'a curse to society', and the situation was 'pregnant with the most dangerous consequences to society'.<sup>84</sup> In fact, reformers feared that, in the space of one lifetime, life on Sydney streets was reproducing all the worst features of

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<sup>80</sup> A T Scull Decarceration: Community Treatment and the Deviant: a Radical View, p. 161. John Hylton, James Austin and Barry Krisberg have made similar observations. J H Hylton 'Rhetoric and reality: A critical appraisal of community correctional programs' Crime and Delinquency vol. 28, no 2, 1982, pp. 341-373; J Austin & B Krisberg 'The unmet promise of alternatives to incarceration' Crime and Delinquency vol. 28 no 3, 1982, pp. 374-409.

<sup>81</sup> A O'Brien Poverty's Prison: The Poor in New South Wales 1880-1918, p. 145 and p. 165; J A Seymour Dealing with Young Offenders, p. 35. See also I O'Connor & P Sweetapple Children in Justice Longman Cheshire, Melbourne, 1988, p. 6; C Picton & P Boss Child Welfare in Australia: An Introduction, p. 169; N Williamson 'Factory to Reformatory: the founding and the failure of industrial and reformatory schools for girls in nineteenth century New South Wales', Educational Enquiry vol. 1, no 3, November, 1978, p. 128; E Windshuttle 'Discipline, domestic training and social control: the female school of industry, Sydney, 1826-1847' Labour History no 39, November, 1980, pp. 1-2; G Scrivener 'Parental imposition or police coercion? the role of parents and police in committals to the industrials schools in New South Wales 1867-1905' JRAHS vol. 86, part 1, June, 2000, p. 36; In relation to Victoria, see D Jaggs Neglected and Criminal: Foundations of Child Welfare Legislation in Victoria, p. 2, and R J W Selleck 'The origins of industrial schooling in Melbourne 1864-1866' Education, Research and Perspectives vol. 15, no, June, 1988, p. 25. For South Australia, see M Barbalet Far from a low gutter girl: The forgotten world of state Wards, South Australia 1887-1940, p. 191; For Queensland, see L Forde (chair) Report of the Commission of Inquiry into abuse of children in Queensland institutions, p. 40. In relation to Tasmania, see S Petrow 'Arabs, Boys and Larrikins: Juvenile Delinquents and Their Treatment in Hobart, 1860-1896' p. 37; J Kociumbas Australian Childhood: A History, Allen & Unwin, Sydney, 1997, p. 112.

<sup>82</sup> J B Hirst Convict Society and its enemies: A history of early New South Wales, pp. 71-72.

<sup>83</sup> J B Hirst Convict Society and its enemies: A history of early New South Wales, p. 25; P Robinson The Hatch and Brood of Time, Oxford University Press, Melbourne, 1985, p. 3.

<sup>84</sup> 'Report of the Select Committee on the Condition of the Working Classes in the Metropolis' V&PLANSW 1859-1860 vol. 4, p. 1267 et seq., pages 6 and 12, and the evidence of the Inspector-General of Police, John Mc Lerie, at pp. 1289-90 and p. 1452. See also 'Report of the Select Committee on the Proposed Nautical School' V&PLANSW 1854, vol. 2, , p. 138.

life in the cities of the old world.<sup>85</sup> Jan Kociumbas, writing of the 1870s, claimed there was a belief then that urban waifs engaged in street trading were ‘an alien menace, while those in institutions were virtually a race apart’.<sup>86</sup> Similar fears were expressed by the Attorney General, B R Wise, during the debate on a State Children’s Bill in 1902.<sup>87</sup>

### *Foucaultian interpretation*

Stanley Cohen has observed that ‘to write today about punishment and classification without Foucault, is like talking about the unconscious without Freud’.<sup>88</sup> Historians have analysed Foucault’s approach to the development of the juvenile correction systems in the nineteenth and twentieth centuries, including the decarceration initiatives of the 1960s.<sup>89</sup> Foucault himself made no claim to any general theory explaining juvenile corrections.<sup>90</sup> A central theme of his work, however, distinguishes his views from those of the social control historians. Foucault considered that institutions did not repress people labelled as deviants but instead produced ‘types’ (criminals, delinquents, lunatics) who were inscribed in relationships of knowledge, power,

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<sup>85</sup> Report of the Select Committee on the Condition of the Working Classes in the Metropolis, p. 10.

<sup>86</sup> J Kociumbas Australian Childhood: A History, p. 112.

<sup>87</sup> NSWPDLC 15 October, 1902, p. 3355.

<sup>88</sup> S Cohen Visions of Social Control: Crime, punishment and classification, p. 10.

<sup>89</sup> S Cohen ‘Social Control Talk: Telling Stories about Correctional Change’ in Garland D & Young P (eds.) The Power to Punish: Contemporary Penalty and Social Analysis Heinemann, London, 1983, and Visions of Social Control: Crime, punishment and classification; S Cohen & A T Scull Social Control and the State Martin Robertson, Oxford, 1983; A T Scull Decarceration: Community Treatment and the Deviant: a Radical View, and ‘Community Corrections: Panacea, Progress or Pretence?’ in Garland D & Young P (eds.) The Power to Punish: Contemporary Penalty and Social Analysis; D Garland Punishment and Welfare: A History of penal strategies Gower, Aldershot, 1985 and Punishment and modern society: a study in social theory Clarendon Press, Oxford, 1990; J Donzelot The Policing of Families, Pantheon, New York, 1979; R Castel The Psychiatric Society Columbia University Press, New York, 1981; N Kittrie The right to be different, Johns Hopkins Press, Baltimore, 1971; T Szasz The Manufacture of madness Dell, New York, 1970; M L Gross The Psychological Society Simon & Schuster, New York, 1978; P Schrag Mind control Marion Boyers, London, 1980.

<sup>90</sup> M Foucault Discipline and Punish Penguin, London, 1977, p. 138; B Smart Michel Foucault Ellis Horwood, Chichester, 1985, p. 80; M Cousins & A Hussain Michel Foucault Macmillan, London, 1984, p. 2.



surveillance and resistance.<sup>91</sup> Power, in Foucault's view, was not imposed from above, but was diffuse, generated by a multiplicity of small localised actions.<sup>92</sup>

Cohen and Barry Smart have both highlighted Foucault's rejection of the 'humanitarian' interpretation of the new penalty, in favour of the notion that the real object of the change was not to punish less, but better.<sup>93</sup> Both assert that Foucault's analysis of individualisation of treatment through the use of social sciences such as social work and psychiatry sees new treatment policies not as a humanitarian or scientific advance, but rather another configuration of power.<sup>94</sup> Foucault clearly shares the scepticism of social control historians about humanitarian reforms. Where the social control historians, however, see the reformers as the instigators of a coercive, dominant ideology, Foucault sees the humanitarian discourses and practices as the consequence of diverse experiments in the government of populations.

Foucault makes it clear that one purpose of modern incarceration is to use labour and work discipline to correct indiscipline. It was not something that should be seen as having been imposed by a dominant class upon an inferior one, but as something that received general assent from society.<sup>95</sup> He particularly applied this view to the pioneer French juvenile reformatory, Mettray.<sup>96</sup> His observations on Mettray are of special importance, because of the way in which the regime there was revered and copied in Britain and America, and later in other countries. Even if individual systems in other countries did not follow every Mettray practice, many of its essentials were

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<sup>91</sup> Danaher G, Schirato T & Webb J Understanding Foucault Allen & Unwin, Sydney, 2000, p. 61 ; B Smart Michel Foucault , p. 77.

<sup>92</sup> M Foucault Discipline and Punish , p. 26 and p. 138.

<sup>93</sup> S Cohen Visions of Social Control: Crime, punishment and classification , p. 24; B Smart Michel Foucault, p. 24; M Foucault Discipline and Punish , pp. 78-82.

<sup>94</sup> S Cohen Visions of Social Control: Crime, punishment and classification , pages 36, 101, 158; B Smart Michel Foucault , p. 25; M Foucault Madness and Civilization: A History of Insanity in the Age of Reason Tavistock, London, 1977, p. 227.

emulated. For Foucault, Mettray was an example of a ‘carceral archipelago’, that is, a power system under which regimes in prisons also developed contemporaneously in other institutions, including the school, the army, workshops, hospitals, and reformatories, legitimising and making normal the power to punish.<sup>97</sup>

Specifically, Mettray placed inmates under ‘permanent observation’, and controlled them through a rigid timetable. There was also regimentation of bodily movements and training in habits of industry, the general object being to produce ‘docile and capable’ adults.<sup>98</sup> The views of Australian historian Robert Van Krieken are close in sentiment to this school, but he has drawn attention to an important distinction. This is, that although there might appear to be strong support for a ‘social control’ explanation of the juvenile correction system, there was a difference. He claims that increased State intervention in the lives of the under-privileged class, for example, the removal of children from dysfunctional families, a feature of the early twentieth century, was in fact assented to by the very class of people affected.<sup>99</sup>

### *Therapeutic model*

In the early twentieth century, as Garton has pointed out, there were movements in many countries which sought to bring criminal behaviour within the scope of a medical model of treatment.<sup>100</sup> In Britain, the work of the noted psychiatrist, Cyril Burt, was

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<sup>95</sup> M Foucault *Discipline and Punish*, p. 81 and p. 102; Danaher G, Schirato T & Webb J *Understanding Foucault* p. 65; S Cohen *Visions of Social Control: Crime, punishment and classification*, p. 25; B Smart *Michel Foucault*, p. 21.

<sup>96</sup> M Foucault *Discipline and Punish*, p. 294.

<sup>97</sup> *ibid.*, p. 178 and pp. 297-305.

<sup>98</sup> *ibid.*, pp. 149-155 and p. 294.

<sup>99</sup> R Van Krieken ‘Children and the State: Child Welfare in New South Wales 1890-1915’, p. 34 and p. 52.

<sup>100</sup> S Garton ‘The Rise of the Therapeutic State: Psychiatry and the System of Criminal Jurisdiction in New South Wales 1890-1940’, p.382.

very influential in the 1930s.<sup>101</sup> Somewhat later, John Bowlby drew attention to the role of maternal deprivation as a cause of delinquency.<sup>102</sup> A number of historians have pointed to the existence in the late nineteenth and early twentieth centuries of the notion that delinquency was a condition caused by a combination of family dysfunction and environmental factors. Thus it could be treated therapeutically through the professional assessment of individual cases by psychologists, psychiatrists, social workers.<sup>103</sup>

Others have seen the medical model as merely a more sophisticated form of social control. Historians such as Christopher Lasch and David Rothman, have also pointed to the way in which in the late nineteenth and early twentieth centuries, there was increasing utilisation of doctors, psychologists, psychiatrists and social workers in the juvenile correction system. This happened in America (where the influence of the Progressive movement was significant) as well as elsewhere. This has sometimes been referred to as the 'medical model'.<sup>104</sup> Other historians, notably Smart, showed that the promise of more scientific treatment had not been achieved. In practice, the rhetoric did not match reality.<sup>105</sup>

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<sup>101</sup> C Burt The Young Delinquent University of London Press, London, 1931, p.124.

<sup>102</sup> J Bowlby Child Care and the Growth of Love Penguin, London, 1953, pp. 13-14.

<sup>103</sup> A M Platt, The Child Savers, p. 45; A Morris & M McIsaac, Juvenile Justice ? The Practice of Social Welfare, p. 5; M H Langley, H R Graves & B Norris ; 'The Juvenile Court and Individualized Treatment', Crime and Delinquency, vol. 18, no 1, January, 1972, p. 80.

<sup>104</sup> C Lasch Haven in a Heartless World: The Family Besieged, Basic Books New York 1977, p. 15; D J Rothman, Conscience and Convenience, p. 66. Laurence Moore, Platt, Schlossman, Sedlak, held similar views. R L Moore 'Directions of thought on Progressive America' in L L Gould (ed.) The Progressive Era, p.40; A M Platt, The Child Savers, p. 18; S L Schlossman Love and the American Delinquent, pp. 58-60; M J Sedlak 'Youth Policy and Young Women 1870-1972', p. 456.

<sup>105</sup> B Smart 'On Discipline and Social Regulation: A Review of Foucault's Genealogical Analysis' in Garland D & Young P (eds.) The Power to Punish: Contemporary Penalty and Social Analysis, p. 264. See also A T Scull 'Community Corrections: Panacea, Progress or Pretence ?' in Garland D & Young P (eds.) The Power to Punish: Contemporary Penalty and Social Analysis Heinemann, London, 1983 p. 155, and Decarceration: Community Treatment and the Deviant: a Radical View, p. 52; D J Rothman Conscience and Convenience, p. 10; K W Jones Taming the Troublesome child: American Families, Child Guidance, and the Limits of Psychiatric Authority, p. 22.

Australian historians have seen therapeutic practices as significant. Garton and Van Krieken have claimed that in the years following the 1905 legislation, the system became more professional and there was greater emphasis on scientific treatment of children, in furtherance of the individual treatment ideal.<sup>106</sup> Garton also considered that during the early twentieth century a medical model began to be used in relation to juvenile delinquents in Australia, particularly Mackellar's efforts to secure proper assessment of children coming before the Children's courts..<sup>107</sup> Van Krieken agreed that there was some 'attempt to render (work in the juvenile correction system) more scientific ...' between 1923 and 1940. He considered that the attempt was superficial, however, and had little real impact.<sup>108</sup> This work will argue that Mackellar's 1905 reforms, such as psychological assessment of children appearing before the courts, and attempts at better classification and so more individualised treatment, were attempts at a more scientific approach. However, after his departure in 1914, even though the bureaucracy continued to claim that treatment was progressively becoming more scientific, in practice this was not the case.

### *Bureaucratic interpretation*

Historians David Gil, Anthony Scull and David Rothman have argued that the conduct of juvenile correction systems was determined more by bureaucratic considerations than humanitarianism or therapeutic ones. They emphasise the insistence on economy,

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<sup>106</sup> S Garton 'Sir Charles Mackellar: Psychiatry, Eugenics and Child Welfare in New South Wales 1900-1914', pp. 28-32; S Garton 'The Rise of the Therapeutic State: Psychiatry and the System of Criminal Jurisdiction in New South Wales 1890-1940', p. 382. R Van Krieken *Children and the State*, p. 112; R Van Krieken 'State Bureaucracy and Social Science 1915-1940', *Labour History* no 58, May 1990, p. 128.

<sup>107</sup> S Garton 'The Rise of the Therapeutic State: Psychiatry and the System of Criminal Jurisdiction in New South Wales 1890-1940', p. 382 and also his 'Sir Charles Mackellar: Psychiatry, Eugenics and Child Welfare in New South Wales 1900-1914' p. 21. See also J A Seymour *Dealing with Young Offenders*, pp. 133-134; M C Tenison-Woods *Juvenile Delinquency: With Special Reference to*

avoidance of embarrassing public exposure, unwillingness to experiment, and a general preference for administrative convenience.<sup>109</sup> Australian historians, notably Dickey and Van Krieken, argue that child welfare services, although founded by philanthropists and reformers, were gradually absorbed into the bureaucratic apparatus of the State.<sup>110</sup> As suggested above, however, New South Wales differed from the other Australian States in one important aspect. In relation to juvenile corrections, the State took a more dominant role, right from the inception of industrial and reformatory schools in the 1860s. In other States, the charitable sector had greater control of juvenile corrective institutions and this persisted until the middle of the twentieth century.<sup>111</sup> Entrusting the management of delinquent institutions to the churches would have saved a lot of expense. This was certainly the experience in other States.

However, this never took place in New South Wales, where sectarian conflict was more

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Institutional Treatment, Melbourne University Press, Melbourne, 1937, p. 15; R Sanson-Fisher 'The Case against Juvenile Corrective Institutions' Australian Social Work vol. 31 no 4, December 1978, p. 7.

<sup>108</sup> R Van Krieken 'State Bureaucracy and Social Science 1915-1940', p. 18 and p. 30.

<sup>109</sup> D G Gil 'Institutions for children' in A L Schorr (ed.) Children and Decent People George Allen & Unwin, London, 1975, p. 69. A T Scull Decarceration: Community Treatment and the Deviant: a Radical View, p. 78, pp. 135-138; D J Rothman Conscience and Convenience, p. 10. Similar views were expressed by , Sedlak, David Taylor, Samuel Barrows. M J Sedlak 'Youth Policy and Young Women 1870-1972', p. 458; D Taylor Crime, Policing and Punishment in England 1750-1914, Macmillan, London, 1998, pages 157 and 163; S J Barrows Children's Courts in the United States U S Government Printing Office, Washington, 1904, p. xvi.

<sup>110</sup> B Dickey No Charity There: A Short History of Social Welfare in Australia, Allen & Unwin, Sydney, 1987, pp. 99-100 and p. 154, and 'Care for Deprived, Neglected and Delinquent Children in New South Wales 1901-1915', pp. 167-168; R Van Krieken Children and the State, p. 112 and 'State Bureaucracy and Social Science 1915-1940', p. 17 and p. 33. See also M Barbalet Far from a low gutter girl: The forgotten world of state Wards, South Australia 1887-1940, p. 153; S L R Anleu 'Lifting the lid: Perspectives on social control, youth crime and juvenile justice', p. 24; A O'Brien, Poverty's Prison: The Poor in New South Wales 1880-1918, p. 226; M Mowbray 'Restructuring Child Welfare: Deinstitutionalisation and Austerity in the NSW Department of Youth and Community Services', p. 2; D Weatherburn 'Appellate Review, Judicial Discretion and the Determination of Minimum Periods' Australian and New Zealand Journal of Criminology (1985) vol. 18, p. 274; J B L Chan 'Decarceration and Imprisonment in New South Wales: A Historical Analysis of Early Release' University of New South Wales Law Journal vol. 13 no 2, 1991, p. 395; J Ramsland Children of the Back Lanes: Destitute and Neglected Children in Colonial N S W, p. 169; R J W Selleck 'The origins of industrial schooling in Melbourne 1864-1866', pp. 24-29.

<sup>111</sup> In relation to Victoria, see R J W Selleck 'The origins of industrial schooling in Melbourne 1864-1866', p. 20. In relation to Queensland, see L Forde (Chair) Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions, p. 45; For Western Australia, see F Tay 'The Administration of Social Service Provisions for Under-privileged children in Western Australia 1947-54', p. 303. For South Australia, see C M Davey Children and their law-makers, pp. 23-24. For

entrenched. A succession of governments declined to support church reformatories because this would have meant subsidisation of religious organisations.

Historians such as O'Brien and Ramsland have drawn attention to the way in which economic considerations dominated decision-making in relation to the care of the disadvantaged.<sup>112</sup> Annual reports invariably included the per capita annual costs for each institution, an indication that economical operation was a priority. For the same reason details of the value of farm operation and manufactured goods as well as the number of laundry articles processed were included.<sup>113</sup> Nearly all the various government inquiries which affected the operation of the juvenile correction system were prompted by concerns about the exercise of due economy.<sup>114</sup> In the years between the wars, very little was spent on the improvement of facilities in institutions, with much of the maintenance and even building construction work being undertaken using

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Tasmania, see S Petrow 'Arabs, Boys and Larrikins: Juvenile Delinquents and their treatment in Hobart 1860-1896', pp. 49-51.

<sup>112</sup> A O'Brien Poverty's Prison: The Poor in New South Wales 1880-1918, pages 163 and 226; J Ramsland Children of the Back Lanes: Destitute and Neglected Children in Colonial N S W, p. 169. See also

I Pinchbeck & M Hewitt Children in English Society from the Eighteenth Century to the Children Act, 1948, Routledge & Kegan Paul, London, 1973, p. 482; A Salt These Outcast Women: The Parramatta Female Factory 1821-1848 Hale & Iremonger, Sydney, 1984, p.50 and pp. 66-67; M Barbalet Far from a low gutter girl: The forgotten world of state Wards, South Australia 1887-1940, pp. 187 -188; R J W Selleck 'The origins of industrial schooling in Melbourne 1864-1866', p. 29; J Godden 'Philanthropy and the Woman's Sphere Sydney 1870-circa 1900' Ph D Thesis, Macquarie University, 1983, p. 124; M Mowbray 'Restructuring Child Welfare: Deinstitutionalisation and Austerity in the NSW Department of Youth and Community Services', p. 3; J B Hirst Convict society and its enemies, p.83; J B L Chan 'Decarceration and Imprisonment in New South Wales: A Historical Analysis of Early Release', p. 395.

<sup>113</sup> See annual reports of the State Children's Relief Board and the Child Welfare Department, until the 1960s.

<sup>114</sup> Public Service Board to Under Secretary, Chief Secretary's Department, quoting the Premier, 5 September, 1905, 'Public Service Board Investigations as to the Re-organization of the Chief Secretary's Department 1904-1907' SR 8/384; 'Further Progress Report of Select Committee' 6 September, 1916 JVPLCLA 1916, vol. 2, p. 1017; G M Allard 'First Sectional Report of the Royal Commission to inquire into the New South Wales Public Service', 3 November 1918, NSWPP, 1918, vol. 4, p. 373 et seq., p 9; 'W M Fincham: Gosford Farm Home for Boys: Papers Concerning Inquiry held by W M Fincham, Special Magistrate, Children's Court Sydney Concerning the Punishment of Joseph Bayliss'. Legislative Assembly of New South Wales: Tabled Papers 1923/422; 'Public Service Board Inquiry into the Child Welfare Department 1926', SR 8/751; J M Harvey 'Report of the Royal Commission to Inquire into Matters relating to the Administration of the Child Welfare Department' in NSWPP 1927, vol. 2.; J E McCulloch Child Welfare Department. Report on the General Organization, Control and Administration of, with Special Reference to State Institutions NSW N S W Government Printer, Sydney, 1935

inmate labour.<sup>115</sup> Departmental facilities generally were in very poor condition by the early 1940s.<sup>116</sup>

In seeking to understand the development of the juvenile correction system in the twentieth century, each of the different schools of thought has some validity. While they represent conflicting interpretations, there were often a variety of factors involved. For example, the fact that Van Krieken has arguably adopted some aspects of Foucaultian theory is quite compatible with his views on the therapeutic development of the system in the early part of the twentieth century. The point is that in the case of most initiatives, there was a combination of motives. Nevertheless, the preoccupation with cost reduction which had been a feature of colonial administration from its inception had become, by the beginning of the twentieth century, ingrained into the operations of the New South Wales bureaucracy. By the 1920s, this priority had become the dominant force in the operations of the juvenile correction system.

#### *The main argument of this thesis*

In this study of twentieth century juvenile corrections, I will argue that although humanitarian, social control and therapeutic ideals were at times influential, the paramount influence after the departure of Sir Charles Mackellar in 1914, was that of the bureaucracy. The capacity of the State Children's Relief Board to continue reformist ideals was greatly diminished by Mackellar's retirement and the influence of the bureaucracy thereafter intensified. In particular the actions of bureaucrats were dominated by an attitude that they were dealing with a 'delinquent class' of inferior

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<sup>115</sup> D H Drummond NSWPDLA 20 December, 1934 p. 5071.

<sup>116</sup> M Tenison-Woods Report on the Girls Industrial School, Parramatta Melbourne University Press, Melbourne, 1945; V A Heffernan 'Notes on the History of Mt. Penang': unpublished typescript, 1989, p. 25.

children. In the words of the American historian, David Gil, there was an ‘expectation of failure...built into...institutions for delinquent children’.<sup>117</sup>

This attitude affected every aspect of their administration of the system. Of course, it can never be conclusively proved that such an attitude prevailed. However, I contend that it is an irresistible inference which should be drawn from the ways in which officials administered the system. These included the way in which economic evidence invariably prevailed over ideals of rehabilitation and reform. There was also the resistance to any suggestion of outside scrutiny or interference in operations, the resort to coercion as the standard response to rebellious behaviour, and the fact that delinquents in institutions, especially girls, were often ill-treated and punished illegally.

Chapter 2 outlines the reforms sponsored by Mackellar, not merely those contained in the legislation of 1905, but also his attempts to move away from the nineteenth century emphasis on incarceration, as well as greater individualisation of treatment and increased professionalism. In Chapter 3 the bureaucratic struggle for control of the child welfare system, which raged from 1914 to 1923, is examined. The struggle culminated in the abolition of the State Children’s Relief Board. The reversal of Mackellar’s progressive policies, under the increasing influence of bureaucrats in the Department of Public Instruction, is also described. Chapter 4 examines the effects of the bureaucratic dominance through the focus of inquiries into the ill-treatment of institutions inmates at Gosford and Yanco, as well as a wide-ranging review of the whole Department which followed the Yanco inquiry.

There follows, in Chapter 5 an analysis of the attempts by Charles Wood between 1934 and 1938 to return to more progressive policies. These included greater involvement of the non-government sector, better staff training and professional

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<sup>117</sup> D G Gil ‘Institutions for children’, p. 73. See also S Jenkins ‘Child welfare as a class system’ in A L



assessment of children. It also catalogues the descent into chaos, marked by riots and mass abscondings, which followed Wood's departure, in the period 1938 to 1945.

Chapter 6 deals with the administration of Richard Hicks, during which the system was rescued from disarray, but at the cost of a more coercive and institutions-based approach. Another period of reform is examined in Chapter 7. Under the leadership of William Langshaw, there were determined attempts to provide alternatives to incarceration, and work began on new legislation. In Chapter 8 we examine another period of chaotic administration, during which there were several unsuccessful experiments with new forms of treatment. The government quickly retreated from its reform agenda and in 1988, the new legislation came into force.

Naval drill on board the Nautical School Ship Sobraon - *photo by courtesy of the Mitchell*

*Library*

## CHAPTER 2

### AN ERA OF REFORM

#### 1905 to 1911

In the first decade of the twentieth century the juvenile correction system underwent major reform. Humanitarian reformers, committed to the use of alternatives to institutional treatment, triumphed over their nineteenth century adversaries. A substantial body of opinion, however, continued to support institutional treatment, especially for older offenders. Despite the appearance that reform had won out, the structure of juvenile corrections meant that different traditions still flourished.

Responsibility was split between two bodies. The Department of Public Instruction administered industrial schools, and the State Children's Relief Board, which operated homes for dependent children in the care of the State, also managed arrangements for their boarding out. These two bodies held opposing views on the way delinquents should be treated, leading to serious policy conflict, and acrimonious public disputes.

This chapter analyses the competition between the Board and the Department for control over the treatment of delinquents. It examines their respective policies as well as the major reforms, most of them associated with the passage of legislation in 1905. The reforms included the introduction of Children's Courts, a probation system and the opening of a model institution.

#### *Policy conflict over the form of treatment*

In 1905, the juvenile corrective system was administered by two different government bodies. The Department of Public Instruction administered two industrial schools,

*Sobraon* for boys and Parramatta for girls, as well as the Carpenterian Reformatory for boys and the Shaftesbury Reformatory for Girls. The State Children's Relief Board administered a number of cottage homes for dependent children. It also operated an extensive system under which children were 'boarded out' with foster parents. It also provided relief for families in need.

Originally, the industrial schools had been controlled by the Chief Secretary's Department. When the public education system was constituted in 1880, they were transferred to the new Department of Public Instruction. The Shaftesbury Reformatory was previously controlled by the prisons administration within the Justice portfolio. It was transferred to the Charitable Institutions administration, within the Chief Secretary's Department, in 1893.<sup>1</sup> The Carpenterian Reformatory was also placed under the control of the Charitable Institutions administration when it opened at Eastwood in 1894. The fact that control of these institutions passed between three different portfolios in the space of a few years suggests that the government itself was unclear as to their purpose.

The Carpenterian, initially known as the 'Shore' Reformatory, to distinguish it from its nautical predecessors, had a dual function. It was primarily established for the detention of boys under sixteen convicted of criminal offences who would otherwise have gone to prison.<sup>2</sup> It also accommodated, in a 'separate division', about forty boys, previously held at Rydalmere Probationary Home, who were 'too vicious to be kept in ordinary homes'. The main attraction for merging the two groups of boys was economic. There was apparently to be an annual saving of £ 125, compared with the

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<sup>1</sup> New South Wales Government Blue Book, NSW Government Printer, Sydney, 1893.

<sup>2</sup> Annual Report, State Children's Relief Board V&PLANSW 1892-93, p. 945.

rent at Rydalmere.<sup>3</sup> In fact there was an expectation that, with income from farming operations, it would become self-supporting.<sup>4</sup> Once it commenced operations, there was a substantial increase in the numbers of boys committed for offences.<sup>5</sup> It quickly became overcrowded. Frederick Neitenstein was commissioned in 1897 to inquire into its operations, when management problems emerged and the Superintendent suddenly resigned. Neitenstein suggested that the Shaftesbury Reformatory be closed as a girls institution and the overflow of boys be accommodated there.<sup>6</sup> That did not happen, instead some inmates were discharged and numbers were reduced.

Although it was based ashore, the Carpenterian Reformatory in many ways continued the regime followed on *Sobraon*. Boys still dressed in naval uniform, slept in hammocks, and the activities of the day were regulated by using a ship's bell, rung from outside the Superintendent's office, still referred to as the quarter deck. This persistence in following naval routine served to emphasize the esteem in which naval training was held, as a means of reforming wayward boys. Even at the famed Mettray, a land-based agricultural colony, boys were trained for the navy, and slept in hammocks.<sup>7</sup>

Since the Board and the Department were at times in radical disagreement over the treatment of delinquents, it is appropriate to examine in some detail their different policies. Industrial Schools had become, after the passage of the Public Instruction Act of 1880, part of a very large public education system. Nevertheless, there does not seem to have been any systemic oversight from the central administration of the

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<sup>3</sup> S Maxted to Principal Under Secretary, Chief Secretary's Department, 28 November, 1893, 'Brush Farm Parramatta River' V&PLANSW, 1894 vol 3, p. 941 et seq., p. 944

<sup>4</sup> F W Neitenstein, Report of 16 March, 1897, 'Correspondence Respecting the Carpenterian Reformatory' V&PLANSW 1897, vol. 7, p. 955 et seq., p. 7.

<sup>5</sup> Annual Report, SCRB, 1899, V&PLANSW 1899, vol 5, p.425 et seq., p. 5

<sup>6</sup> F W Neitenstein, Report of 16 March, 1897, 'Correspondence Respecting the Carpenterian Reformatory', p. 8

Department. Although Superintendents were generally appointed from among experienced public school teachers, they functioned with a greater degree of independence. The schools submitted their own annual reports and received children direct from the courts, as they had since before the education reforms of 1880. Also, in contrast with the rest of the public system, they were residential schools. Considering the type of inmate, obviously very different from other public schools, their institutions were not incorporated into the regional inspectorial system by which the ordinary schools were supervised. Only the tuition given in classrooms was subject to that inspectorial system.<sup>8</sup>

Another factor was that both industrial school ships *Vernon* and *Sobraon* had been managed by outstanding public servants like Frederick Neitenstein, regarded as having a 'splendid record of achievements'. He was subsequently promoted to the position of Comptroller-General of Prisons.<sup>9</sup> While the Industrial Schools for Girls had had a tumultuous history, with frequent rioting at Newcastle, Biloela, and Parramatta, there were indications, that a period of comparative stability had arrived. This was probably the result of changes made after an inquiry in 1898, and a period under the control of Superintendents with teaching experience.<sup>10</sup> So, at face value, here were institutions, operating under the barrack system, which were regarded by the Government in 1905 as operating satisfactorily as independent units. There was no compelling case for any change to the comparatively remote supervision exercised over

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<sup>7</sup> M Foucault *Discipline and Punish : The Birth of the prison* Penguin, London, 1977 (1979 Vintage Books edition), photograph appearing after page 169.

<sup>8</sup> The formal tuition given in classrooms continued to be subject to the ordinary inspectorial system of the Department of Public Instruction.

<sup>9</sup> Report by Public Service Board, 28 December, 1906, Neitenstein Papers, ML MSS 1833/1-2X

<sup>10</sup> J H Carruthers, former Minister for Public Instruction, in which he referred to the place as a prison, with girls frequently rebelling and often held in cells below the floors. *NSWPDLC* 22 October, 1902, p. 2885.

them by the central administration of the Department, nor was there any serious argument for radical change in the way they operated.

Because of their peculiar intake and residential operation, the ordinary curriculum was modified. The Department gave little thought, however, to the question of whether schools of this kind, or barrack institutions generally, provided the appropriate treatment for such children. Instead, there was a very rigid disciplinary regime and an inflexible approach to the length of training. Superintendents repeatedly emphasised that a lengthy period of training, ideally three years, was essential.<sup>11</sup> This is understandable, since it was no more than the conventional wisdom of the time. Respected authorities like the social reformers, Rosamund and Florence Hill, said so when visiting Australia in 1873.<sup>12</sup> The Inspector of Public Charities had expressed similar sentiments in 1883.<sup>13</sup>

On the other hand, there may well have been another, less altruistic reason: the need to 'keep up the numbers' in the large institutions. This was especially so after the establishment of Mittagong Farm Home in 1906, when the numbers on the *Sobraon* declined. This problem had arisen in Great Britain, where allegations were made that children were wrongly retained to keep inmate numbers high, and so safeguard the Government per capita subsidy.<sup>14</sup> An identical situation simply could not apply in New South Wales, since the Government ran these institutions, and there were no institutions operated under subsidy by church bodies.

Their cost efficiency was, however, an ever present issue. Year after year, each institution presented a balance sheet showing income and expenditure and, most

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<sup>11</sup> Carpenterian Reformatory Annual Report for 1899, in V&PLANSW 1899, vol. 6, p.481

<sup>12</sup> R & F Hill What we saw in Australia Macmillan, London, 1875, p. 283.

<sup>13</sup> H. Robison, Inspector of Public Charities to Principal Under Secretary, Colonial Secretary's Department 2 July 1883 SR 4/901.1.

<sup>14</sup> I Pinchbeck & M Hewitt Children In English Society: vol II, Routledge & Kegan Paul, London, 1973, p. 482

importantly, the cost per head. The way these costs were calculated was misleading, because it depended on the numbers enrolled, rather than an average daily number, producing a lower cost per head.<sup>15</sup> Most of the costs of running an Industrial School were fixed costs, such as staff salaries, and the staff establishment could not, under the rigid staffing system then prevailing in the public service, easily be reduced. Therefore, if numbers of inmates fell, the per capita cost rose. This is well illustrated in the case of the *Sobraon*. In 1906, it had an average inmate population of four hundred and twenty-five, which fell to three hundred by 1908. The cost per head rose in the same period by more than a quarter.<sup>16</sup> Significantly, when the *Sobraon* closed in 1911, the Minister conceded that seventy inmates, kept on board solely to maintain the ship's company, should have been discharged earlier.<sup>17</sup> Whatever the reason, lengthy training was the policy of the Department of Public Instruction, and the existing institutions were seen as performing well.

The State Children's Relief Board operated quite differently. It had its genesis in the efforts of a group of women who began, informally, to arrange the boarding out of children from Government Asylums in the 1870s. Their efforts were based on similar activities in Britain and Europe since the middle of the nineteenth century, and more recently in Victoria and South Australia. Mrs. Marian Jefferis, wife of the Minister of the Pitt Street Congregational Church, was a founding member of the group. She had come from South Australia and had experience of its operation there. It was also stimulated by the visit of Rosamund and Florence Hill, the English social reformers, who were advocates for a boarding out system.<sup>18</sup>

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<sup>15</sup> C K Mackellar, *NSWPDLC* 22 October, 1902, p. 3645.

<sup>16</sup> Minister for Public Instruction, 1908, *NSWPP* 1910, vol 1, part 2 p. 26

<sup>17</sup> Minister for Public Instruction, *Annual Report* for year 1910 NSW Government Printer, Sydney, 1911, p.29

<sup>18</sup> J Ramsland 'The Development of Boarding Out Systems in Australia: A Series of Child Welfare Experiments in Child Care 1860-1910' *JRAHS* vol 60 part 3, September 1974 pp. 186-189



Legislation in 1881 established the Board, which vigorously pursued a policy of moving children out from barrack style institutions into foster care. The Government of the day supported this policy, although guardedly at first. They could have chosen to implement it through the medium of a branch in a government department. The initiative, however, had come from the 'voluntary' sector, and initially there was doubt about whether it would be successful, it chose to achieve its purpose through a statutory Board.

The President and members were unpaid, although the officers were public servants, and the cost of the Board's operations was met from the public purse. The senior official, the Boarding-out Officer, reported directly to the President, but not through the Departmental structure of the Chief Secretary's Department, to which the Board was then attached. The President was in turn responsible to the Minister for the Board's operations, so the Board was at arm's length from the Departmental structure. The first two Presidents, Sir Arthur Renwick and Sir Charles Mackellar, were both Members of Parliament, as well as holding political office at different times. Its membership, apart from the President, consisted largely of the wives of prominent citizens, and thus the Board amounted to a powerful body.

It was deliberately constituted to provide representation for the major churches, to allay sectarian fears. Catholic bishops, led by Cardinal Patrick Moran, Archbishop of Sydney, were concerned that, under such a system, Catholic children would be placed with Protestant foster parents, leading to the loss of their religion. Marian Fox has claimed that this stemmed from entrenched opposition by Cardinal Paul Cullen,

Archbishop of Dublin to a similar boarding out system, introduced in Ireland in 1862.

Moran was an orphan and was raised by Cullen, who was his uncle.<sup>19</sup>

Because the Board was at arm's length from Government, it was more interested in innovative programs. Despite what it considered to be the great success of the boarding-out system for dependent children, the Board recognized that not all State children were suitable for fostering. A significant proportion of children were intellectually or physically disabled. Still others were unable to adjust to foster placement, so institutions had to be maintained for them. The prevailing view was that such children should be cared for under the 'family system'.

The Board set up small Cottage Homes, to provide this kind of care at Pennant Hills, Picton and Mittagong.<sup>20</sup> Each of these homes was operated by a married couple. Although the numbers of children sometimes exceeded those found in the typical families of the times, they represented a real attempt at family life, in contrast with barrack style institutions. In fact, when Sir Henry Parkes introduced the Bill to establish the State Children's Relief Board, Renwick's contribution to the debate included a suggestion that the 'family system' be applied to the 'large institutions' operated by the State for delinquents. In support of this view he quoted the precedents at Rauhe Haus in Germany, Mettray in France and Red Hill in England in which, he said, the system had been brought to the 'highest state of perfection'.<sup>21</sup>

In 1891, the Board began to experiment with a different system for those boys who were 'too old or vicious' for the cottage homes, when it established a Probationary Farm Home at Rydalmere, based on a scheme already operating in Victoria.<sup>22</sup> Others

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<sup>19</sup> M Fox 'The Provision of Care and Education for Children in Catholic Charitable Institutions in NSW 1881-1981'. Ph D Thesis University of Sydney, 1994, p. 41.

<sup>20</sup> Annual Report SCRB 1901 in V&PLANSW 1901, vol 3, p.1301.

<sup>21</sup> NSWPDLA 17 March, 1881, p. 981

<sup>22</sup> Annual Report Director, Department of Charitable Institutions 1891 in V&PLANSW 1892-93, vol 7, p. 94. For Rydalmere, see Annual Report, SCRB 1899 V&PLANSW 1899, vol 5, p.425 et seq., p. 6

followed at Dora Creek, Cessnock, Toronto and Branxton. The placements in the Hunter region were with private individuals, farmers, who were paid ten shillings a week per boy. The important point about this innovation was that the Board was often dealing with children of much the same class as those incarcerated in Industrial Schools and Reformatories, and yet was able to place them without having to detain them in institutions. It claimed satisfactory results.<sup>23</sup>

The Board also differed from the Department of Public Instruction about the question of the length of training. It condemned lengthy training in the barrack institutions as repressive.<sup>24</sup> The Board claimed that, once children had shown an improvement in conduct, they could be boarded out or apprenticed. The average period of detention at Mittagong in 1907 was, at sixty-one days, very much shorter than the three years or so advocated by the industrial schools. According to the Board, this had been found to produce satisfactory results.<sup>25</sup>

The Board also claimed that the Carpenterian Reformatory was an 'entirely new method of dealing with young criminals'. This was because it proposed a much shorter period of detention (nine months) than the industrial schools. It also employed a much more definite classification system, with three separate divisions, each with its own dormitory, dining room and bathroom. Boys moved from one division to another through a system of rewards and punishments.

There was in fact nothing new about the system of rewards and punishments. A similar system, had operated in *Vernon* and *Sobraon*. Foucault records that in eighteenth century France, schools operated by the Brothers of the Christian Schools

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<sup>23</sup> Annual Report SCRB for the year ended 5 April, 1914 NSWPP 1914-1915, vol 2, p. 34. For Branxton, see B R Wise, Attorney General, NSWPDLC 15 October, 1902, p. 3358.

<sup>24</sup> Annual Report SCRB 1913-1914, NSW Government Printer, Sydney, 1914, p. 16

<sup>25</sup> Annual Report SCRB 1906-1907, NSW Government Printer, Sydney, 1907, p. 15

used a ‘micro economy of privileges and impositions’.<sup>26</sup> A similar scheme was also used by French authorities at the Ecole Militaire.<sup>27</sup> It was claimed that corporal punishment had been almost eliminated, and there were few abscondings, although, since there were no statistics published on this, it is impossible to know what the true situation was, although ‘close confinement’ in cells was used.<sup>28</sup> Mackellar contrasted it with *Sobraon*, where boys were ‘always under lock and key’. At the Carpenterian, boys wandered around ‘with nothing more than a two-rail fence to prevent their escape’.<sup>29</sup> Cells were, however, used to restrain those who absconded or misbehaved. There was a Visiting Committee of eight citizens, who reported direct to the Head of the Department, something that never existed in relation to any of the industrial schools. It was, in effect, the Board’s answer to what it considered to be the inadequacies of the industrial schools, which they regarded as juvenile prisons. It was based on a reformatory in Ballarat in Victoria.<sup>30</sup>

The evidence for the efficacy of institutional, boarding-out and ‘family system’ programs is dubious. Invariably favourable figures were produced by those responsible for the programs. Those who operated them continually claimed them to be effective. For example, the Superintendent of the *Vernon* in 1890 claimed a low recidivism rate. According to him, of the 2,134 boys who had passed through the ship since it began in 1867, only twenty-eight had been convicted in the year 1890.<sup>31</sup> This was not a very meaningful statistic, since it did not disclose convictions for the other twenty-two years which had elapsed. It also appeared that, for the numbers of convictions, the

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<sup>26</sup> M Foucault *Discipline and Punish*, p. 180, quoting J-B de La Salle ‘Conduit des Ecoles Chretiennes’, Bibliotheque Nationale MS. 11759, 156 ff.

<sup>27</sup> *ibid.*, p. 181.

<sup>28</sup> F W Neitenstein, Report of 16 March, 1897, ‘Correspondence Respecting the Carpenterian Reformatory’, p. 9.

<sup>29</sup> *NSWPDLC* 30 August, 1905, p. 1767.

<sup>30</sup> ‘Papers relating to the Leasing of Brush Farm, Parramatta River’, pp. 941-948.

Superintendent was dependent upon the Comptroller-General of Prisons notifying him of any former *Vernon* boys who were imprisoned. Thus, it did not include those convicted but not sent to prison.

For its part, the Board attempted to demonstrate the effectiveness of its methods by publishing in every Annual Report, great numbers of testimonials from school principals, clergy and honorary visitors associated with its programs. These were of course selected for publication by the Board. Superintendents of institutions did the same by publishing testimonials from people who had taken children as apprentices. So much of the ‘evidence’ was anecdotal as to be worthless in terms of forming any objective view of the value of programs, although they would seem to have been popular, probably as exercises in public relations. The Superintendents of the *Vernon* and *Sobraon* also sought to demonstrate the reforming effects of the training program through public displays of the boys, dressed in naval uniforms and led by the ship’s band. It was in demand to play for visiting dignitaries, and on many public occasions, such as the departure of contingents of soldiers for overseas service. The band even made a tour in 1908 of southern districts of the State, giving concerts and playing football against local teams.<sup>32</sup>

The Board had also rectified one of the worst features of the previous system, the holding of very young children in the Industrial Schools. Over the years, such children, some as young as three years of age, had been detained on the ship. In the latter years of the nineteenth century they spent nights ‘in the commodious establishment on the neighbouring island (Cockatoo Island, formerly an institution for

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<sup>31</sup> Annual Report, Superintendent *Vernon* for Year ended 30 April, 1890 in V&PLANSW 1890, vol 2, p. 261

<sup>32</sup> Under Secretary, Colonial Secretary’s Office to Superintendent, 10 March 1885, ML MSS 1833/1. See also SR 8/1753.3

delinquent girls), coming to the ship for meals, school and instruction'.<sup>33</sup> The Board secured the removal of children under eight years, and boarded them out.<sup>34</sup>

Another example of the Board's innovative approach concerned truancy, widely regarded by child welfare reformers as a major cause of juvenile delinquency and adult crime.<sup>35</sup> In urban areas, Attendance Officers of the Department of Public Instruction enforced a requirement under the Public Instruction Act, 1880, that parents cause their children to attend school. When children refused to attend, they were committed to an industrial school, because it was considered that truancy, if not dealt with, led inevitably to crime. However, in 1893, as an economy measure at the height of a severe depression, all eighteen Attendance Officers were retrenched, and enforcement left to the police.<sup>36</sup>

The Board's approach to the truants who came into its care was quite different and rather novel. It placed them with a group of farming families along the Hawkesbury River. The children were taken to and from school by Government Launch, so that the opportunities for disappearing between home and school were virtually eliminated. It became known as the 'Hawkesbury River Truant School'.<sup>37</sup> In the Board's view, it was an effective way of dealing with a critical problem, without resort to institutions.

The closure of the Shaftesbury Reformatory at South Head was another demonstration of the Board's determination to do all in its power to get rid of barrack

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<sup>33</sup> NSS *Vernon* : Report of the Inspector of Public Charities 28 July, 1868 in JLC 1868-69, p. 459. See also Report of the Inspector of Public Charities, in V&PLANSW 1879-80, vol 2, p. 859 and Annual Report Superintendent *Vernon* for Year ended 30 April, 1890 in V&PLANSW 1890 Session, vol 2, p. 261

<sup>34</sup> Annual Report SCRB for year ending April 1901 in V&PLANSW 1901, vol 1 p. 1304

<sup>35</sup> see comments by Comptroller-General of Prisons, Annual Report, 1896; also Annual Report of the Carpenterian Reformatory 1903 in NSWPP 1904, vol 2, p. 40; also comments by the Hon. B R Wise Attorney General NSWPDLC 15 October 1902, p. 3356

<sup>36</sup> Annual Report Minister for Public Instruction, 1893, NSW Government Printer, Sydney, 1893, p. 35.

institutions. John Ramsland has claimed that this Reformatory was ‘architecturally modelled on the cottage plan’.<sup>37</sup> It had in fact been built as a hotel and functioned as such for some thirty years before acquisition. When the government took it over in 1880, it accommodated twenty-four inmates, although it had the external appearance of a cottage. Alterations made at the time it opened, as well as in 1892, meant that it had a distinctly penal character. The main building enclosed a central courtyard and the few external windows were barred. Three punishment cells with steel doors were added, together with a three metre corrugated iron perimeter fence, with the tops cut to a point, to deter absconding. Accommodation for another forty-two inmates had also been provided, taking the capacity to about seventy. This was far too many for a ‘cottage’ system, although when it closed, there were only twenty-eight there.<sup>38</sup> There was little provision for segregation of different classes of inmates, although the girls were divided into two ‘divisions’, one for delinquents and the other for refractory wards of the State Children’s Relief Board.<sup>39</sup> There is no suggestion that it was run on the ‘family system’, using for example, a married couple. Although earlier considered by Sir Henry Parkes to have been successful, it had, at least in the later years of its operation, been the subject of allegations of ill-treatment and ‘harsh incessant beating’ of girls.<sup>40</sup>

After its transfer from the prisons administration in 1901, the Board sought to close it down, since it considered the barrack-style buildings unsuitable. The Board

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<sup>37</sup> Annual Report SCRB 1916 in NSWPP 1916, vol 2, p. 937

<sup>38</sup> J Ramsland With Just But Relentless Discipline, Kangaroo Press, Sydney, 1996, p. 118

<sup>39</sup> E C Rowland ‘The Story of the South Arm: Watson’s Bay, Vacluse and Rose Bay’ JRAHS vol 37, part 4, 1951, p. 229. See also R F Smith ‘History of Land on which Vacluse High School now stands’ and also B Crosson ‘The Shaftesbury Institution’, January, 1999, both unpublished papers in the possession of the Local History Section of Woollahra Council Library. For the alterations, see Annual Reports of the Comptroller General of Prisons for 1878 and 1879, V&PLANSW 1879-80, vol 2, p. 973 et seq., p. 2, and V&PLANSW 1880-81, vol 2, p. 149 et seq., p. 2. For the 1892 additions, see Annual Report, Comptroller General of Prisons 1892 V&PLANSW 1892-93, vol 3, p. 771 et seq., p. 3

<sup>40</sup> C K Mackellar to Under Secretary, Chief Secretary’s Department, 2 September, 1903, SR 5/5229

<sup>41</sup> H Parkes Fifty Years in the Making of Australian History vol, 1892, Reprint by Books for Libraries Press, Freeport, New York, 1971, p. 195. See also ‘Report from the Select Committee on Dismissal of Mrs. Abraham, Shaftesbury Girls Asylum’, 1900 V&PLANSW 1901, vol 6 p. 453 et seq.

reluctantly kept some 'refractory wards' (both male and female) there, as well as girls committed for criminal offences. This went against the policy of the Board to avoid contamination of wards by offenders, but there was a shortage of accommodation, and so, for reasons of economy, the two classes of children were put together in the one institution.<sup>42</sup> Mackellar urged the Government to close it, and he would hardly have taken such a step if it had possessed the characteristics of a cottage home.<sup>43</sup> In his view, it had always been unsuitable, simply a gaol. He said that on its portals might well have been written the legend from Dante's *Inferno*: 'Abandon hope all ye who enter here'.<sup>44</sup> It was closed in 1904, largely because of his determined efforts.<sup>45</sup>

The Board and the Department also had contrasting organizational cultures. The Department was seemingly intent on presenting to the public an image that all was proceeding smoothly in well-managed institutions. These were presented as transforming wayward boys, who were, or otherwise would have become vicious criminals. Depraved or fallen girls, were claimed to be transformed into worthwhile women, suitable for marriage. This approach was put forward in Annual Reports, both those produced by the Department, as well as those submitted by individual Superintendents. The Superintendent at Parramatta asserted that the majority of girls (he estimated about seventy per cent) were reclaimed from a life of vice. He said of them: 'We have to do purely and simply with a low -class human type -a mere bundle of appetites of animalism... eminently biologically predisposed to prostitution of the lower type. He claimed reclamation was through the example set by female staff, 'solely comprised of an educated cultured type of woman'. He also referred to the

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<sup>42</sup> Annual Report SCRB for year ending 5 April, 1901 in V&PLANSW 1901, vol 3, p. 1302

<sup>43</sup> C K Mackellar, President, SCRB to Under Secretary, Chief Secretary's Department 2 September, 1903 SR 5/5229

<sup>44</sup> ibid.

<sup>45</sup> Government Gazette 12 April, 1904.



instillation of habits of industry through instruction in housework, as well as more refined activities such as fancywork and the 'singing of good drawing room songs' which had 'an important uplifting influence on the girls' minds'.<sup>46</sup>

The Annual Reports of the Board were also self-congratulatory in the style of the times, but to a lesser degree. It didn't produce quite the same rosy view of its operations, claiming, with refreshing frankness, that it was not hoping to produce 'angels', but simply people who could make their own way in life.<sup>47</sup> The Board also criticized, harshly at times, the administration of industrial schools by the Department of Public Instruction. For example, in its Annual Report for 1906 -1907, the Board claimed that 'the maintenance of large institutions (by the Department) with formidable bolts and bars, and a staff of ultra-disciplined attendants in imposing uniform, is not necessary for the reformation of the majority of the so -called juvenile offenders'.<sup>48</sup>

In summary, therefore, there were, in the first decade of the twentieth century, two competing systems dealing with delinquent children. Industrial schools were operating using a lengthy, rigid and inflexible model of training. It had, except in respect of a fairly small number of hardened offenders, been discredited by child savers, and was expensive. By contrast, the Board was seriously trying to follow the most advanced thinking in relation to the reform of delinquent children. It was innovative and prepared to experiment with new models of treatment. Its services were provided at a fraction of the per capita cost of children detained in industrial schools.

The question of the preferable form of treatment was inextricably bound up with the issue of administrative control. The Board, for its part, was firmly in favour

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<sup>46</sup> Annual Report A W Thompson, Superintendent, Industrial School for Girls, Parramatta, 1914, N S W Government Printer, Sydney, 1915.

<sup>47</sup> Annual Report SCRB\_ for year ended April 1885 in V&PLANSW 1885 vol 2, p. 526.

of the two administrations being brought under single control. When legislation to establish the State Children's Relief Board was first enacted in 1881, Sir Arthur Renwick had proposed that reformatory and industrial Schools be brought under the control of the Board.<sup>49</sup> Given the somewhat experimental nature of the legislation, it was hardly surprising that this was not adopted. Again in 1885, Renwick raised the issue, referring to the advantages which had followed in Victoria and South Australia when the state institutions had been emptied during the 1870s.<sup>50</sup> The Board again and again returned to this theme. In 1893, Renwick observed that he had made the same proposal in every previous Annual Report.<sup>51</sup> In 1897, there was a proposal for a Bill to abolish the distinction between reformatories and industrial Schools, but it came to nothing.<sup>52</sup>

The advantages were obvious, from the Board's point of view. They would acquire the capacity to replace the large industrial schools with greater reliance on the boarding out and apprenticeship systems. This would be backed by appropriate supervision of placements in the field, and for those children who could not be fostered, the 'family system' cottage homes would be used. The Board's submissions were based on the premise that, if there were to be an administrative merger, then the Board should run the new organization. For reasons which are not readily apparent, no Government moved to bring the two administrations under single control.

There were of course, some changes. For example, the Shaftesbury Reformatory was transferred to the Board, but the reason for this was economic. The place was due to be closed because it was under utilized, having only a dozen or so

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<sup>48</sup> Annual Report SCRB 1906-1907 NSW Government Printer, Sydney, 1907, p. 14.

<sup>49</sup> A Renwick NSWPDLA 17 March 1881, p. 981

<sup>50</sup> Annual Report SCRB for year ended April 1885 in V&PLANSW 1885, vol 2, p. 526

<sup>51</sup> Annual Report SCRB, 1893 in V&PLANSW 1892-1893, vol 7, p. 953

<sup>52</sup> Under Secretary, Department of Public Instruction, to Minister for Public Instruction, 17 March, 1897, 'Correspondence Respecting the Carpenterian Reformatory', p. 11

inmates, but a capacity for seventy. Also, the Board had a pressing need to accommodate 'troublesome' wards who were unsuitable for foster placement.<sup>53</sup> It was still, however, a curious decision, because it meant that at both Shaftesbury and Carpenterian, there was a mixing of offenders and non-offenders, which the Board had certainly opposed. In this instance, ideals were subordinated to the practical necessity for accommodation and economy.

In conjunction with the passage of the Neglected Children and Juvenile Offenders Act in 1905 the Board was transferred from the Ministerial control of the Chief Secretary to that of the Minister for Public Instruction.<sup>54</sup> Stephen Garton says that as a result, provisions for children in industrial schools were placed under the control of the Board.<sup>55</sup> However, this was not the case. Under the Act, it was the Minister, not the Board, who had power to move a child from one form of committal, such as an industrial school, to another.<sup>56</sup> All that happened was that the two administrations were brought under the same portfolio. This did nothing to achieve the 'single control' so long advocated, since the Board was still a statutory authority, with its officers responsible to the President and not directly to the Minister. Nor did it resolve the conflict of views between the two administrations as to the appropriate form of treatment for delinquent children. They continued to operate independently and there continued to be 'friction between the two (Branches) and...deliberate competition between them for the securing of cases to be sent to them from the Children's Courts'.<sup>57</sup>

Some historians have placed detention and boarding out within changes to the wider welfare system. This included aspects such as public monetary relief, care of the

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<sup>53</sup> Annual Report SCRB 1901 in V&PLANSW 1901, vol 3, p. 1302

<sup>54</sup> 'Further Report of the Select Committee on the Whole Administration of the State Children Relief Act, 1901', NSWPP 1917-1918, vol 2, p. 447.

<sup>55</sup> S Garton 'Frederick William Neitenstein: Juvenile Reformatory and Prison Reform in NSW 1878-1909' JRAHS vol 75, part, 1 June 1989, p. 54.

<sup>56</sup> See Neglected Children and Juvenile Offenders Act, 1905, section 35, Statutes of New South Wales.

aged, care of dependent children, infant protection, as well as the care of delinquents, but there is little agreement over the nature of change. In *No Charity There*, Brian Dickey, for example, deals with the whole spectrum of welfare services.<sup>58</sup> He claimed that in the period 1901-1914 there were 'spectacular examples of expansion' of the Board's activities, including the number of children in care, number of institutions, staffing and expenditure.<sup>59</sup> Garton, on the other hand, in looking at much the same period, found that the effect of the implementation of the boarding out system meant that although there were many more children under the control of the Board, the number remaining in institutional care was substantially reduced.<sup>60</sup> Anne O'Brien, comparing the years 1881 and 1911, asserts that 'there was an increase in the proportion of the population of adolescents admitted to industrial schools or reformatories'. She also said that 'probation did not replace incarceration as a form of control, in fact the use of both was increasing'.<sup>61</sup>

These seemingly conflicting views require closer examination. There was indeed expansion, since expenditure by the Board more than trebled during the years 1901-1914. There were also substantial increases in the total number of children under the Board's control, rising from 3,910 in 1910 to 5,938 in 1914.<sup>62</sup> However, most of this was attributable to the practice of 'boarding-out' of children with their own mothers, which began in 1896.<sup>63</sup> This was, in effect, a way of subsidizing women to care for their children, to avoid their having to be cared for by the State. A table

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<sup>57</sup> William Holman, *NSWPDLA* 13 October, 1908 p. 1610.

<sup>58</sup> B Dickey *No Charity There: A Short History of Social Welfare in Australia* Allen & Unwin, Sydney, 1987.

<sup>59</sup> B Dickey 'Care for Deprived, Neglected and Delinquent Children in New South Wales 1901-1915' *JRAHS* vol 63 1977, p. 173

<sup>60</sup> S Garton, 'Frederick William Neitenstein: Juvenile Reformatory and Prison Reform in NSW 1878-1909', p. 54

<sup>61</sup> A O'Brien *Poverty's Prison* Melbourne University Press, Melbourne, 1988, p. 169

<sup>62</sup> *NSW Statistical Registers* for 1901 and 1914. Total expenditure for 1901 was £ 42,422, compared with £ 132,383 for 1914

included in the Board's Annual Report for 1914 shows that, if comparison is made with the population of New South Wales, the *proportion* of children under the Board's control per thousand head of population actually peaked well before the 1905 changes, in 1897. While it is true that there was a marginal increase in the numbers in institutional care between 1881 and 1914, it is rather misleading to conclude (as O'Brien did) that, because of this, 'probation did not replace incarceration as a form of control',<sup>64</sup>.

The following table shows that there was, in the period 1901-1914, a large reduction in the numbers of children in *delinquent* institutions, although there were still some 355 in this form of detention in 1914. This is the period which is more likely to indicate the impact of probation.<sup>65</sup>

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<sup>63</sup> S Garton *Out of Luck* Allen & Unwin, Sydney, 1990, p. 92

<sup>64</sup> A O'Brien *Poverty's Prison*, p. 169. For details of the increase in the numbers in institutional care, see Annual Report SCRB year ended 5 April 1914, *NSWPP* 1914-1915, vol 2, p. 803

<sup>65</sup> *NSW Statistical Registers* for 1901 and 1914. Figures for Mittagong are not shown in the Statistical Register, and have therefore been estimated, on the basis that there were five home operating there in 1914, each with a complement of between 20 and 25 boys. See Annual Report SCRB for year ended 5 April, 1914 *NSWPP* Session 1914-1915, vol 2, p. 819

**CHILDREN IN GOVERNMENT INSTITUTIONS FOR DELINQUENTS  
COMPARISON FOR THE YEARS 1881, 1901 and 1914**

<i><b>Institution</b></i>	<i><b>1881</b></i>	<i><b>1901</b></i>	<i><b>1914</b></i>
N S S Vernon	177	-	-
N S S Sobraon	-	395	-
Carpenterian Reformatory	-	98	-
Biloela Industrial School	130	-	-
Shaftesbury Reformatory	19	23	-
Parramatta Industrial School	-	107	160
Gosford Farm Home	-	-	70
Mittagong	-	-	125
<b>Total</b>	<b>326</b>	<b>623</b>	<b>355</b>

It is reasonable to argue that the increasing use of the probation system was at least partly responsible for this, together with the greater sentencing flexibility given to Courts in 1905. Clearly, there was, after 1905, a marked decline in institutional care, and this inevitably meant more children being placed on probation, and thus still under the Board's control. Another factor may well have been that, prior to 1905, both courts and police were less willing to proceed against children when the main option was institutionalization. Between 1884 and 1886, about forty per cent of children were discharged without penalty.<sup>66</sup> Mackellar gave this as one of the reasons why probation should be introduced, to prevent children in trouble being ignored by police adverse to what they saw as harsh punishment for minor infractions.<sup>67</sup>

<sup>66</sup> See 'Report of the Select Committee on the Condition of the Working Classes in the Metropolis' V&PLANSW 1859-60, vol 4, p. 1267 et seq., p. 13, also evidence by Inspector John Mc Lerie, questions 133-134, at page 28. A high percentage of children appearing before courts were dealt with by being discharged. See also V&PLANSW 1885-1886, vol 4, p. 762.

<sup>67</sup> Sir Charles Mackellar Address on the Neglected Children and Juvenile Offenders Act and the Ethics of the Prohibition Law given at the Church of England Synod 28 September, 1911, NSW Government Printer, Sydney, 1911, p. 7.

Once probation became an option, there was an element of net-widening, so that more children actually appeared before the new children's courts. One other feature which emerges from a comparison of the 1901 and 1914 figures is that the decrease in numbers in delinquent institutions applied only to boys. In fact, it was very substantial, falling from 493 to 195. Probation is the only significant factor which can account for such a huge decline. By contrast, the number of girls actually rose from 130 to 160.

Probation for girls does not appear to have been favoured by the courts. Most girls were before the courts on sexual matters, and the view was that girls had to be separated from the environment which had contaminated them for a significant period in order to be rescued. This was not a local phenomenon. A similar situation was encountered in America, where girls received probation much less than boys. This was because, having reached puberty and offended, they were considered to have acted as an adult, and thus surrendered the special consideration accorded to juveniles. They were thus considered less malleable than boys. Also, parents of a promiscuous girl were considered more at fault and therefore probation was less likely to be effective.<sup>68</sup>

In summary then, Dickey was correct in describing the period as one of expansion, but this expansion did not result in more children being in institutions. Garton correctly pointed out that the number of children in institutions was greatly reduced by the application of the boarding-out policy. O'Brien's contention that the use of both incarceration and probation increased is not correct for boys, in the period after 1905 when probation became available as a sentencing option. Probation was used increasingly for boys, and the numbers of boys incarcerated fell dramatically.

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<sup>68</sup> S Schlossman & S Wallach 'The Crime of Precocious Sexuality: Female Delinquency in the Progressive Era' Harvard Educational Review vol 48 no 1, February, 1978, p. 72 and pp. 83-84.

In relation to girls, the number incarcerated did rise, but there was no great expansion of the number of girls released on probation.

In dealing with administrative issues, Dickey says that by 1900, the Board and the Department were 'a going concern'.<sup>69</sup> From this, one could reasonably infer that they worked together in a spirit of co-operation. He also implies that this collaboration extended to the issue of a 'classification circular' to Magistrates in 1909. This set out the types of children which should be accommodated in the various institutions. The classification issue is dealt with in detail later in this chapter, but suffice to say that it was not at all an example of co-operation. Under pressure from the Government, Mackellar was obliged to consult with the Director of Education, Peter Board, and this led to proposals which were, to some extent, the basis for the circular which was ultimately issued by the Premier.

Mackellar was, however, a reluctant participant, and almost immediately after its promulgation began to undermine the Premier's instruction, claiming that it would 'detract from the usefulness of the (Mittagong) Farm Home'. He tried to lessen its significance by referring to it in disparaging terms, as a 'temporary arrangement' pending the introduction of a system of 'proper classification'.<sup>70</sup> As the Report of a Select Committee which inquired into the administration of the Board in 1916 showed, far from operating together co-operatively, there were in fact 'serious disputes' between the Board and the Department until Mackellar resigned in 1914.<sup>71</sup> Some of these disputes sprang from the increasing expenditure of the Board, and the administrative problems of a rapidly expanding organization.

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<sup>69</sup> B Dickey 'Care of Deprived, Neglected and Dependent Children in New South Wales 1901-1915' JRAHS 1977, vol 63, part3, p. 173.

<sup>70</sup> Annual Report SCRB year ended 5 April, 1910, NSWPP 1910, vol 1, p.20.

<sup>71</sup> 'Further Progress Report of Select Committee' 6 September, 1916 NSWPP 1916, vol 2, p. 1017.



In the context of the issue of determining in which portfolio the Board should function, a 1904 Public Service Board Inquiry into the Chief Secretary's Department is of interest because it looked at this question in some detail. The investigations showed that there was continuing Government concern at increasing expenditure by the Board. The inquiry was commenced at the instigation of the Premier partly as a consequence of the federation of the Australian States in 1901 and the transfer of some State functions to the new Commonwealth Government. It also reflected the Government's desire to reduce expenditure during a time of economic recession, accentuated by a disastrous drought.<sup>72</sup> The Department was singled out because its expenditure was regarded as too great, compared with those of other Departments which, it was claimed, were being reduced 'below that of ...five years ago'.<sup>73</sup> Because of increasing expenditure on 'eleemosynary' purposes, the State Children's Relief Board was an obvious target. This was despite the fact that expenditure of this kind would understandably have increased as a result of the recession.

Evidence was given by Mackellar that his first priority as President was 'the reduction of expenditure consistent with the efficient conduct of work'. The Boarding Out Officer, Alfred Green, however, opposed a suggestion that the boarding-out allowance of five shillings be reduced, pointing out that it had been the same since 1881, even though the cost of living had risen in the meantime.<sup>74</sup> Despite this, the Department was ordered to reduce its expenditure. Later, as part of the same review, the Public Service Board expressed the view that it was desirable to divest the Department of Public Instruction of everything not directly related to education. Thus

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<sup>72</sup> K Buckley & E Wheelwright No Paradise for Workers: Capitalism and the Common People in Australia 1788-1914 Oxford University Press, Melbourne 1988 p. 197. See also J Rydon, R N Spann & H Nelson, New South Wales Politics 1901-1917, Department of Government, Sydney University, Sydney, 1996, p.13.

<sup>73</sup> Public Service Board to Under Secretary, Chief Secretary's Department, quoting the Premier, 5 September, 1905. SR 8/384.

the State Children's Relief Board should be returned to the Chief Secretary's Department, to be renamed the Home Secretary's Department.<sup>75</sup> That recommendation was never implemented, but it does show that there was still disagreement about the proper administrative location of the Board's work.

### *Classification disputes*

With two branches of the one Department providing treatment for delinquents, sometimes in competition with each other, and the Board providing alternatives to institutionalization, it became necessary to establish a workable system to determine the assignment of children coming before the courts. Publicly, the argument for such a system was based on the need to avoid 'contamination', the mixing of criminals with non-criminals, or delinquents with non-delinquents. However, there was also a bureaucratic reason, the need to define territorial boundaries between the two administrations, each of which viewed the other with suspicion.

By the mid nineteenth century the conventional view among politicians, and some senior administration officials, was that contamination should be avoided at all costs.<sup>76</sup> When the Reformatory and Industrial Schools Acts were passed in 1866 contamination meant the association of children who had committed offences with those who had not. However, a central paradox of the system, as it developed, was that, right from the start, the criteria laid down in legislation and Government policy to achieve this goal were not observed. This was not merely because of occasional errors or administrative slip-ups, but was part of the structure of the system.

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<sup>74</sup> Public Service Board 8 December, 1905, quoting evidence by C K Mackellar and A W Green SR 8/384

<sup>75</sup> Secretary Public Service Board to Under Secretary of Justice 22 November, 1907. SR 8/384.

<sup>76</sup> see for example, the 'Second Report of the Royal Commission on Public Charities of the Colony, 1874' in V&PLANSW 1873-1874, vol 6, p. 40.

The evidence for this is considerable. In 1873 children who committed offences were being sent to industrial schools, in contravention of the legislation, in response to parental requests.<sup>77</sup> In the same year, the Hill sisters, visiting from Britain, commented on the failure to segregate the two groups at Biloela, and similar criticism was reported by the Inspector of Charities in 1883.<sup>78</sup> When Neitenstein took over the *Vernon* in 1875 he apparently persuaded Magistrates who had previously been committing juvenile criminals to prison, to send them instead to the ship. This was on the basis that juvenile criminals and others, such as destitute children, could quite safely be mixed if all were under twelve. He quoted Florence Hill in support of this view.<sup>79</sup>

‘Troublesome’ State wards were accommodated at the Shaftesbury Reformatory, both male and female, together with those convicted of offences.<sup>80</sup> Both offenders and non-offenders were accommodated in the 1890s at the Carpenterian Reformatory.<sup>81</sup> In 1902, B. R. Wise, Attorney General, complained that children charged with stealing were not sent to reformatories. Instead these charges were withdrawn and new ones, usually ‘nominal offences’, such as vagrancy, were used to send juveniles to an industrial school’.<sup>82</sup> Also, magistrates had been directed by the Minister that boys should be proceeded against under the Industrial Schools Act rather than for criminal offences.<sup>83</sup> The admission registers for *Vernon*, *Sobraon*, Shaftesbury, and Mittagong Farm Home all show, indisputably, that children who committed offences were habitually sent to industrial schools and those who had not were sent to reformatory

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<sup>77</sup> B Dickey ‘The Establishment of Industrial Schools and Reformatories in NSW 1850-1875’ *JRAHS* vol 54, part 2, June 1968. p. 146

<sup>78</sup> R & F Hill, *What we saw in Australia* p.284. See also H Robison, Inspector of Public Charities to Principal Under Secretary, Colonial Secretary’s Department, 2 July, 1883. *SR* 4/901.1

<sup>79</sup> J Ramsland *With Just But Relentless Discipline* p.150. See also B Boyle *The Child Welfare Schools* undated, unpublished manuscript in the possession of the State Records Office of N S W , p. 31.

<sup>80</sup> C K Mackellar, President State Children’s Relief Board to Under Secretary Chief Secretary’s Office, 2 September, 1903. *SR* 5/5229.

<sup>81</sup> See Annual Report, SCRB 1899, *V&PLANSW* 1899, vol 5, p.425 et seq., p. 5

<sup>82</sup> *NSWPDLC* 15 October, 1902, p. 3356

schools.<sup>84</sup> A similar disregard for the legal distinction between the two types of institutions had long been the case in England, where the Home Office had, by 1870, regarded them as virtually indistinguishable.<sup>85</sup>

In summary, by 1905, the classification system established by the legislation was being widely disregarded. For boys, up until the opening of the Carpenterian Reformatory in 1894, classification was academic any way, since there was only one institution. Attempts at segregation were limited to transferring younger boys to the Board's care or, accommodating them part of each day on Cockatoo Island, vacated when the Biloela Industrial School transferred to Parramatta in 1887.<sup>86</sup> With Mittagong opening in 1906, there was then a choice of three institutions, so some form of classification became a practical possibility. The reverse happened with girls. Once Shaftesbury closed in 1904, there was only one institution at Parramatta, and so separation of different classes became impractical.

One method considered was separation within one campus. This had the advantage of providing some segregation, but without the added costs involved in having separate institutions. It was essentially the scheme adopted for Mittagong, where cottages were established by the Board under the 'family system'. Boys were segregated according to age and sophistication. 'Sophisticated' juveniles were those who were street-wise or had criminal experience. Also, following pressure from

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<sup>83</sup> Section 21 of the Children's Protection Act, 1892, Statutes of New South Wales, see also Annual Report SCRB 1893 in V&PLANSW vol 1 p. 686

<sup>84</sup> *Vernon* Entry Books, 1867-1897, SR 8/1740-46; *NSS Sobraon* Entrance Books, 1897-1911, SR 8/1747-51; Roll of Inmates, Shaftesbury Reformatory, South Head, SR 8/1757; Register of Committals, Farm Home for Boys, Mittagong, 1907-1914, SR 8/1755

<sup>85</sup> L Radzinowicz & R Hood, A History of English Criminal Law and its Administration from 1750, volume 5, Stevens & Sons, London, 1986, pp. 208-210.

<sup>86</sup> Annual Report *Vernon* 1890, V&PLANSW 1890, vol 2, p. 261

church authorities, Catholic boys were accommodated separately from Protestants, although boys did mix for school, recreation and sport.<sup>87</sup>

This was, in essence, similar to the plan for a reformatory at Rookwood, accommodating 160 boys in ten cottages, which was actually constructed in 1886. It never used for that purpose, because it was considered too luxurious for delinquent children.<sup>88</sup> It also represented the essence of a plan advanced in 1907 to replace the barrack style Industrial School for Girls at Parramatta with a group of five cottages to be built at Westmead, and run on the 'family system'. The principal feature of Westmead would have been greater capacity to segregate different classes of girls, although they would be together for instruction.<sup>89</sup> This plan was abandoned, also for reasons of economy.

Attempts to devise a more thorough classification system began with the passage of the Neglected Children and Juvenile Offenders Act, 1905, and the opening of Mittagong for delinquents in 1906. According to complaints raised in Parliament, there had been 'deliberate competition' between the Board and the Industrial Schools to secure control over children coming before the Children's Court.<sup>90</sup> A conference between the parties to sort out things was proposed, but this was objected to by Mackellar. In particular he opposed the attendance of Superintendents of Industrial Schools. He was annoyed at their proposals to lengthen the period of training so that boys in particular could undertake formal trade training in Technical Colleges, and convinced that the use of institutions should be drastically reduced, not expanded.<sup>91</sup>

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<sup>87</sup> Annual Report SCRB 1916 in NSWPP 1916, vol 2, p. 943

<sup>88</sup> Report by Attorney General to Cabinet 31 March, 1887 SR 4/901.1.

<sup>89</sup> P. Board, Under Secretary, Department of Public Instruction, minute dated 15 April, 1907. SR 5/5229

<sup>90</sup> N L W Nielson M L A , NSWPDLA 13 October, 1908, p. 1610.

<sup>91</sup> Mackellar to Under Secretary, Department of Public Instruction, 10 July, 1908, ML MSS 2100.

Eventually, in 1909, Mackellar and Peter Board, Director of Education, were directed by the Minister to draft a classification scheme, which led to an instruction, issued by the Premier<sup>92</sup>. It provided that Mittagong would take male non-offenders who were simply neglected and needed to be boarded out, as well as juvenile offenders under thirteen who required brief detention prior to boarding out. *Sobraon* would be an 'intermediate' institution, both 'reformatory and disciplinary', for boys over thirteen who had not developed criminal tendencies. The Carpenterian Reformatory was for those 'exhibiting criminal tendencies'. For girls, Parramatta was reserved for those 'who have reached the age of puberty and have given evidence of sexual delinquency', and the rest went to the Board.

Although the instruction was issued for the guidance of courts, the real purpose was bureaucratic. It was essential to define the boundary between the territories of the Board and the Department, since the Minister already possessed wide statutory powers to decide the disposition of children committed to the care of the Board or to Industrial schools. The main reason for the promulgation, especially since it came from the Premier, was to eliminate administrative in-fighting. This is made clear by the fact that the Premier's instruction was in very precise terms, with age as the principal criterion, whereas the proposal by Mackellar and Board was more flexible. No doubt this was because Mackellar's aim was to make an individual assessment of each child, and then place according to that assessment.

This concept was now, to a large extent, superseded by the arbitrary criterion of age, which Mackellar considered inappropriate.<sup>93</sup> He was thus an unwilling participant in the new scheme, and so the classification issue continued to be a divisive

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<sup>92</sup> C K Mackellar and P Board, Report on the Classification of Children and Institutions, 10 February, 1909. See also :Under Secretary of Justice, circular to Magistrates, 7 September, 1909. SR 5/7750.2.

issue between the Board and the Department. It flared up again when the Gosford Farm Home was opened in 1913. One interesting aspect of the new rules was the question of what to do with absconders from the Carpenterian Reformatory. In July 1907, the Minister for Public Instruction had directed that, on recapture, all absconders from there should be sent to *Sobraon*. It was certainly more secure, but was supposed to be caring for the less criminal types. After the Premier's instruction, this practice ceased, and returned absconders were either returned to the fairly open situation at Brush Farm or spent up to three months in prison, followed by return to the reformatory.<sup>94</sup>

### *Major Reforms*

The existence of squabbles between the two administrations should not detract from the fact that there were some people in the system who were advancing serious and comprehensive plans for reform of the system, and chief among these were Frederick Neitenstein and Sir Charles Mackellar. Neitenstein, after a successful period as Superintendent of the *Vernon*, had been appointed Comptroller-General of Prisons. Mackellar succeeded Renwick as President of the Board in 1902.

Neitenstein, in presenting his Annual Report as Comptroller-General for 1896, put forward a comprehensive plan for reform of the juvenile correction system. It made use of the experience he had gained as Superintendent of the *Vernon* as well as drawing on his knowledge of developments overseas, both through personal observation of places like Mettray and Red Hill, as well as correspondence with authorities in other

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<sup>93</sup> Annual Report SCRB for year ended 5 April, 1910 NSWPP Second Session 1910, vol 1, p. 301

<sup>94</sup> Unsigned minute prepared in the Department, in response to a complaint dated 20 April, 1910, by F Galbraith, Police Magistrate at Goulburn about this practice. SR 5/7750.2. This penalty was prescribed by Section 44 of the Neglected Children and Juvenile Offenders Act, 1905.

countries.<sup>95</sup> It emphasized reformation rather than punishment, and much of what he suggested was embodied in the 1905 legislation.<sup>96</sup> Consistent with the view that children, by virtue of their immaturity, were not fully responsible for their actions, he concluded that children under the age of sixteen ‘should not, under any circumstances, be sent to prison’.<sup>97</sup>

He also advocated steps to avoid incarceration of first offenders, thus anticipating the establishment of the probation system. In relation to the issue of classification, he considered the distinction between Reformatory and Industrial Schools to be ineffective, preferring age as the main determinant. In that respect, he was expressing the realities of the local situation, where there had long been considerable mixture of the two groups in practice, even though legally they were supposed to be separated.

Coupled with separation by age, he was also in favour of separate ‘more penal’ institutions for ‘habitual juvenile offenders’ and the ‘worse behaved’. In dealing with administrative issues, he favoured giving the Minister power to determine which institution a child would be sent to, as well as to transfer between institutions, quite radical changes to the existing system. He also proposed establishing a Children’s Court, together with assessment to determine what treatment they should receive.

Finally, Neitenstein proposed a campaign to stamp out truancy, which he, in common with many others, considered to be at the heart of juvenile delinquency. If truancy could be stamped out, it would ‘empty the gaols and reformatories’.

Neitenstein’s solution was a short term of one to two months in an industrial school,

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<sup>95</sup> Annual Report NSS *Vernon* for year ended 5 April, 1890 in V&PLANSW 1890, vol 2, p. 261.

<sup>96</sup> M L S Cruise ‘Penal Reform in New South Wales: Frederick William Neitenstein 1896-1909’ Ph D Thesis, University of Sydney, 1980. More specifically, see also Comptroller-General of Prisons Annual Report for 1896 in V&PLANSW 1897, vol 3, p. 1390.

<sup>97</sup> ibid., p. 1369.



accompanied by strict discipline (in modern parlance, the ‘short, sharp shock’).<sup>98</sup>

However, as Garton has pointed out, he was still a supporter of institutional care, advocating early incarceration rather than using industrial schools as a last resort, a view that differed from that of Sir Charles Mackellar, who was much more strongly in favour of avoiding institutional care.<sup>99</sup>

In summary, he supported the diversion of first offenders, greater flexibility in deciding the appropriate treatment, and, for most children, much shorter periods of detention. He also continued to have faith in institutional treatment as the preferred option for most cases, against the main thrust of child welfare reform in the late nineteenth century. Neitenstein’s influence in juvenile corrections continued after his promotion to head the Prisons Department. In 1897, when problems arose at the Carpenterian Reformatory, he was called in to do an urgent report for the Government. In 1904, he compiled a voluminous report after an overseas trip, which contained substantial segments dealing with juvenile corrections.<sup>100</sup>

Another major reform was the establishment of the Farm Home for Boys at Mittagong in 1906. This was an important step because it was the first attempt to apply the principles of the ‘cottage home’ or ‘family system’ to the care of delinquents in a State institution. The Board regarded it as a most progressive move, providing a more humane form of institutional care for a less serious class of delinquents. It was aimed at a much shorter period of training (an average of about nine weeks) than the ideal of three years favoured by Industrial Schools. Since 1885, the Board had operated cottages for sick and invalid children at Mittagong. The industrial school for

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<sup>98</sup> *ibid.*, pp. 1391-1392.

<sup>99</sup> C K Mackellar *The State Children: An Open Letter to the Honourable A. G. F. James, M. L. A., Minister for Education* N S W Government Printer, Sydney, 1917, pp. 4-5.

<sup>100</sup> F W Neitenstein, Report of 16 March, 1897, ‘Correspondence Respecting the Carpenterian Reformatory’ pp. 7-10. See also F W Neitenstein, ‘Report by the Comptroller-General of Prisons on

delinquents was thus grafted on to the existing establishment for dependent children. Initially, one additional twenty-five bed cottage was provided for delinquents, but in the next few years, others were added. Inmates ranged in age from eight to seventeen and included those convicted of offences as well as truants and uncontrollable and neglected children.<sup>101</sup>

The biographers of Peter Board, appointed Director of Education in 1905, claimed that he was responsible for the Mittagong initiative. A similar claim was made, contemporaneously however, by Mackellar in the Board's Annual Report for 1906-07.<sup>102</sup> It is impossible at this distance to assign responsibility with any certainty, but Mackellar had long been an advocate of the kind of program set up at Mittagong, and surely deserves much of the credit for it. This view is reinforced by the fact that Board failed to establish cottage home systems when he had the chance, at Westmead in 1907 and at Gosford in 1913.

Mackellar is arguably the most influential person during this period. After a distinguished medical career, during which he displayed a keen interest in child welfare, he was a member of the State Children's Relief Board from 1882 to 1885. He also became a member of the Legislative Council, holding political office several times in the 1880s. From 1902 to 1914, as President of the Board, he led the movement for social reform in relation to the treatment of children. He didn't hesitate to criticize the Government and frequently did so, in quite trenchant terms through the medium of the Annual Report of the Board. In that respect, the power of his position was enhanced by the fact that, for much of the time, he was a member of the Legislative Council, as well

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Prisons, Reformatories, Asylums and other Institutions visited by him in Europe and America' NSWPP 1904, vol. 2, p. 117

<sup>101</sup> Annual Report SCRB 1906-1907, NSW Government Printer, Sydney, 1907, p. 14.

<sup>102</sup> A R Crane & W G Walker Peter Board: His Contribution to the Development of Education in N S W Australian Council for Educational Research, Melbourne, 1957, p. 209. See also Annual Report SCRB 1906-1907, NSW Government Printer, Sydney, 1907, p. 14.

as an eminent medical practitioner. This is illustrated by the fact that the Government, from 1905 on, considered abolishing the Board in order to stifle the kind of criticism he (because he was not a public servant) was able to make. They refrained from taking action to deal with this problem until his retirement.<sup>103</sup>

He was principally responsible for the significant reforms contained in the Neglected Children and Juvenile Offenders Act, 1905, including Children's Courts and the probation system. He considered that the treatment of children was too arbitrary, since decisions tended to be based on age and the nature of the charge. His view was that classification of children should be based on an assessment of the individual character and environment of the child. He was a strong supporter of the view that social environment was the most significant influence on child development.<sup>104</sup> The welfare of the child was to be the important consideration. Mackellar constructed what was in effect a hierarchy of treatment options, based on a number of principles: it was important to keep children with their families if at all possible, hence the probation system. If that was not possible, then they should be placed in foster care. If that proved unsuitable, then the 'family system' of cottage home care should be used, and so on, with institutional care the last resort.

In this respect, he was in touch with child welfare reform movements in the United States, Britain and Europe, and his policies were consistent with developments overseas. In 1912, he was appointed Royal Commissioner to enquire into the treatment of neglected and delinquent children, and travelled extensively overseas

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<sup>103</sup> Evidence of A W Green, President of the SCRB, 'Progress Report of 11 April, 1916 of the Select Committee on the Whole Administration of the State Children's Relief Act, 1901', NSWPP 1915-1916, p. 10.

<sup>104</sup> S Garton 'Sir Charles Mackellar: Psychiatry, Eugenics and Child Welfare in New South Wales 1900-1914' Historical Studies vol 22 no 86 April, 1986, p 21.

before compiling a very comprehensive report in the following year.<sup>105</sup> One objective, that of wresting control of the treatment of delinquent children from the industrial schools within the Department of Public Instruction, eluded him. Even though he had long sought to reduce the incidence of that kind of institutional detention, he had a balanced approach to institutional care in general, and believed that institutionalisation was appropriate for certain classes of children, notably vicious offenders.<sup>106</sup>

### *The 1905 legislation*

The Neglected Children and Juvenile Offenders Act, 1905 was a major reform. It was the embodiment, in statute, of the main changes so forcefully advocated by Mackellar, Neitenstein and others who supported them. It was the high point of a reformist era, but paradoxically it also marked the beginning of attempts by the Department to bring the Board under closer bureaucratic control. It was a very significant piece of legislation, which in many ways set the course for the treatment of juvenile delinquents for many years to come.

There had been attempts to enact similar legislation in 1902, 1903 and 1904, but none had completed passage through Parliament. The State Children's Bill, 1902, contained a provision which would have facilitated placement of delinquent children with religious organizations in small cottage homes, as was the case in other States, something long advocated by Mackellar.<sup>107</sup> That provision proved too controversial, and produced a sectarian outcry. A number of members, including Sir Normand McLaurin, objected to this, on the ground that it was the 'thin end of the wedge' and

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<sup>105</sup> C K Mackellar The Treatment of Neglected and Delinquent Children in Great Britain, Europe, and America with Recommendations as to Amendment of Administration and Law in New South Wales, N S W Government Printer, Sydney, 1913.

<sup>106</sup> S Garton 'Sir Charles Mackellar: Psychiatry, Eugenics and Child Welfare in New South Wales 1900-1914', p 30.

<sup>107</sup> NSWPDLC 24 September, 1902, vol 7, p. 2930. See also NSWPDLC 22 October, 1902, p. 3659.

would lead to subsidization of schools operated by churches.<sup>108</sup> It was dropped from the 1905 Bill.<sup>109</sup> The power to subsidize private industrial schools, unused since 1866, was also dropped.<sup>110</sup> The 1902 Bill also proposed the establishment of day industrial schools, based on a Glasgow model, apparently to counter truancy, but they were not included in the 1905 Act.<sup>111</sup> The 1902 Bill was to be administered by the Chief Secretary, an attempt to remove children from the industrial schools administered by the Department of Public Instruction.<sup>112</sup> By the time the 1905 Bill appeared, this provision had been dropped.

One aspect of the legislative initiatives between 1902 and 1905 was the persistence of motives of social control. In introducing the 1902 Bill, Attorney General Wise claimed there had been complaints about the operation of the system for at least fifteen years. He referred to the threat posed by street children, ‘the neglected child takes a terrible revenge upon society when he grows into an habitual criminal’.<sup>113</sup> Views such as this had been held by those who, from the middle of the nineteenth century, had advocated the establishment of reformatory and industrial schools, because they feared the emergence of a delinquent class.

The 1905 Act established a new judicial body, the Children’s Court, and also provided a new sentencing option, probation, both of which are discussed in detail below. Another important provision removed a legal restriction on sentencing which, theoretically, had bound the courts in relation to Reformatory and Industrial Schools. The basic principle of the 1866 Act had been that children who committed offences went to Reformatories and those who were neglected went to Industrial Schools.

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<sup>108</sup> NSWPDLC 15 October, 1902, pp. 3365-66, and 22 October, 1902, pp. 3652-54.

<sup>109</sup> NSWPDLC 30 August, 1905, p. 1764.

<sup>110</sup> NSWPDLC 15 October, 1902, pp. 3365-66, and 22 October, 1902, pp. 3652-54.

<sup>111</sup> NSWPDLC 15 October, 1902, p. 3364.

<sup>112</sup> NSWPDLC 15 October, 1902, p. 3368.

<sup>113</sup> B R Wise NSWPDLC 15 October, 1902, p. 3355.

There were a number of ways in which this basic principle was circumvented, both by use of Section 21 of the Children's Protection Act, 1892, as well as administrative procedures. The 1905 Act changed all that. Now, regardless of whether the child had committed an offence, or was being neglected by its parents, or was behaving in such a way as to be at risk of becoming a criminal, the court could make up its own mind about the appropriate course of action.

The legislation thus introduced an important reform, that in dealing with juveniles, the paramount consideration should be to do what was best for the child, rather than the charge itself. The main options were the release of the child on probation (the new option introduced by this Act), committal to the care of some person (a relative, or the person in charge of a church home), committal to the care of the Board (for the purpose of boarding out, or perhaps placement in one of the Board's homes), committal to an Industrial School, or committal to a Reformatory School. The Act also preserved the common law sentencing options, notably committal to prison or, for serious offences, committal for trial in a superior court.<sup>114</sup>

In introducing the Bill, the Attorney General reiterated the Government's desire to keep 'disciplinary institutions' separate from 'boarding out establishments'. He also wanted to keep separate 'children of vicious temperament and vicious intent' from those 'less vicious', and each of those classes of children from those 'whose habits are mild and temperament good'.<sup>115</sup> This again represented the classes which the courts had defined in practice. The old legal distinction was between two classes: first, criminals, second, those not actually criminal but destined for crime, together with those sinned against by parental neglect. Instead, the law would preserve those classes but now provide the same sentencing options for all (with the exception that only those who

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<sup>114</sup> Neglected Children and Juvenile Offenders Act, 1905, Statutes of New South Wales.

committed offences could be sent to prison or for trial) . In one sense, this was an admission that reformers like Mary Carpenter were correct when they declared that, for children under fourteen at least, it was impossible to distinguish between the treatment to be given to the juvenile criminal and a non -criminal delinquent. In another sense, it represented the mainstream view of the social reform movement of the late nineteenth century. This was that such children were the products of poor parental and environmental factors, and should not therefore be dealt with in the criminal system.

Consistent with this approach, the Board was given, for the first time, power to remove a child already detained in a Reformatory School and board the child out. This was a power previously sought by the Superintendent of the Carpenterian Reformatory, who complained that he could have apprenticed many boys but lacked legal authority to do so.<sup>116</sup> Under the Reformatory and Industrial Schools Act, 1901, a consolidating measure, children could be apprenticed out from Industrial Schools.<sup>117</sup> The 1905 Act, while extending the power of the Board to board out children to those in Reformatories, left the placement of children from Industrial Schools as it was, that is, by apprenticeship by the Superintendent rather than boarding out by the Board. To give the Board power to board out children from Industrial Schools would arguably have led to further disputation between the Board and the Industrial Schools, so it was not included.

### *Children's Courts*

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<sup>115</sup> C G Wade, Attorney General NSWPDLA 5 July, 1905, p. 614.

<sup>116</sup> Superintendent, Carpenterian Reformatory Annual Report 1899 in V&PLANSW 1900, vol 1 , p. 482

<sup>117</sup> See note as to its nature, appended to the Bill, from the Commissioner for Consolidation of the Statute Law. H M Cockshott & S E Lamb (eds.) The Statutes of New South Wales of Practical Utility vol V, 1901, Law Book Company, Sydney, 1902, p. 475.

One of the major innovations effected by the 1905 Act was the establishment of Children's Courts. This was important because it represents the formal recognition that children should be treated differently from adults, in the criminal justice system. Although novel for New South Wales, Children's Courts had been operating in other parts of the world for some years.<sup>118</sup> The first Children's Court formally established was in Chicago in 1899.<sup>119</sup> In South Australia, hearings of juvenile cases in a room away from the Adelaide courthouse began in 1890.<sup>120</sup> On that basis, some people have argued that the first 'juvenile court' was in South Australia.<sup>121</sup> In fact, the Adelaide Court lacked any statutory authority and also a probation system, regarded as an essential ingredient. Probation was not introduced until 1906.<sup>122</sup> A Children's Court was not formally constituted in South Australia until 1941, although a number of different administrative and legislative provisions meant that some attributes of a modern children's court operated earlier.<sup>123</sup>

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<sup>118</sup> For details of such a court operating in France in the 1860s, see J Donzelot The Policing of Families, Pantheon, New York, 1979, p. 101.

<sup>119</sup> A M Platt The Child Savers University of Chicago Press, Chicago, 1977, p. 9.

<sup>120</sup> C E Clark to Sir Henry Parkes 13 August, 1890 Parkes Correspondence vol 8 pp. 208 215 A 878 CY Reel 30 Mitchell Library.

<sup>121</sup> C H Spence State Children In Australia Vardon & Sons, Adelaide, 1907 pp. 47-48. See also claims made by the Attorney General, the Hon. L J King on the second reading of the Juvenile Court Bill, 1971, and also by an opposition speaker on the Bill, Dr. David Tonkin. South Australia: Official Reports of the Parliamentary Debates, House of Assembly, 1 and 28 September, 1971, pages 1302 and 1731.

<sup>122</sup> See Annual Report of the State Children's Council, 1890 Proceedings of the Parliament of South Australia 1890 vol 3, no 39, South Australian Government Printer, Adelaide, 1891, p. 4. See also Annual Report of the State Children's Council, 1891 Proceedings of the Parliament of South Australia 1891 vol 3, no 39, South Australian Government Printer, Adelaide, 1892, p. 4. See also Annual Report of the State Children's Council, 1895 Proceedings of the Parliament of South Australia 1895, vol 3, no 81, South Australian Government Printer, Adelaide, 1896, p. 3. See also Annual Report of the State Children's Council, 1906 Proceedings of the Parliament of South Australia 1907, vol 3, no 59. South Australian Government Printer, Adelaide, 1907, p. 11 and Annual Report of the State Children's Council, 1907 Proceedings of the Parliament of South Australia 1907, vol 3, no 59A. South Australian Government Printer, Adelaide, 1907. See also Dependent Children; Interstate Congress of Workers, Adelaide, May 1909, W K Thomas & Co., Adelaide, 1909, p. 9.

<sup>123</sup> See State Children Act, 1895. Acts of the Parliament of South Australia, 1895 SA Government Printer, Adelaide, 1896.



The Chicago Court, which was copied by most other American States, went much further than the South Australian model.<sup>124</sup> In New South Wales, the Attorney General, in introducing the Bill, claimed that legislation was based directly on an American model. . Juvenile Courts were not established formally in Britain until 1908, although some operated informally before that.<sup>125</sup> There have been some suggestions that it was influenced by German law, but the American model seems more likely, given the success attributed at the time to juvenile courts in the United States.<sup>126</sup> A court of this kind had been proposed for New South Wales as early as 1896, when Frederick Neitenstein, Comptroller General of Prisons, presented his comprehensive plan for the future direction of juvenile corrections.<sup>127</sup>

John Seymour has argued that the legislation was not so much based on the American legislation but on the *idea* of a children's court embodied in that legislation. He claimed that there was a fundamental difference between children's courts in Australia and America. In Australia, the child was charged with the actual offence but in the United States, a delinquency petition was lodged instead.<sup>128</sup> While that was true for the first court established in Illinois, and also for many other States in America, it was not the case in New York, where the child was still charged with an offence, and criminal rules of evidence applied, even though if convicted, the sentencing options were the same, including probation and committal to a school instead of prison.<sup>129</sup> The

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<sup>124</sup> A M Platt, The Child Savers p. 10

<sup>125</sup> C G Wade, Attorney General NSWPDLA 5 July, 1905, p. 611. For details of Children's courts in Britain, see A Morris & M McIsaac Juvenile Justice ? The Practice of Social Welfare Heineman, London, 1978, p. 4

<sup>126</sup> Sir Charles Mackellar The Treatment of Neglected and Delinquent Children in Great Britain, Europe and America section E, p. 143. See also C Walther 'Child Welfare, Delinquency and the Law in New South Wales 1896-1914' BA Honours Thesis, University of New South Wales, 1968, p. 52.

<sup>127</sup> Comptroller-General of Prisons Annual Report for 1896, pp. 1391

<sup>128</sup> J A Seymour Dealing with Young Offenders Law Book Coy., Sydney, 1988, p. 94. See also J A Seymour 'Children's Courts in Australia' in A Borowski & J M Murray Juvenile Delinquency in Australia Methuen, North Ryde, 1985, p. 187

<sup>129</sup> J W Mack 'The Juvenile Court' Harvard Law Review vol 23, 1909-1910, p. 108.

system adopted for New South Wales was therefore very much along the lines of that which operated in New York.

The system operating in Illinois, a petition of delinquency instead of a criminal charge, was also broadly consistent with way the system operated in New South Wales, in practice, before 1905. Specifically, it had long been the practice when a child was charged with a criminal offence, that charge would be dismissed by the Magistrate, and the child would instead be dealt with under the Industrial Schools Act, for example, as a vagrant.<sup>130</sup> When viewed in that light, the procedure was not so different to the Illinois one. Also, the use of committal to an institution in general terms, which became the usual custodial sentence for juveniles, meant that the penalty was the same, regardless of the offence, which was similar to the outcome of a petition of delinquency in those American States which used that procedure.

Seymour also regards the provisions of the 1905 legislation relating to indictable offences as strange.<sup>131</sup> This Act provided that a Children's Court Magistrate, in relation to a range of indictable offences, could, without actually making a determination on the charge, deal with the child in one of the ways allowed under the Act, including probation, committal to the care of a person, an asylum or to an institution.<sup>132</sup> If the Magistrate elected to commit the child for trial in a superior court, the Minister had power to commit the child to an institution, provided the Attorney General filed a *nolle prosequi*, the parents consented and defence evidence had been heard. What these provisions meant was that a child could be sentenced (including committal to an institution, normally for more than twelve months), without

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<sup>130</sup> T A Coghlan The Wealth and Progress of New South Wales, 1897-1898 NSW Government Printer, Sydney, 1899, p. 813.

<sup>131</sup> J A Seymour Dealing with Young Offenders p. 85.

<sup>132</sup> This provision only related to indictable offences which a court could not deal with summarily. In other legislation, courts of summary jurisdiction had been given power to deal summarily with a range of indictable offences, typically larceny and similar crimes.

ever having been convicted of any offence.<sup>133</sup> Although this was a strange procedure, it again followed the previous practice of the courts, and meant that the child could avoid the stigma of criminal conviction. There were objections to the provision during debate on an earlier version of the legislation, on the ground that it was unfair and contrary to the principles of British justice, but it remained part of the law until 1939.<sup>134</sup>

Sir Charles Mackellar later claimed, in evidence to a Select Committee in 1916, that he was responsible for the establishment of the Children's Court, as well as the accompanying probation system<sup>135</sup>. It certainly seems likely that he, as President of the Board since 1902, and a person of considerable public eminence, had a pivotal role in the 1905 legislation. Also, as has been mentioned previously, three earlier State Children's Bills between 1902 and 1904 had also contained provisions to establish Children's Courts. Neitenstein, who had also proposed a Children's Court, had observed juvenile correctional systems overseas and both were closely in touch with developments in the United States, Britain and Europe.

The establishment of Children's Courts should be seen as part of a world wide trend which New South Wales followed. According to Anthony Platt, the conventional liberal view of the origins of the juvenile court in the USA is that the 'child savers made an enlightened effort to alleviate the miseries of urban life caused by an unregulated capitalist economy'.<sup>136</sup> Similar sentiments were certainly voiced in New South Wales at the time. Mackellar, according to Garton, favoured this new

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<sup>133</sup> Neglected Children and Juvenile Offenders Act, 1905, section 26. Under common law, no trial before a superior court can proceed unless the Attorney General files a bill of indictment. Where no bill is filed, the procedure is known by its ancient latin title : *nolle prosequi*

<sup>134</sup> W Mahoney and J J Carruthers, in the debate on clause 9 of the State Children's Bill, 1903. See NSWPDLA 30 September, 1903 pages 2875 and 2888. This provision was reproduced as Section 26 of the Neglected Children and Juvenile Offenders Act, 1905, and section 61 of the Child Welfare Act, 1923. Repealed, Child Welfare Act, 1939.

<sup>135</sup> evidence by Sir Charles Mackellar in Report of the Select Committee on the Administration of the State Children's Relief Board, NSWPP 1916, vol 2 p. 47

<sup>136</sup> A M Platt, The Child Savers, p. xiv

type of judicial system, based on the best interests of ‘the child’s welfare, rather than the degree of guilt’.<sup>137</sup>

One feature of the new Courts was to remove children from the ordinary court system which dealt with adults. Thus, the hearings were to be held ‘in some place other than a court house’. The proceedings were to be, as far as possible, without formality, and the object was to treat the children ‘more or less in a friendly, parental fashion’.<sup>138</sup> This followed the American example, where the court was seen as the *parens patriae*, that is the State intervening in the role of a loving parent, to fill the void left by neglectful parents.<sup>139</sup> For that reason, some effort was apparently made in the selection of the presiding Magistrates for the Sydney court to further that goal. Once again, the formal requirement that proceedings against children be heard in a place other than a courthouse was more in the nature of a logical development than a radical move. In practice, Magistrates had for some years before, been hearing cases against children in Sydney in chambers rather than in open court.<sup>140</sup>

In Sydney, a Court was established first at Ormond House in Paddington, the head office of the State Children’s Relief Board.<sup>141</sup> Apart from not being part of any court buildings, it had the advantage of providing accommodation for children who came into the Board’s care. It was a kind of depot where children, who were picked up by the police in the city or had been committed in country courts, could be held temporarily until they were permanently placed. When a purpose-built Children’s Court was later established near Central Railway Station, a shelter for boys was built

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<sup>137</sup> S Garton ‘Frederick William Neitenstein: Juvenile Reformatory and Prison Reform in NSW 1878-1909’, p. 58.

<sup>138</sup> C G Wade, Attorney General NSWPDLA 5 July, 1905, p. 612.

<sup>139</sup> J W Mack ‘The Juvenile Court’, pp. 104-105. See also B Flexner ‘The Juvenile Court-Its Legal Aspect’ Annals of the American Academy of Political and Social Science vol 36 July-December, 1910, p. 49, and H H Lou Juvenile Courts in the United States Chapel Hill, London, 1927 p. 20. See also J A Hogue, Minister for Public Instruction NSWPDLA 13 October, 1908, p. 1612.

<sup>140</sup> E W Fosbery, former Inspector General of Police, NSWPDLC 30 August, 1905, p. 1773-74.

next door, for children coming before the court, or on remand. Accommodation there was provided only for boys, girls being held at the Metropolitan Girls Shelter, Glebe. Other children's courts were established at Parramatta, Burwood, Newcastle and Broken Hill.<sup>142</sup> In all other areas outside Sydney, hearings took place in the ordinary court houses, because it would simply have been impractical and expensive to do otherwise.

The Board's activities were also expanded in conjunction with the establishment of the new court. Authorized officers of the Board were now empowered to bring children before the court in 'neglect' matters, whereas previously this was done by police alone. In country areas, of course, the police continued to initiate 'neglect' proceedings when a Board official was not available. A curious feature of the new Act was that only children who had attained the age of five years fell within its scope. in relation to neglect proceedings. In imposing this limitation, there was an expectation that children under five would be dealt with under the Children's Protection Act, 1902. Section 9 of that Act made it an offence to neglect or ill-treat a child. However, the provision was subject to the limitation that the neglect or ill-treatment had resulted or was likely to result in 'bodily suffering or permanent or serious injury to the health of (the) child.'<sup>143</sup> In practice this meant that many children who should have come within the scope of the new Act did not. This was a source of complaint by police and Magistrates when the operation of the Act was reviewed in 1907. Some police admitted that they had taken children under five into custody even though it was unlawful, in the interests of protecting the children.<sup>144</sup> Despite the obvious need for an

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<sup>141</sup> the building is now Juniper Hall, Oxford Street, Paddington

<sup>142</sup> Government Gazette 30 September, 1905, p. 6669.

<sup>143</sup> Section 9, Children's Protection Act, 1902. There were also drafting problems. The Neglected Children and Juvenile Offenders Act repealed other sections of the 1902 Act which referred to section 9, but not section 9 itself. As a result, there were doubts about whether section 9 had any real force.

<sup>144</sup> See reports by police and Magistrates in the form of suggestions for amendments to the Act

amendment, nothing was done until 1923.<sup>145</sup> In criminal matters, the court also made use of reports about the child's background, but initially these were prepared by the police.<sup>146</sup> There was also concern at the incidence of truancy, then regarded as 'the predominant cause of nearly all juvenile offences'. The Public Instruction Act of 1880 was regarded as ineffectual, but legislation to enable truants to be dealt with was not enacted until 1916.<sup>147</sup>

The hearings were now to be in camera, and typically those allowed in the court consisted only of the child and parents, prosecution, lawyers, police, church representatives and Departmental officers. Prior to the new legislation, the name of the child, and details of evidence given in a case could be reported in the press, and frequently were, usually as amusing tidbits. Children committed to institutions sometimes achieved a kind of hero status by displaying newspaper reports of their exploits.<sup>148</sup> After 1905, no publicity was permitted. At the time, there was no opposition to this change. Many of the cases in the court were not criminal proceedings, but in essence inquiries into the care and behaviour of the children concerned, as well as their parents, so informality in those situations was unobjectionable. In relation to criminal proceedings, there was in theory an inherent tension between informality and the interests of justice. In view of the fact that only rarely was any child legally represented, and in the vast majority of cases they pleaded

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SR 5/7750.2.

<sup>145</sup> Section 3 of the Child Welfare Act, 1923, removed the lower age of five years from the definition of 'child'.

<sup>146</sup> A N Barnett, Special Magistrate of the Sydney Children's Court: 'Report on the working of the Neglected Children and Juvenile Offenders Act 1905 and the Infant Protection Act 1904, in NSWPP 1906, vol 1, p. 5

<sup>147</sup> 'Report upon the working of the Neglected Children and Juvenile Offenders Act in the Metropolitan Children's Court from October 1905 to December 1906, NSWPP 1907, vol. 1, p. et seq., p.2. The Public Instruction (Amendment) Act, 1916, provided a range of sentencing options, including committal to an institution, for habitual truants.

<sup>148</sup> Annual Report, Carpenterian Reformatory, 1905, NSWPP 1906 vol 1 p. 1.

guilty, it was not an issue that arose in any practical sense, at least until many years later when children began to be represented in the Children's Courts.

The jurisdiction of the courts also extended beyond that normally possessed by their adult counterparts, then courts of petty sessions. Under the previous arrangements, a child accused of an indictable offence, could, after a preliminary petty sessions hearing to establish whether a *prima facie* case existed, be committed for trial on indictment by a judge and jury in a superior court, usually the District Court (or the Supreme Court, for very serious crimes).<sup>149</sup> In speaking to the 1905 Bill, the Attorney General described this procedure as a 'moral farce' since quite often the defendant was 'a mere brat not able to see over the rail of the dock'.<sup>150</sup> However, this was by no means applicable to all cases. Under the Crimes Act, 1900, Magistrates had discretion to deal with specified indictable offences summarily if the defendant consented.<sup>151</sup> Discretion had been available in larceny matters since 1850, in respect of juveniles under fourteen years of age.<sup>152</sup> Under the new system, the powers of the Magistrate in the Children's Court were simply extended so that he could deal with both summary and all but the most serious indictable offences, without requiring the consent of the child. The court was still given discretion to commit for trial in those indictable cases where that seemed more appropriate, no doubt in the case of older, more hardened juveniles.

The new court was also based on the notion that the treatment of such children needed to be placed on a more scientific footing. Soon after it began operations, Mackellar sought to have a neurologist or psychiatrist conduct mental tests on children

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<sup>149</sup> An indictable offence is, broadly speaking, a more serious crime carrying a penalty of twelve months imprisonment or more.

<sup>150</sup> C G Wade, Attorney General NSWPDLA 5 July, 1905, p. 608.

<sup>151</sup> Crimes Act, 1900, (NSW) section 476.

<sup>152</sup> Act 14 Vic 2, (1850) NSW.

coming before the court. This was consistent with his view that a better classification system was needed, in order to separate those who were capable of benefiting from the new probation system, or were suitable for boarding out, from those who should be institutionalized. It also followed similar views held in America where, in some States, it was regarded as an essential adjunct to the Juvenile Court, for there to be a 'psycho-physical examination' of every child.<sup>153</sup> Mackellar was also concerned with the legal issue of mental capacity to commit crime. Without mental testing, an intellectually disabled child might be convicted of an offence for which 'he was neither mentally nor morally responsible'.<sup>154</sup> Mackellar, like many of his medical contemporaries, believed that mental deficiency was closely associated with delinquency and crime, and so it was essential to segregate mental defectives (by institutional care, if necessary) to prevent 'contamination'.<sup>155</sup> The introduction of mental testing did not however, occur until some years later, and will be discussed in the next chapter.

### *Probation*

The other major innovation in the 1905 Act was the introduction of probation as a sentencing option for children. This was of immense significance, because it had the practical effect of diverting great numbers of children from incarceration in institutions. The word 'probation' had earlier been used in correctional systems to refer to the issue of a ticket of leave for convicts.<sup>156</sup> In Industrial Schools, the term was often used to refer to the apprenticing of children, as provided for in the Industrial Schools Act, 1866,

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<sup>153</sup> J W Mack 'The Juvenile Court' p. 120.

<sup>154</sup> Annual Report SCRB for year ending 5 April, 1914 NSWPP 1914-1915, vol 2, p. 17

<sup>155</sup> S Garton "Sir Charles Mackellar: Psychiatry, Eugenics and Child Welfare in New South Wales 1900-1914" pp. 26-33.

<sup>156</sup> Colonial Secretary's Special Bundle: Rules for Cockatoo Island Prison, SR 4/1161.



normally after twelve months satisfactory behaviour. Superintendents also allowed inmates to return to the care of their parents after a suitable period of institutional training. These children, who were still subject to committal orders, were referred to as ‘probationers’.<sup>157</sup>

Once apprenticed or allowed home, some supervision by the Superintendent or another officer was arranged for those who were accessible, but in the country, it took the form of monthly visits from the local police.<sup>158</sup> Superintendents did obtain regular reports from employers and their Annual Reports are replete with their testimonials, nearly all from farmers in the country. About a third of apprentices, however, were sent back for misconduct.<sup>159</sup> The scheme grew, and by 1890 there were 480 apprentices ‘under control’, in addition to those on board *Sobraon*.<sup>160</sup> The Board also practised what it called a system of probation before the 1905 legislation, but this again referred to children who, after a period in the Board’s care, were allowed to return to parents.<sup>161</sup> All Board placements were closely supervised by honorary visitors in a similar way to the supervision of children who were boarded out.

The system introduced by the 1905 Act was quite different, since it was imposed by the court, as an alternative to committal. Mackellar was directly responsible for its adoption. In the Board’s Annual Report for 1905, he criticized its omission from the Bill when it was still before parliament, pointing to the success of probation in

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<sup>157</sup> Brush Farm Home for Boys Annual Report 1909 NSWPP 2nd Session 1910 p.298

<sup>158</sup> See Annual Report *Sobraon* 1894, V&PLANSW 1894-95, vol 3, p. 946, Annual Report *Sobraon* 1906 in NSWPP 1906 vol 1, p. 363 and Annual Report Brush Farm Home for Boys 1909 NSWPP Second Session 1910, p. 298. In relation to girls, see Annual Report, Minister of Public Instruction 1912 NSWPP 1913 vol 1 p. 393

<sup>159</sup> H Robison, Inspector of Public Charities to Principal Under Secretary, Colonial Secretary’s Department, 2 July 1883, SR 4/901.1

<sup>160</sup> Second Report of the Royal Commission into the Public Charities of the Colony V&PLANSW 1873-74 vol 6 p. 57. See also Annual Report *Vernon* for year ended 30 April 1890 in V&PLANSW 1890 vol 11, p. 260

<sup>161</sup> Annual Report SCRB 1904 NSWPP 1904, vol 2, p. 18.

America.<sup>162</sup> Later, he moved amendments to add probation as a sentencing option during the passage of the Bill in the Legislative Council.<sup>163</sup> For him, it was not just another good scheme which could be adopted on the basis of overseas success. On the contrary, it was an essential feature of an effective Children's Court, for several reasons. First, it was his intention that the new probation system would involve both those released on probation *and their families* being supervised during the period of probation, in much the same way as 'boarded out' children had been supervised by the State Children's Relief Board.

This supervision would enable intervention in the child's family environment, in order to rectify, if possible, the problems which had led to the court appearance, in the interests of saving the child. In this respect, Mackellar's idea of probation followed the American model, where juvenile courts aimed at treating the underlying causes of delinquency rather than focussing on the events which brought the child before the court.<sup>164</sup> In fact, many American commentators have suggested that probation was the most important element of the new Children's Courts, because of the way in which probation focussed on the child's home and family.<sup>165</sup> To some extent, this was because of the focus in the American system of the connection with the English chancery jurisdiction, the idea being that this ancient parental jurisdiction was being substituted for the previous strictly criminal one.<sup>166</sup>

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<sup>162</sup> Annual Report State Children's Relief Board, 1905, NSWPP 1905, vol 2, p. 11 et seq., pp. 22-23.

<sup>163</sup> NSWPDLC 6 September, 1905 p.1951.

<sup>164</sup> S Schlossman & S Wallach 'The Crime of Precocious Sexuality: Female Delinquency in the Progressive Era' p. 74.

<sup>165</sup> S L Schlossman Love and the American Delinquent University of Chicago Press, Chicago, 1977, p. 62. See also J W Mack 'The Juvenile Court', p. 116; S J Barrows Children's Courts in the United States US Government Printing Office, Washington, 1904. p. xii, and C Kelsey who quotes Judge Richard Tuthill, Judge of the Cook County Juvenile Court in Illinois in 'The Juvenile Court of Chicago and its work' Annals of the American Academy of Political and Social Science vol 17 March 1901, p. 301.

<sup>166</sup> H H Lou Juvenile Courts in the United States, p. 20. See also B Flexner & R N Baldwin Juvenile Courts and Probation The Century Company, New York, 1914, p. 80.

Probation was therefore to be distinguished from earlier similar sentences which involved the release of a convicted person on recognizance, which had been available for some offences for more than fifty years, although without capacity for supervision.<sup>167</sup> Second, the probation officer would have a role, in the court itself, prosecuting cases and advising the Magistrate on the needs of the child. From 1908, all charge cases in Sydney Children's Court were presented by the Senior Probation Officer, not the police.<sup>168</sup> Probation was by no means a novelty. Informal probation systems had been operating in Britain since 1841 and in the United States since 1846.<sup>169</sup> As far back as 1885 the Board had given guarded support for a probation system, referring to the good results achieved by one operating in Massachusetts, since 1869.<sup>170</sup> Those results included a substantial fall in the number of juvenile offenders, with a consequent reduction in the numbers of industrial schools and reformatories, and a recidivism rate claimed to be only ten per cent.<sup>171</sup>

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<sup>167</sup> See section 1 of 'An Act for the more speedy trial and punishment of juvenile offenders, (1850) 14 Vic chap 2 (NSW) which allowed release on recognizance on a charge of simple larceny for those under fourteen years. The Criminal Law (Amendment) Act 1883, covered both stealing offences and embezzlement generally, as well as a number of mainly street offences by boys and youths, which could be dealt with by release on recognizance. Section 3 of the First Offenders Probation Act, 1894, provided for release on recognizance for first offenders convicted of a summary offence. In the Crimes Act, 1900, a number of provisions allowed for release on recognizance. Section 558 covered first offenders. Section 429 allowed the court to refrain from passing sentence on any one under sixteen, and to release them on recognizance instead. First offenders released under Section 558 were required to report to a police station every three months (s. 560). A form of 'probation' had also been introduced in Victoria by the Juvenile Offenders Act (Vic) 1887, but again, this did not include supervision. See D Jaggs Neglected and Criminal: Foundations of Child Welfare Legislation in Victoria Phillip Institute of Technology, Melbourne, 1986, p. 94.

<sup>168</sup> See Annual Report Minister of Public Instruction 1935-37 NSWPP 1938-40, vol 1, p 32.

<sup>169</sup> See M Davenport Hill 'Report of a Charge to the Grand Jury of the Borough of Birmingham at the Michaelmas Quarter Sessions for 1848' Charles Knight, London, 1848, copy in Mitchell Library. See also Inner London Probation and After-Care Service ILPAS '76, London, 1976; R Harris & D Webb, Welfare, Power and Juvenile Justice Tavistock Publications, London, 1987, p. 35.

<sup>170</sup> Annual Report SCRB 1885 in V&PLANSW 1885, vol 2, p. 530.

<sup>171</sup> L Radzinowicz and R Hood A History of English Criminal Law and its Administration from 1750, vol 5 p. 635. For a description of the Massachusetts system, see also 'Second and Final Report of Commission appointed to report on the Destitute Act, 1881, Proceedings of the Parliament of South Australia, 1885, vol 4, no 228 (Way Committee), p. xciv et seq. and appendix I.

Under the new scheme children released on probation were to be supervised, partly by some eighteen new Probation Officers, appointed by the Board.<sup>172</sup> In addition, there was substantial reliance, from 1909, on a large number of Honorary Probation Officers.<sup>173</sup> These were respectable local community members, about a quarter of them clergymen. By 1914, they were doing more than sixty per cent of visits.<sup>174</sup> The religious emphasis in the probation system followed practice in America and Britain, where probation officers mainly had a religious base until the 1930s.<sup>175</sup> The period of probation imposed was commonly six to twelve months.<sup>176</sup>

The activities of the new Probation Officers did not extend to those apprenticed, or given 'probation' from Industrial Schools.<sup>177</sup> 'Supervision' of ex-inmates by their former Superintendent continued, at least in some cases, until the 1930s.<sup>178</sup> It would seem to have made more sense to use the new Probation Officers to supervise both types of placement, not only because the service was available at no cost, but also the supervision was local, and therefore arguably more effective. The fact that it was not handled in this way was simply another example of the administrative antipathy between the Board and the Department.

Apart from the issue of supervision, Superintendents of Industrial Schools, after the introduction of the new system, opposed its expansion, on the ground that

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<sup>172</sup> B Dickey 'Care for Deprived, Neglected and Delinquent Children in New South Wales, 1901-1915', p. 176

<sup>173</sup> Government Gazette 13 January, 1909, p. 4261.

<sup>174</sup> Annual Report SCRB for year ending 5 April, 1914 NSWPP 1914-1915, vol 2, p. 17 See also Annual Report SCRB 1916 in NSWPP 1916, vol 2, p. 980.

<sup>175</sup> R Harris & D Webb Welfare, Power and Juvenile Justice: The Social Control of Delinquent Youth, p.37

<sup>176</sup> Annual Report SCRB for year ended 5 April, 1915 NSWPP 1914-1915, vol 1, p. 52

<sup>177</sup> Report to Minister by C.K.Mackellar, President SCRB and P. Board, Director of Education, 'Classification of Children and Institutions' 10 February, 1909, SR 5/7750.2

<sup>178</sup> Instruction H 8015 24 October, 1933, Riverina Welfare Farm Approvals Register SR 8/2138

institutional training was likely to be more effective.<sup>179</sup> The Superintendent of the Girls Industrial School, Parramatta was strongly of the view that the work of the industrial school was ‘a purely educational problem’ and therefore time was needed in order to effect attitudinal change on the part of inmates. This view was endorsed by Peter Board, Director of Education.<sup>180</sup>

In contrast, the effect of the introduction of a probation system was considered by the Board to be most beneficial. It claimed that probation kept out of institutions first or minor offenders, saving them from the corrupting influences present in industrial schools, and at a fraction of the cost of institutionalizing a child. Mackellar later claimed that the probation system, coupled with alternatives to institutional care such as the boarding out system had been a major factor in bringing about a significant reduction in the gaol population.<sup>181</sup> This claim no doubt had some validity, but there were other factors at work in reducing the gaol population, not the least of which were Neitenstein’s efforts as Comptroller-General of Prisons to remove inebriates and mentally ill people from gaols.<sup>182</sup> Nevertheless, the number of juveniles going to prison certainly declined markedly.<sup>183</sup>

### *Conclusion*

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<sup>179</sup> P Board, Director of Education to Under Secretary of Justice 30 April 1910 SR 5/7750.2 See also Revised Classification Direction, reprinted in Annual Report SCRB for year ended 5 April, 1915 NSWPP 1914-1915, vol. p. 46

<sup>180</sup> A W Thompson to Director of Education, Report entitled: ‘Neglected Children and Juvenile Offenders Act, 1905 Application of Clauses 23, 24 & 26 February 1914 with Special Reference to Probationary Discharges from the Court’, February 1914. Endorsed by Peter Board in a Minute dated 25 February, 1914. Copy in possession of the author.

<sup>181</sup> C K Mackellar The State Children: An Open Letter to the Honourable A. G. F. James, M. L. A., Minister for Education, p. 12.

<sup>182</sup> S Garton ‘Frederick William Neitenstein: Juvenile Reformatory and Prison Reform in NSW 1878-1909’, p. 60.

<sup>183</sup> Mackellar claimed that in 1905, the year the new legislation came into force, there were 164 boys sent to prison, whereas in 1911, there were just two. See Sir Charles Mackellar Address on the Neglected Children and Juvenile Offenders Act and the Ethics of the Prohibition Law, p. 10

The first decade of the century was one of dynamic change, promoted by spirited reformers, led by Sir Charles Mackellar. They took their inspiration from overseas models, principally in the United States, but from Britain too, and to that extent, they were part of significant attitudinal change in relation to penal institutions taking place at that time.<sup>184</sup> The reforms they introduced, Children's Courts, probation, cottage homes for delinquents based on the family system, had been tried elsewhere and so were not novel. The main piece of legislation, the Neglected Children and Juvenile Offenders Act, was long overdue, and, in many instances, merely sanctioned established practices. Nevertheless, the provisions which allowed the Minister to determine the kind of institution in which a child would be detained, and wide powers of transfer between institutions, represented a significant transfer of power from the judiciary to the executive, or in practice, public officials.

At the administrative level, it was a period of internecine strife. On one hand the Board pursued innovative and progressive policies which were child-centred. It aimed at radical reduction of institutional treatment, much shorter periods of committal, the use of the 'family system' and keeping offenders with their parents, through the use of probation. On the other hand, the Superintendents of Industrial Schools opposed the use of probation as a treatment option. They continued, and indeed favoured the extension of institutional programs which were excessively rigid, lengthy, and thus more expensive.

The 1905 legislation thus had all the appearances of a victory for Mackellar and the State Children's Relief Board. The humanitarian policies which he had long advocated had now been incorporated into statute law. The establishment of the Children's Court and a probation system represented the triumph of non-institutional

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<sup>184</sup> R Harris & D Webb, Welfare, Power and Juvenile Justice: The Social Control of Delinquent Youth p.

care over the institutional treatment embodied in the 1866 legislation. The vision splendid which the 1905 Act promised, however, turned out to be a mirage, because in the ensuing years, especially after Mackellar's retirement in 1914, the bureaucracy, still committed to institutional treatment, fought back, and in time gained the ascendancy with the demise of the Board in 1923.

Spartan dining at Carpenterian reformatory-*photo from State Records Office 8/1753.1*



Dormitory at Carpenterian Reformatory-*photo from State Records Office*

Shaftesbury Reformatory : view from the front-*by courtesy Mitchell Library*



The Rookwood Reformatory -*photo by courtesy of Australand Holdings Ltd.*

**CHAPTER 3**  
**AN END TO REFORM**  
**1911 to 1923**

If the first decade of the twentieth century was marked by a number of reforms, many of them associated with the leadership of Sir Charles Mackellar, in the first few years after his retirement in 1914, there was a backlash against the Board's approach to juvenile corrections reform. The 1922 Board, after more than forty years of operation, succumbed to the relentless attacks of its enemies in the Department of Public Instruction and was abolished. The need to replace the Nautical School Ship, *Sobraon*, created the opportunity to build a modern institution, based on the cottage or 'family' system. The replacement at Gosford, however, was set up on the old, discredited, barrack system. Forms of treatment which, at the beginning of the century had shown signs of innovative change, reverted to those which had applied in the nineteenth century.

*Gosford Farm Home for Boys*

The establishment of the Gosford Farm Home in 1912 was an event of critical importance. It provided an opportunity to establish a modern institution with the capacity to separate different classes of boys, through the use of small cottages rather than the large dormitories characteristic of the barrack system in use on *Sobraon* and at Brush Farm. This was the sort of change which Mackellar and others had long

advocated. The Neglected Children and Juvenile Offenders Act, 1905, precipitated moves to establish the new institution. With the increased use of probation, the total numbers of boys detained on *Sobraon* declined significantly. The Government was reluctant to close it down because of the large amount of capital which had been expended. Its original cost was £11,500, but a further £31,429 had been spent on modifications.<sup>1</sup> Departmental officials considered that a minimum of two hundred boys was needed to 'keep the ship in a state of safety and cleanliness', and by 1910, that number had almost been reached.<sup>2</sup> There was little demand for the nautical training provided on *Sobraon*, and even though it was considered 'an invaluable factor in the formation of character', there was more scope for training in farm work, for which there was a demand.<sup>3</sup>

Brush Farm was able to provide some instruction in farming, but, at thirty-seven acres, was too small for such purposes. There was also 'local agitation against such an institution being located in the midst of a growing residential suburb'.<sup>4</sup> Absconders also became a problem, since they often stole from nearby properties. Recaptured absconders either served a prison term or were transferred to *Sobraon*, from which escape was difficult. After 1909, this practice was discontinued, with *Sobraon* designated for less hardened delinquents.<sup>5</sup>

*Sobraon* was closed in June 1911. Gosford ultimately replaced both *Sobraon* and Brush Farm, but from 1911, boys who would have gone to *Sobraon* were sent to

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<sup>1</sup> See V&PLANSW 1891-92, vol 3, p. 817. See also H Thurstone 'The History of HMAS Tingira' Naval History Review September 1979.

<sup>2</sup> C K Mackellar to P Board, Director of Education, 10 July, 1908, ML MSS 2100. See also Statistical Register of New South Wales.

<sup>3</sup> Article by Walter Bethel, The Sun 20 July, 1940.

<sup>4</sup> F A Stayner and W E Bethel 'Final Report of the Building Committee: Gosford Farm Home for Boys 23.11.1915' copy held in Gosford Library Local History Archives.

<sup>5</sup> C K Mackellar and P Board, 'Report on the Classification of Children and Institutions', 10 February, 1909. See also: Under Secretary of Justice, circular to Magistrates, 7 September, 1909. For the

Mittagong or Brush Farm.<sup>6</sup> The delay was probably because estimates for the construction of buildings at Gosford were considered by the government to be too expensive. The transitional arrangements ran quite contrary to the principles set out in the 1909 classification direction, designed to minimize ‘contamination’.<sup>7</sup>

In one sense, the decision to close *Sobraon* was almost a *volte face* since its capacity had been enhanced as recently as 1906 by the addition of *HMS Dart*. This was a small screw yacht, also proclaimed as an industrial school, to serve as an auxiliary ship and provide boys with four months of actual sea-going training, which *Sobraon* could not.<sup>8</sup> Furthermore, only three years previously, in 1908, *Sobraon* and Brush Farm were described in Parliament as ‘being practically a model to the rest of the world’, with wide agreement of members on this assessment.<sup>9</sup> By contrast, in 1910, *Sobraon* was being described as having outlived its usefulness, and the Minister claimed that boys were being kept there beyond the time when they should have been discharged, simply to maintain the numbers.<sup>10</sup> Despite the capital invested in the ships, *Sobraon* was probably closed because its naval training was no longer appropriate or in demand.

John Ramsland and George Cartan argue that *Sobraon* and Brush Farm were expensive to operate, and that Gosford cost about a third of their combined costs, thus suggesting a financial explanation for the premature closure.<sup>11</sup> The figures, however, do not entirely support this view. For 1908, *Sobraon* cost £27. 8. 0 per head. The

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change in 1909, see P. Board, Director of Education to Under Secretary of Justice 30 April, 1910, SR 5/7750.2.

<sup>6</sup> A note at the front of the Register of Committals for Mittagong shows that thirty-two boys were transferred from *Sobraon* in June and July, 1911. SR 8/1755.

<sup>7</sup> Under Secretary of Justice, circular to Magistrates 7 September, 1909, SR 5/7750.2.

<sup>8</sup> See Government Gazette 6 June, 1906. For description of *Wolverene*, see Statistical Register 1893.

<sup>9</sup> See remarks by the Hon J A Hogue, Minister for Public Instruction, NSWPDLA 13 October, 1908, p. 1609.

<sup>10</sup> Annual Report of Minister for Public Instruction, for year 1910, N S W Government Printer, Sydney, 1911, p.29.

figure for Brush Farm in 1909 was £26.14. 0. Gosford in 1915 cost £ 25. 9. 6.<sup>12</sup> The difference was thus only marginal. The comparison was further distorted by the fact that most of the *Sobraon* crew were not public servants, were paid less, and worked longer hours than their counterparts in other industrial schools.<sup>13</sup> Crane and Walker discount the economic factor, suggesting that it was only used to nullify the arguments of traditionalists who continued to see value in the shipboard system, despite the fact that it could no longer provide appropriate industrial training.<sup>14</sup> In 1907, Peter Board argued that *Sobraon* should be got rid of because of the cost and also the fact that the type of training they received did ‘nothing... to help them in after life except... drilling them in good conduct’.<sup>15</sup> Mackellar held similar views, claiming that the character training of boys in such places was ‘machine-made’ and that it did not fit them for coping in the outside world.<sup>16</sup>

A few years later, Walter Bethel, who had considerable influence in child welfare policy matters within the Department of Public Instruction, and later became Secretary of the Child Welfare Department, gave much the same reason for closure. According to him, children on the *Sobraon* were ‘merely disciplined and mechanically brought up’ and that the Government wanted to secure instead farm training for them.<sup>17</sup> This would appear to be a more plausible explanation than the financial one, although it

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<sup>11</sup> J Ramsland & G A Cartan ‘The Gosford Farm Home for Boys, Mt. Penang 1912-1940’ *JRAHS* vol 75, part 1, June, 1989, p. 66 and 73.

<sup>12</sup> For the figures on *Sobraon*, see Annual Report Minister for Public Instruction for 1908, *NSWPP* 1910 vol 1, part 2. For Brush Farm, see Annual Report Superintendent Brush Farm Home for Boys, 1909, *NSWPP* 2nd Session, 1910, p.297. For Gosford see Annual Report, Minister for Public Instruction, 1915, *NSWPP* 1915-1916, vol 1, p. 489.

<sup>13</sup> Public Service Board Inquiry into working conditions on N S S *Sobraon*, 1909, *SR* 8/399.1.

<sup>14</sup> A R Crane & W G Walker *Peter Board: His Contribution to the Development of Education in New South Wales* ACER, Melbourne, 1957, p. 210.

<sup>15</sup> Peter Board, Under Secretary, Department of Public Instruction, comments at Conference of Permanent Heads convened by the Public Service Board, 19 April 1905, *SR* 8/384.

<sup>16</sup> Sir Charles Mackellar ‘Address on the Neglected Children and Juvenile Offenders Act, and the Ethics of the Prohibition Law’ given to the Church of England Synod 28 September, 1911, NSW Government Printer, Sydney, 1911, p. 9. Copy in Mitchell Library.



does not explain the haste of the closure. Clearly the Department of Public Instruction considered that it was unnecessary to have more than two institutions, one for younger boys, Mittagong, and another for older boys, Gosford.

Thus, the idea of having a separate reformatory as well as an industrial school for boys was extinguished, as it had been for girls when Shaftesbury closed. In fact, the notion of combining the functions of Reformatories and Industrial Schools had been mooted since 1897.<sup>18</sup> Gosford was not the first choice for the replacement for *Sobraon*. Originally, it had been planned to build the new institution at Mittagong, but this was abandoned in favour of Gosford. The main reason was that the existing Mittagong Farm Home was controlled by the State Children's Relief Board, whereas the replacement for *Sobraon* and Brush Farm was to be administered directly by the Department of Public Instruction. Departmental officials thought that locating the new institution at Mittagong might aggravate the conflict which already existed between the two organizations, as well as mixing older offenders with younger ones.<sup>19</sup> Establishing the new institution at Mittagong, using the barrack system would, of course, have drawn attention to this feature, since the existing accommodation there was all of the 'cottage home' type.

Gosford was constructed using the labour of inmates who had been brought up from Brush Farm. The boys lived in tents while the first dormitory and other essential buildings were constructed.<sup>20</sup> The main advantage of the site, apart from its size, 681 acres, was its location in a then rural area, well away from the city of Sydney.<sup>21</sup> The

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<sup>17</sup> W E Bethel, submission to A C Carmichael, Minister for Public Instruction 11 November, 1913. Copy in the possession of the author.

<sup>18</sup> J C Maynard, Under Secretary to Minister of Public Instruction, 17 March 1897, in 'Correspondence Respecting the Carpenterian Reformatory' *V&PLANSW* 1897, vol 7, p.955 et seq., p. 11.

<sup>19</sup> F A Stayner and W E Bethel 'Final Report of the Building Committee: Gosford Farm Home for Boys 23.11.1915' copy held in Gosford Library Local History Archives.

<sup>20</sup> J Ramsland & G A Cartan, 'The Gosford Farm Home for Boys, Mt. Penang 1912-1940', p. 68.

<sup>21</sup> *Government Gazette* 27 August, 1913.

contemporary belief was that delinquency was principally caused by environmental factors. As Anthony Platt has pointed out, slum life was seen as vicious and lacking in social rules, in contrast with the order which existed in rural areas. The advantage of being in a rural setting like Gosford was not simply to train in agricultural work, but to undergo a 'spiritual and regenerative cleansing' through the simplicity and peace of country life.<sup>22</sup>

The ground plan of a crescent of buildings with extensive views over Brisbane Water was developed by James Nangle, Lecturer in Architecture at Sydney Technical College.<sup>23</sup> The dormitory was made to the same plan as one at Brush Farm.<sup>24</sup> Gosford formally commenced operations in August, 1913, at which time Brush Farm was closed and all inmates transferred to Gosford.<sup>25</sup> This move was not without controversy. The Under Secretary of Justice, writing on behalf of Magistrates, complained that at Gosford there would be a mixing of criminal and non-criminal types, which, theoretically, were supposed to be held in separate institutions. He proposed that those who had not developed criminal tendencies should go to homes run by the Board.<sup>26</sup> This was rejected as totally unacceptable to the Department of Public Instruction since it would result in fewer numbers at Gosford and consequent waste of money 'in the eyes of the public'.<sup>27</sup>

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<sup>22</sup> A M Platt *The Child Savers* University of Chicago Press, Chicago, 1977, pp. 44 and 65.

<sup>23</sup> W E Bethel, 'Submission to Minister 6 April, 1923, in response to Fincham Report', identifies Nangle as the designer. Tabled Paper, Legislative Assembly *New South Wales Parliamentary Archives* 1923/422. See also Annual Report, Child Welfare Department 1930 & 1931, *NSWPP* 1932 vol 1, p. 525 et seq., p.27.

<sup>24</sup> V A Heffernan 'Notes on the History of Mt. Penang' unpublished manuscript, 1989, in possession of the author.

<sup>25</sup> see proclamation as an Industrial School *Government Gazette* 27 August, 1913.

<sup>26</sup> Under Secretary of Justice to Under Secretary of Public Instruction 7 October, 1913. Copy in possession of author.

<sup>27</sup> W E Bethel, submission to A C Carmichael, Minister for Public Instruction 11 November, 1913. Copy in the possession of the author.

The training program established at Gosford was, according to Ramsland and Cartan, based on the English Borstal system, with some modification.<sup>28</sup> The Borstal system, begun in 1900, was the brainchild of Sir Evelyn Ruggles-Brise, Chairman of the Prisons Commission for England and Wales. He based it on American Reformatories, particularly Elmira, a huge industrial school operating in New York State.<sup>29</sup> The main feature of the Borstal system was a stern and exacting discipline administered by warders who were, for the most part, former soldiers. There was strong emphasis on hard labour, 'more strenuous than that of ordinary prisoners' and physical drill.<sup>30</sup>

Inmates were managed by means of a 'grade' system, by which Ruggles-Brise hoped to achieve 'individualisation' of treatment. By means of good behaviour and achievement in the work program, they progressed through seven levels, but could also regress if their response was poor. Those at the bottom of the scale did manual work, those in the upper echelons were given trade training. The bottom four grades wore brown uniforms and the top three wore blue. The blues had privileges such as cigarettes, better leisure facilities and visiting rights. If a boy stayed in the top grade for a month, he would be discharged. Punishment generally consisted of extra, unpleasant duties. Arguably the most important feature was the age range, sixteen to twenty-one years. The Borstal system was aimed at a particular group, 'the young

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<sup>28</sup> J Ramsland & G A Cartan, 'The Gosford Farm Home for Boys, Mt. Penang 1912-1940', p. 72. See also J Ramsland 'The Anatomy of an Australian Borstal: Mt. Penang Boys Home Gosford NSW 1912-1940' Paper read to the Parramatta and District Historical Society 18 April, 1990, copy held in Gosford Library Local History Archives.

<sup>29</sup> D E Lord 'Changes in Attitude Towards the Treatment of Juvenile Offenders in Great Britain 1823-1908' *Australia and New Zealand Journal of Criminology* vol 1 no 4, December, 1968, p. 210.

<sup>30</sup> Sir Charles Mackellar Report of Royal Commission: The Treatment of Neglected and Delinquent Children in Great Britain, Europe and America N S W Government Printer, Sydney, 1913, p. 54.

hooligan, advanced in crime'.<sup>31</sup> Borstals were given legislative recognition in Britain by the Prevention of Crime Act, 1908.<sup>32</sup>

Ramsland and Cartan argue that Gosford was based on the British Borstal model. They further claim that this model was promoted in Australia by Sir Charles Mackellar as an alternative to imprisonment for the older and more recalcitrant juvenile offenders.<sup>33</sup> The first of these claims is debatable, the second is correct, but only in relation to offenders *over* sixteen years. Mackellar did devote a section to Borstals in his 1913 Royal Commission Report. He made it clear that their role was punitive, not reformatory, and that their value was as 'enlightened gaol-treatment' for young criminals, in that they were separated from older ones.

According to Mackellar, Borstals were for 'suitable salutary punishment' of offenders over sixteen who should be 'fully conscious of the criminality of their actions'. Juvenile institutions were for children under sixteen 'who are not and cannot be generally criminal'. Mackellar referred approvingly to the efforts of Neitenstein, who, as Comptroller-General of Prisons had arranged for the segregation of prisoners aged sixteen and above at Goulburn, in a Borstal type program.<sup>34</sup> All of these comments were made in relation to Borstal programs within the *prison* system. What he did suggest was that the Gosford site, then recently opened as an industrial school, would be suitable for a Borstal for boys over sixteen, provided those sixteen and under were transferred somewhere else.<sup>35</sup>

In contrast, the Neglected Children and Juvenile Offenders Act, 1905, under which Gosford was established, dealt only with those under sixteen years of age at the

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<sup>31</sup> D E Lord, 'Changes in Attitude Towards the Treatment of Juvenile Offenders in Great Britain 1823-1908', p. 210.

<sup>32</sup> S Barman The English Borstal System P S King & Son, London, 1934, pp. 172-173.

<sup>33</sup> J Ramsland & G A Cartan, 'The Gosford Farm Home for Boys, Mt. Penang 1912-1940', p. 79.

<sup>34</sup> Sir Charles Mackellar Report of Royal Commission: The Treatment of Neglected and Delinquent Children in Great Britain, Europe and America, pp. 53-54.

time of sentence. In addition, Gosford accommodated the full range of delinquents, from those who were merely found to be neglected, those who had committed misdemeanours, to more hardened criminals. Also, those who misbehaved in Borstals could simply be transferred administratively to prison, whereas in New South Wales this could only be done by court proceedings, and in most cases the misbehaving inmate would return to the institution after a short period in gaol. Given those major differences, a place like Gosford could hardly be said to be equatable with the British Borstal system.<sup>36</sup>

It seems that the Government may have had some broad intention of expanding Gosford to accommodate an older age group. The Minister in 1913 referred to a possible amendment of the Act to permit boys aged sixteen to twenty-one to be sent for treatment.<sup>37</sup> No such legislation appeared. Instead, from 1914, boys between sixteen and eighteen who had been sentenced to imprisonment were simply transferred from prison to Gosford. This was achieved by the legal stratagem of discharging the prisoner 'on license', with a condition that the balance of his sentence be served in Gosford.<sup>38</sup> Referred to as an 'experiment', it appears to have been an attempt to make better provision for boys the Prisons administration considered were unsuitable for the gaol system. The legal procedure used was dubious. It was a relic of the transportation era, when convicts were granted 'tickets of leave' under conditions requiring them to live in a nominated district, until the sentence expired.<sup>39</sup>

Granting a license to serve the balance of the sentence in another corrective institution was contrary to the spirit, if not the letter of the Crimes Act. Of course,

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<sup>35</sup> *ibid.*, p. 14.

<sup>36</sup> For detailed examination of this issue, see P E Quinn 'The 'Penal Reformatory' that never was: Proposals to establish Borstal training in New South Wales, 1900-1948' *JRAHS* vol 88, part 2, December, 2002.

<sup>37</sup> Minister for Public Instruction Annual Report 1913 *NSWPP* 1914, vol 1, p. 30.

<sup>38</sup> Minister for Public Instruction Annual Report 1914, *NSWPP* 1915-1916, vol 1, p. 500.

there were boys in this age group already at Gosford; a boy committed at age fifteen would remain after turning sixteen, sometimes till eighteen. In 1913, before the prison transfer scheme began, seventeen boys at Gosford were over sixteen.<sup>40</sup>

Nevertheless the licence system was a rather bold exercise of administrative power since it was contrary to the principles embodied in the Neglected Children and Juvenile Offenders Act. The 'experiment' was not persisted with, since Allard, in his 1920 Report gives the upper age of boys at Gosford as 16.<sup>41</sup> The age was eventually raised, but only to eighteen, in 1923.<sup>42</sup>

There were of course, some similarities between the Borstal program and that followed at Gosford. Discipline in both was stern, and the inmates were controlled by means of a military program, with boys marching to and from work assignments, saluting and wearing uniforms. Under both systems, boys progressed by a grading system, with those in the higher grades entitled to extra privileges. Both emphasized physical drills, training in habits of industry and useful trades, as well as sport. Ramsland claimed that, when Gosford commenced, the Superintendent, Frederick Stayner made changes to the system which had been followed on *Sobraon*. These included the use of an honour system, emphasis on character building, restricting the carrying of canes, and competitive sports.

As Ramsland himself concedes, however, these features had been present in the programs followed on both the *Vernon* and *Sobraon*, as well as at Brush Farm, which all pre-dated the Borstal system.<sup>43</sup> Rather than being based on the Borstal model,

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<sup>39</sup> section 463 Crimes Act, 1900. Statutes of New South Wales.

<sup>40</sup> Minister for Public Instruction Annual Report 1913 NSWPP 1914 vol 1 p. 30.

<sup>41</sup> G M Allard 'Fifth Sectional Report of the Royal Commission to inquire into the Public Service of New South Wales Concerning the Administration of the Acts Relating to State Children' 29 July, 1920 NSWPP 1920, vol 4 p. 467.

<sup>42</sup> Child Welfare Act, 1923, section 3 Statutes of New South Wales

<sup>43</sup> J Ramsland 'The Anatomy of an Australian Borstal: Mt. Penang Boys Home Gosford NSW 1912-1940'.

Gosford was a continuation of its institutional predecessors in New South Wales.

Most of the staff had worked on *Sobraon* or at Brush Farm. The Superintendent at Brush Farm, Frederick Stayner, transferred to Gosford, and had earlier been a teacher on *Sobraon*. The Superintendent's office continued to be referred to as the 'quarter deck', for at least fifty years after the end of the nautical ships era.<sup>44</sup>

A critical question is why Gosford was not established on the cottage home system, which the State Children's Relief Board considered had operated successfully at Mittagong. Peter Board, Director of Education, voiced his support for the 'family system', to enable the segregation of different classes of children, showing that he was in touch with developments overseas..<sup>45</sup> Barrack style institutions continued to be used both in Britain and America in the late nineteenth and early twentieth centuries. There were, however, numerous instances, especially in America, where delinquent institutions were operating on the 'family system'. Delinquents were housed in cottages under the supervision of a married couple.<sup>46</sup>

Board's biographers, A R Crane and W G Walker, claimed that when Gosford was completed, it operated on the 'family system'.<sup>47</sup> This was not the case. Instead of a series of separate cottages, there was a large, barrack style dormitory. After a second dormitory was added within the first two years, it was claimed that the buildings were so arranged as to permit the institution to be 'worked in separate divisions' to enable the inmates to be 'classified and kept totally apart'. This rudimentary separation fell far short of the cottage system, which, according to Peter Board, should

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<sup>44</sup> The author visited Gosford regularly in 1960 as a probation officer. The term was still in use then.

<sup>45</sup> Minister for Public Instruction Annual Report for 1906 NSWPP 1907, vol 1, p.40.

<sup>46</sup> S Schlossman Love and the American Delinquent, University of Chicago Press, Chicago, 1977, p. 34 and pp. 40-41.

<sup>47</sup> A R Crane & W G Walker, Peter Board: His Contribution to the Development of Education in New South Wales, p. 210.

be about twenty boys in one cottage.<sup>48</sup> Dormitories at Gosford nominally held about sixty each, and there was no attempt at implementing the 'family system'.

An additional factor which made segregation impractical was the introduction into the inmate population of boys over sixteen, transferred on license from gaol. There was also the necessity for boys to come together for meals, sport, schooling and other activities. The second dormitory was not used for sleeping purposes for any length of time, if at all, at that stage, being used as a library, school room and gymnasium. The increase in numbers which followed raising the age from sixteen to eighteen in 1923 made it necessary for it to be used as a dormitory.<sup>49</sup> One might well ask why just one dormitory was used when numbers since Gosford opened in 1913 had consistently exceeded sixty. The answer could well have been cost-cutting during the hard times experienced in the State in the 1920s. A dormitory necessitated the employment of a nightwatchman and an attendant, and putting all the boys in one dormitory saved on wages, even though it meant some overcrowding.

In reality, Gosford was simply a barrack institution, and was thus a reversion to the same model of treatment which had been subject to heavy criticism for at least the previous forty years. One could argue that this decision was taken for reasons of economy, and Gosford, at a capital cost of about £12,000, was certainly cheap to build.<sup>50</sup> One would also expect that 'barrack' institutions would be cheaper than 'cottage' ones. The per capita operating costs were not significantly less, so that argument does not seem to have much substance. In fact, once the construction phase was over, the per capita cost at Gosford for 1915 was £25. 9. 6d, compared with

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<sup>48</sup> Minister for Public Instruction Annual Report for, 1906, NSWPP 1907, vol 1, p.40. See also Annual Report for 1913 NSWPP 1914, vol 1, p. 30.

<sup>49</sup> W E Bethel, 'Submission to Minister 6 April, 1923, in response to Fincham Report'.

<sup>50</sup> 'Further Progress Report of the Select Committee to Inquire into the Whole Administration of the State Children Relief Act, 1901', p. 41. See also F A Stayner and W E Bethel 'Final Report of the Building Committee: Gosford Farm Home for Boys 23.11.1915'.



Mittagong (operating on the cottage system) at £ 25 . 2. 7d.<sup>51</sup> Of greater significance was the fact that the Department of Public Instruction during this period was strengthening its control of the system at the expense of the Board, in 1923 culminating in the abolition of the Board. During this transitional period, the dominant view within the Department favoured retention of barrack style institutions, even though it was still necessary to claim publicly that segregation was being practised to avoid ‘contamination’.

### *Influential persons*

In the last years before Mackellar’s departure, several officials in the Department were influential. Peter Board was the respected head of the Department, but in reviewing issues associated with the establishment of Gosford, it is clear that he completely reversed the position he previously held on the type of institution which should replace *Sobraon*. In 1906, he had declared himself strongly in favour of the ‘family system’ of cottage homes, but by 1912, that was abandoned, and the new institution, Gosford, was once more built on the barrack system.<sup>52</sup>

The explanation for this change of direction may lie in the influences acting on him at the time. Board had no direct experience in the residential care of delinquent children, but Alexander Thompson, the Superintendent at Parramatta, did. Thompson was a respected educationist, a university graduate, who had lectured at the Teacher Training College.<sup>53</sup> He had earlier performed well on *Sobraon* and at Brush Farm and had managed the Girls Industrial School since 1906 seemingly very smoothly, certainly

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<sup>51</sup> Annual Report SCRB 1915 NSWPP 1915-1916, vol 1, p. 851 for details of the Mittagong costs. See Annual Report Minister for Public Instruction 1915 NSWPP 1916, vol 1, p.26 for Gosford costs.

<sup>52</sup> P Board ‘Report by Director of Education’, in Annual Report Minister for Public Instruction, 1906, NSWPP 1907, vol 1, p. 41-44.

<sup>53</sup> SMH 26 October, 1934

without the succession of public riots that had characterized its history since 1867.

His views therefore commanded some respect. He was firmly in favour of institutional training as the preferred option, in fact he favoured increasing the period of detention, and was also against expansion of the probation system. Alexander Thompson's view was that two years was the minimum period in which reform could be achieved.<sup>54</sup>

The other person who was influential was Walter Bethel, a career public servant, then a senior clerk in the Ministerial Office of the Department. Bethel was principally responsible for policy development on issues relating to child welfare matters at the time. He was the inspector of institutions appointed under the Neglected Children and Juvenile Offenders Act, 1905.<sup>55</sup> He prepared the original 'classification' proposal, rejected by Mackellar in 1908.<sup>56</sup> He was also the author of the Departmental minute which answered Mackellar's objections to the proposal for a training home at Parramatta.<sup>57</sup> He routinely recommended to the Minister the disposition of all children committed by the courts, including those destined for the care of the Board, not hesitating to depart from the court's recommendations.<sup>58</sup> In 1913 he proposed (directly to the Minister and not through the Under Secretary, a most unusual procedure at that time, indicating an influential status) a conference of interested parties to resolve problems which had once again arisen with the classification of children. Together with Henry Maxted from the Board, Bethel drafted the scheme eventually adopted.

Perusal of the documents relating to the dispute show that Bethel's main concerns were administrative ones. He sought to ensure the economical use of resources, and promote 'practical reform' to the relationship between the Department,

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<sup>54</sup> P Bartley Prostitution, Prevention and Reform in England 1860-1914 Routledge, London, 2000, p. 39.

<sup>55</sup> Walter Bethel, The Sun 20 July, 1940.

<sup>56</sup> C K Mackellar to Under Secretary, Department of Public Instruction, 10 July, 1908, ML MSS 2100.

<sup>57</sup> W E Bethel, Senior Clerk, Ministerial Office, Department of Public Instruction, undated minute c. 1910 on Department of Youth and Community Services file PS 0732.

the Board and the children's courts.<sup>59</sup> Bethel and Walter Loveridge were appointed by the Public Service Board to inquire into the workings of the Board in 1915.<sup>60</sup> In 1922, the extent of Bethel's influence was confirmed when he was appointed Secretary of the new Child Welfare Department. Bethel's work shows that, in addition to issues of economy, he sought to make the Board's operations conform to public service standards, in contrast to the system which had flowered under Mackellar. His style was conservative and autocratic.<sup>61</sup>

The establishment of a 'Training Home' within the grounds of the existing Parramatta Girls Industrial School, in 1912, illustrates the way in which the views of officials like Bethel and Thompson had gained the ascendancy. The decision represented a victory for the Department over the Board in a long-running and fierce dispute over which should be responsible for female wards who were unsuitable for foster care. The Board claimed that, for something like thirty years it had been urging the establishment of an institution for the accommodation of 'insubordinate and generally unruly' female state wards who had been apprenticed or placed in foster care, where such arrangements had broken down.<sup>62</sup>

For a time, after the State Children's Relief Board took over the Shaftesbury Reformatory, it was used to accommodate girls of this class, but after Shaftesbury closed in 1904, such cases had to be accommodated in a dormitory of the shelter,

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<sup>58</sup> G M Allard : 'Fifth Sectional Report of the Royal Commission to inquire into the Public Service of New South Wales Concerning the Administration of the Acts Relating to State Children' p. 466.

<sup>59</sup> W E Bethel, Submission to Minister 11 November, 1913, in particular a note in Bethel's handwriting, added after the submission was approved. See also Minutes of the 'Conference on Industrial Schools' which met from 18 February to 1 April, 1914. Copies of these documents in possession of the author.

<sup>60</sup> 'Progress Report 11 April, 1916, from the Select Committee on the Whole Administration of the State Children Relief Act, 1901', p. 947.

<sup>61</sup> Information supplied by Leo Edgar Evans Hunt of Terrigal. Hunt was related to Bethel's second wife, Berta, and visited Bethel's house at McMahon's Point frequently. Hunt was later private secretary to Harold Hawkins, Minister for Child Welfare and Social Welfare from 1956.

<sup>62</sup> Mackellar to Under Secretary Department of Public Instruction 30 June, 1910 (written on black-bordered, funeral note paper) Department of Youth and Community Services file PS 0732

Ormond House, which was proclaimed a Reformatory School for that purpose.<sup>63</sup> This was a very unsatisfactory situation and once again, the Board sought permission to establish a Training Home, but was refused.<sup>64</sup> From 1906, girls of this class were transferred from the care of the Board to the Girls Industrial School at Parramatta.<sup>65</sup> That practice ceased in 1909, because under the terms of the Classification Instruction issued by the Premier, to which reference was made in the last chapter, Parramatta was reserved for girls who had 'reached the age of puberty and have given some evidence of sexual delinquency'.<sup>66</sup> Girls were then apparently sent to church homes, the State making no contribution to their upkeep.<sup>67</sup>

Peter Board was apparently persuaded to recommend the establishment of the 'training home' at Parramatta after a visit there in 1910. The Superintendent, Alexander Thompson, convinced him that the facility could be established at minimal cost, by using existing buildings, and that the girls could be separated from those in the rest of the industrial school, except for schooling and church services. He pointed out that an area of about an acre had been enclosed with a wall about twenty years before, with the object of establishing a training home, but it had not gone ahead.

A factor in the decision was the desire to reduce the use of church homes for girl delinquents. It was claimed that the staff in church homes were not qualified to manage unruly girls, resulting in a lack of discipline. They also catered for a much broader class of 'fallen women' including adults. Also convents were at a disadvantage in that they could not compel girls to remain. However, the most

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<sup>63</sup> Annual Report SCRB 1901 V&PLANSW 1901, vol 2, p. 1302. See also Government Gazette 15 April, 1904.

<sup>64</sup> A W Green, President SCRB in evidence to Select Committee on the Whole Administration of the State Children Relief Act, 1901, NSWPP 1916, vol 2, p.945.

<sup>65</sup> W E Bethel, Senior Clerk, Ministerial Office, Department of Public Instruction, undated minute, c. 1910 on Department of Youth and Community Services file PS 0732.

<sup>66</sup> Under Secretary of Justice, circular to Magistrates 7 September, 1909, SR 5/7750.2.

significant point, given the sectarian strife prevalent at the time, was that any suggestion of payment would re-open the politically sensitive question of subsidizing religious institutions.<sup>68</sup> In his submission to the Minister, Board also pointed out that, of the girls transferred from the care of the Board to Parramatta Industrial School between 1906 and 1909, none was found to be *virgo intacta*. Thirteen had venereal disease, so there could hardly be any question of 'contamination'.<sup>69</sup> Board emphasized the 'moderate cost' involved, and the fact that it would avoid sending girls to church homes.<sup>70</sup>

Mackellar, President of the Board, was strongly opposed to the Parramatta scheme. He wanted any training home run by the Board, not by the Department, pointing out that such a policy had been followed in the case of male wards, by establishing cottage homes at Mittagong. He envisaged similar arrangement for girls, but with a woman in charge. This was rejected by the Department on the ground that 'women cannot be trusted to supervise (such) girls ... unless working under a man'.<sup>71</sup> This was contrary to the common Victorian belief that the reformation of women was a task particularly for women themselves.<sup>72</sup> Mackellar was in favour of continuing to use the services of church homes. He was, however, unable to persuade the Government

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<sup>67</sup> A W Green, President SCRB in evidence to Select Committee on the Whole Administration of the State Children Relief Act, 1901, NSWPP 1916, vol 2, p.946.

<sup>68</sup> A W Thompson, Superintendent, Girls Industrial School, Parramatta, to Under Secretary, Department of Public Instruction, 17 March, 1909 headed 'Classification of Children and Institutions'-copy in the possession of the author.

<sup>69</sup> W E Bethel, Senior Clerk, Ministerial Office, Department of Public Instruction, undated minute c. 1910 on Department of Youth and Community Services file PS 0732.

<sup>70</sup> P Board to Minister for Public Instruction 8 April, 1910, Department of Youth and Community Services file PS 0732.

<sup>71</sup> W E Bethel, Senior Clerk, Ministerial Office, Department of Public Instruction, undated minute c. 1910 on Department of Youth and Community Services file PS 0732.

<sup>72</sup> F K Prochaska Women and Philanthropy in Nineteenth Century England Clarendon Press, Oxford, 1980, pp. 188-189.

that those homes should be paid for looking after the girls, since this was regarded as tantamount to the State giving financial support to a religion.<sup>73</sup>

Mackellar's view was that Parramatta was nothing more than a 'Reformatory for Juvenile Prostitutes', and that contamination of girl wards in a training home annexe was therefore inevitable. In commenting on Thompson's arrangements to separate the two groups, he remarked sarcastically that it was gratifying to know that 'at least, they will not sleep together'. Finally, he warned that if the home was set up, the Board would not be making any request to transfer wards to such a 'curiously composite institution'.<sup>74</sup>

His protests were to no avail, and responsibility for the Training Home was given to the Department. The 'Training Home' was then also proclaimed as an Industrial School in its own right, even though it was under the control of the Superintendent of the main institution, Thompson.<sup>75</sup> This proclamation was a curious action, since the girls in question were simply state wards, and did not fall within the class of girls allocated to industrial schools either under existing legislation or the prevailing instructions issued by the Premier in 1909. However, a possible reason became clear later when the rationale for the Training Home was explained as enabling the classification of girls into 'two broad divisions', the uncontrollables and those 'guilty of immoral behaviour'.<sup>76</sup> This made it possible for girls to be allocated not according to the relevant court order, but their behaviour, which is exactly what the Allard Royal Commission complained was happening in practice a few years later.<sup>77</sup>

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<sup>73</sup> See the entry for 1910 in 'Summary of suggestions made by State Children's Relief Board 1902-1919'. SR 8/1754.

<sup>74</sup> Mackellar to Minister for Public Instruction 5 September, 1910, Department of Youth and Community Services file PS 0732.

<sup>75</sup> Government Gazette 7 February, 1912, p.769.

<sup>76</sup> Annual Report Minister of Public Instruction 1912 NSWPP 1913, vol 1, p. 392.

<sup>77</sup> G M Allard 'Fifth Sectional Report of the Royal Commission to inquire into the Public Service of New South Wales Concerning the Administration of the Acts Relating to State Children', p. 467.

Mackellar declined to send any more girls there, and another home, 'Hillside', at Paddington was apparently used by the Board as a training home.<sup>78</sup>

### *Classification*

Another aspect of the reformist program advanced by Mackellar, watered down after his departure, was the classification of children appearing before Children's Courts.

When they were established in 1905, there was one ingredient missing. This was the provision of 'mental tests' for children coming before the court. Mackellar considered them to be essential, an integral part of the court scheme. Courts would take into account not simply the facts of the case, but the family history and environmental factors, as well as each child's individual characteristics, particularly mental capacity. This could, in Mackellar's view, only be done by professional assessment. Stephen Garton has shown that Mackellar supported the view of psychiatrists that it was possible, through the use of diagnostic tools such as intelligence tests, to identify children in the 'defective classes'. Early diagnosis was important, so that those children could be appropriately dealt with before they became involved in crime or were a danger to society.<sup>79</sup>

Despite the fact that Mackellar had been pressing for this service since 1907, it was 1913 before arrangements were made for assessment of children coming before the courts. Dr. Andrew Davidson, Lecturer in Psychology and Mental Diseases at Sydney University was appointed Visiting Medical Officer to the Shelter in Sydney. He examined 'all children who are apparently mentally, physically or morally

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<sup>78</sup> *ibid.*, p. 456.

<sup>79</sup> S Garton 'Sir Charles Mackellar: Psychiatry, Eugenics and Child Welfare in New South Wales 1900-1914' *Historical Studies* vol 22, no 86, April 1986, p.26.

defective', after the Superintendent had administered a Binet-Simon intelligence test.<sup>80</sup> Davidson found that many of the children had undiagnosed conditions and deformities that affected their lives. About forty per cent were 'dull, backward or feeble-minded'. A very large proportion had 'little idea of their proper relation to others, being guided by an ill-developed mental condition' sufficient to warrant their removal and care by the State.<sup>81</sup>

The experiment was short-lived. Davidson's appointment was terminated after only twelve months and the work assigned to the Medical Branch of the Department of Public Instruction.<sup>82</sup> The official reason given was that the Minister's policy was that all medical work of the Department was to be carried out by the Medical Branch, which had been formed several years before.<sup>83</sup> Perhaps the prospect of large numbers of children being assessed as requiring State care frightened the Government. Davidson, as an independent professional, could not be controlled, whereas the officers of the Medical Branch were public servants. It is significant that the termination of Davidson's appointment co-incided, exactly, with the retirement of Sir Charles Mackellar as President of the Board. The Medical Branch continued to provide a service, but it was not regarded as satisfactory by the Department, and was to be the subject of criticism over many years. For example, in 1920 George Mason Allard drew attention to the fact that although 'feeble-minded' boys were accommodated in institutions, they had never been medically examined.<sup>84</sup> Again, in 1935-36, it was reported that less than half the boys passing through the Metropolitan

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<sup>80</sup> Annual Report SCRB 1914 NSWPP 1914-1915, vol 2, p. 50.

<sup>81</sup> Annual Report SCRB 1915 NSWPP 1915-1916 vol 1 p. 873.

<sup>82</sup> C T Wood, Secretary of the Child Welfare Department to Under Secretary, Department of Public Instruction 9 August, 1937 SR 7/4681.

<sup>83</sup> Annual Report SCRB 1915 NSWPP 1915 -1916, vol 1, p. 861.

<sup>84</sup> G M Allard, 'Fifth Sectional Report of the Royal Commission to inquire into the Public Service of New South Wales Concerning the Administration of the Acts Relating to State Children', p. 43.



Boys Shelter were being assessed, and the service was not routinely available to girls at all.<sup>85</sup>

Yet another of the Mackellar initiatives which the Department extinguished was the boys home at Raymond Terrace. This began as an experiment in the care of intellectually handicapped boys who might otherwise have ended up in industrial schools, to their detriment. Since 1900, the Board had utilized the services of a number of 'Probationary Farm Homes' for boys, first at Dora Creek, then Toronto and Cessnock.<sup>86</sup> The idea of these homes was an extension of the 'family system' of cottage homes. In the words of a contemporary, a small group of boys (were) 'taught industrial pursuits under the supervision of a man and his wife, who are giving them at the same time the associations of family life'.<sup>87</sup> An unusual feature was that they were never established as Government institutions with public servant staffing, but were operated by private farmers who were paid a fee of ten shillings per week for each child.<sup>88</sup>

Probably this device was resorted to as the Board had been frustrated in efforts to establish such homes by more conventional means. Understandably, the Government did not look with favour on these places, and on several occasions ordered the Board to close them and transfer the boys to Brush Farm or Mittagong. Mackellar simply defied his Minister's instructions and kept them open. His actions here are evidence of the importance he placed on these homes, since they had been established to accommodate children that Mackellar considered should be segregated from the rest of the community, that is, boys afflicted with *psychopathica sexualis*.

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<sup>85</sup> Secretary Child Welfare Department to Under Secretary, Department of Public Instruction, 9 August, 1937 SR 7/4681.

<sup>86</sup> Annual Report SCRB 1901 V&PLANSW 1901, vol 3, p. 1293.

<sup>87</sup> the Hon B R Wise, Attorney General, NSWPDLC 15 October, 1902, p. 3358.

<sup>88</sup> Annual Report SCRB 1913 NSWPP 1914, vol 1, p. 727.

They had, according to Mackellar, been guilty of sodomy, bestiality and were confirmed masturbators.<sup>89</sup>

In 1913, the boys remaining at Dora Creek were transferred to a new, official home at Raymond Terrace, with accommodation for thirty.<sup>90</sup> Several years later, they were described as 'more or less mentally weak'.<sup>91</sup> These two descriptions of the boys, that is, 'mentally weak' on the one hand and engaged in scandalous sexual activity on the other, were not necessarily inconsistent. The Board, in common with many other child welfare authorities at the time considered there was 'immutable evidence that mentally defective children often have immoral tendencies' and were susceptible to criminal careers.<sup>92</sup> The home was listed in official publications together with industrial schools, but was never proclaimed as such, in fact it was established without Ministerial approval. Boys learnt bootmaking and tailoring, and also manufactured a variety of toys, which were sold in the town.<sup>93</sup> The Board thus operated Raymond Terrace and its predecessors were thus operated as alternatives to industrial schools, on the assumption that this class of boy was unsuitable for incarceration in the industrial school system. The Department regarded this as an expensive exercise, and once Mackellar's influence was removed, the home was incorporated into the delinquent institution system, and administered as an annexe of Gosford Farm Home.<sup>94</sup>

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<sup>89</sup> Undated note by Mackellar on the homes at Dora Creek and Cessnock, ML MSS 2100.

<sup>90</sup> The location of the home was probably Williamtown Road, Tomago. M Saunderson, Vice President of the Raymond Terrace and District Historical Society to author 28 June, 2003.

<sup>91</sup> Annual Report SCRB 1916 NSWPP 1916, vol 2, p. 942.

<sup>92</sup> A W Green, President of the State Children's Relief Board, quoting from the findings of the Royal Commission on Mental Deficiency in England in Annual Report SCRB 1917 NSWPP 1917-1918, vol 2, p. 395. See also C Lombroso, The Female Offender T Fisher Unwin, London, 1895, pp. xv-xvi.

<sup>93</sup> See 'Progress Report 11 April, 1916, from the Select Committee on the Whole Administration of the State Children Relief Act, 1901', p. 957. Also, Raymond Terrace Examiner 7 September, 1917.

<sup>94</sup> Edward Dermody, Senior Instructor at Gosford was appointed Officer in Charge at Raymond Terrace on 1 December, 1924. See Public Service List.

Apart from the many attempts to secure the abolition of the Board, perhaps the next most significant effort to curtail its power was in relation to the classification of children coming into the system. This was the administrative arrangement for determining where children were placed within the two systems, one operated by the Department, the other by the Board. Just as Mackellar had been a reluctant party to the 1909 Classification scheme, and had immediately set about trying to undermine it, the Department of Public Instruction was not happy with the way it operated in practice.

The Department took the opportunity of the revision obviously necessitated by the opening of Gosford, and the approach of Mackellar's retirement, to propose a conference to devise a new classification regime. In making this suggestion, Bethel made it plain to his Minister that 'the policy of the State Children Relief Branch is not the policy of the Department'. His main complaint was that the Board favoured a 'wholesale system of probation' as a 'panacea for the majority of the delinquent children'. If this were allowed to go unchecked, the Department's 'enterprise in providing such a place as Gosford (was) likely... to be largely stultified'.<sup>95</sup> Bethel's minute was couched in unusually blunt terms for an official document. There was no attempt to argue the value of probation for the children affected, since clearly the overriding concern was that money spent on Gosford might be wasted. It also noted that the same thing had happened before, an apparent reference to the fall in the numbers on the *Sobraon*, after the introduction of the probation system in 1905.

The Conference duly met from February to April, 1914. The members consisted of Peter Board as Chairman, assisted by Bethel, two Magistrates of the Sydney Children's Court, Alfred Green, President of the Board, and another officer, as well as the Superintendent from Mittagong. Industrial schools were represented by

Stayner from Gosford and Thompson from Parramatta. Significantly, Mackellar was not present. He had previously opposed any participation by the Superintendents, and perhaps his influence was waning as his retirement was only a few months off. The formality of the conference was highlighted by the fact that proceedings were recorded by a shorthand writer.

Under the scheme proposed by the conference and adopted by the Minister, certain principles and arrangements were determined. First, predictably, was a reassertion of the dangers of contamination. There was also to be restriction on the use of probation, facilitation of re-classification and transfers between institutions in the light of the child's response, and the necessity of a female presence. There were also a number of administrative measures designed to reduce the involvement of police and local justices of the peace, two of whom could lawfully constitute a children's court. Children accused of criminal offences were to be dealt with as neglected or uncontrollable instead of being charged, and it was decided that church homes could be used for girls where the case was not serious. Finally, there was to be a permanent advisory committee to deal with the kind of matters the conference had been considering.<sup>96</sup>

The scheme adopted contained some compromise. For example, Thompson, supported by Peter Board, was opposed to any use of church homes, whereas Green, President of the Board, was in favour, pointing out that they had been used by the Board, and were used in every other State.<sup>97</sup> Both Green and the Superintendent at Gosford, Stayner, suggested amending the Act to admit boys between sixteen and

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<sup>95</sup> W E Bethel, submission to A C Carmichael Minister for Public Instruction, 11 November, 1913. Copy in the possession of the author.

<sup>96</sup> 'Report of the Conference Re Industrial School Matter' (Peter Board chairman) 1 April, 1914 together with submission by P. Board 22 April, 1914, approved by Minister for Public Instruction, 3 May, 1914. Copy in the possession of the author.

eighteen from prisons. Bethel suggested instead release on license from prison, the scheme actually adopted in practice. Otherwise, the new scheme did not vary significantly from the previous one, with the exception of probation, in respect of which the conservative views of the 'Departmental' men prevailed. Probation was to be used much more selectively, being reserved for cases where there was a prospect of 'decent living', and not unless a home report had been considered by the Court.

The overall scheme did, however, have one major defect. In defining thirteen different categories of children, both delinquent and dependent, it made no attempt to address the question of just how proper separation of those in these various categories could in practice be achieved. For example, 'children of vicious and malicious habits' were supposed to be separated from others, but there were only two institutions for boys (allocation being mainly by age) and only one of these, Mittagong, was organized on the cottage home system. Even there, the practical problems of separation were further complicated by the fact that cottages were designated either for Protestants or Roman Catholics. For girls, only one institution (Parramatta) was mentioned, 'sexually immoral' girls were to be in the main industrial school and others in the Training Home, although both were on the same site, and there was inevitably contact between the two groups.

The problems of classification also affected Shelters. Since 1905, children of both sexes held in custody pending appearance before the Children's Court in Sydney were accommodated at Ormond House, Paddington. This was in addition to those dealt with by the court and awaiting transfer to an institution. When a purpose built Court was constructed in 1911 in Surry Hills, a new shelter was part of the court complex, although there was no accommodation for girls there. The Metropolitan

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<sup>97</sup> for Peter Board's attitude, see A W Thompson, Diary, 4 March, 1914. Original was in possession of

Girls Shelter was eventually established in 1925 at Glebe, with the girls being transported to Surry Hills for court appearances.<sup>98</sup> A number of shelters had earlier been set up outside Sydney by the Board. In 1909, eleven were mentioned in official publications, although some were located in country gaols or lock-ups.<sup>99</sup>

A major problem with each of these places was the fact that there was no separation of different classes of children whatsoever, and this included, for example, quite small children in custody because they were destitute. Later, Royal Commissioner Allard was to be very critical of this, reporting that Surry Hills and Ormond were both overcrowded and provided no segregation.<sup>100</sup> To give the kind of segregation suggested by the conference would have required at least three shelters (dependent children, young offenders, older offenders), for each sex. The problem was that resources were simply not available, and this situation was to remain a problem for another twenty years. In the country, segregation was simply not a practical possibility.

### *The Movement for the Abolition of the Board*

The Department of Public Instruction had for some years wished to see the State Children's Relief Board abolished. In 1912, following the election of a Labor government, it proposed legislation to this end, but the proposal did not meet with the approval of the Labor caucus.<sup>101</sup> The issue surfaced again during a 1915 inquiry by the Public Service Board into the administration of the State Children's Relief Board.

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his grandson, Mr. Patrick Humfrey, before Mr. Humfrey's death.

<sup>98</sup> Annual Report, Child Welfare Department, 1945, NSW Government Printer, Sydney, 1946, p. 21.

<sup>99</sup> C K Mackellar Instructions to Honorary Probation Officers, NSW Government Printer, Sydney, 1908, p. 4.

<sup>100</sup> G M Allard 'Fifth Sectional Report of the Royal Commission to inquire into the Public Service of New South Wales Concerning the Administration of the Acts Relating to State Children', p. 481.

It marks the beginning of more determined attempts by the Department to undermine and secure the abolition of the Board, following Mackellar's departure. The inquiry was prompted by a complaint by the Auditor-General about the state of the Board's accounts. It seems to have begun in secret, since the President was not informed of the terms of reference. Initially, it was conducted by Bethel from the Department of Public Instruction and Walter Loveridge, who was on the staff of the Public Service Board.<sup>102</sup> It apparently found that the problems which had arisen were caused by lack of staff, since additional officers were appointed as a result.<sup>103</sup>

While it was pursuing its investigations, allegations were made that boys placed on dairy farms by the Board, referred to as 'cow slaves', were being overworked. After initial inquiries by police, six cases were investigated by Public Service Board members, as well as a member of the State Children's Relief Board, Margarethe McCallum. They found the charges 'altogether rebutted' and that the boys had to do much the same work as the farmers' own children. Later, in Parliament, the episode was referred to as 'a most glorious acquittal for the Board and Mr. Green'.<sup>104</sup> Despite the fact that apparently no blame was attributed to the Board in relation to either of the matters investigated by the Public Service Board, the allegations had nevertheless been aired publicly, and later accounting problems were linked to them. For example, in

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<sup>101</sup> Minutes of the NSW Parliamentary Labor Party for 12 July, 1912, (Molesworth MSS in Mitchell Library) quoted in B Dickey 'Care for Deprived, Neglected and Delinquent Children in New South Wales 1901-1915' JRAHS vol 63, 1977, p. 177.

<sup>102</sup> W D Loveridge was appointed a member of the Public Service Board on 23 April, 1920. See Public Service List.

<sup>103</sup> 'Further Progress Report of the Select Committee to Inquire into the Whole Administration of the State Children Relief Act, 1901', p. 55.

<sup>104</sup> 'Progress Report 11 April, 1916, from the Select Committee on the Whole Administration of the State Children Relief Act, 1901', p. 1019. See also L F Heydon MLC, NSWPDLC 28 September, 1916, p. 2229

1926, the Auditor-General was to complain that problems with these accounts were ‘of long continuance’.<sup>105</sup>

The attack on the Board continued through the vehicle of a Parliamentary Select Committee in 1916. This Committee had its origin at the end of 1914 when Mackellar retired. The Minister, Campbell Carmichael, immediately seized the opportunity to announce the abolition of the Board, but after remonstrance from the Hon. Louis Heydon, MLC, a long-serving member of the Board, he relented.<sup>106</sup> In one sense, Carmichael’s move was not unexpected. The Board and its President, Mackellar, had long been critical of Governments of all kinds. In its Annual Reports, the Board habitually listed in schedules, the reforms that it had proposed over the years, drawing attention to the failure of Governments to implement them. That kind of regular criticism from a body responsible for the administration of Government policy was galling to most Ministers. It was possible because the Board was independent of the public service, whose members could not publicly attack the Government.

It was therefore a very tempting option to have the Board absorbed with a Department. That this did not happen at the time simply reflected the Government’s wish to avoid criticism. Instead, Carmichael appointed Alfred Green, who had headed the Board’s administration as Boarding Out Officer since 1901, as President.<sup>107</sup> Mackellar had a high regard for him and had recommended his appointment.<sup>108</sup> However, there was a twist, certainly not envisaged when Mackellar endorsed his appointment. Green was appointed to hold both the office of President as well as Boarding Out Officer. He received no extra salary, and was told at the time to treat the

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<sup>105</sup> J R Moore, Senior Inspector of Public Accounts, Minute to Auditor-General 25 August, 1926, SR 8/751.

<sup>106</sup> Motion by Hon L F Heydon, NSWPDLC 23 March, 1916, p. 5668. See also ‘Further Progress Report of the Select Committee to Inquire into the Whole Administration of the State Children Relief Act, 1901, p. 1018.

<sup>107</sup> Public Service List.



arrangement as temporary, as the Board might still be abolished.<sup>109</sup> Green had neither the prestige or political influence of Mackellar, and the effect of this manoeuvre was that the independence of the Board was greatly diminished, since Green could not, as a public servant, criticize the Government in the same way as Mackellar had done.<sup>110</sup> Ministerial involvement also tended to increase, with the departure of Mackellar.

Matters came to a head in 1916, when Heydon moved in Parliament for the Board to be removed from the control of the Department of Public Instruction to the Chief Secretary's Department. Heydon, in an attempt to ensure the survival of the Board, claimed that it 'was on the rocks, very nearly wrecked', through the appointment of incompetent people. He claimed that the long-standing convention that the membership should be representative of the major churches had been broken. He also complained about the failure to consult the churches on the selection of members of the Board. It was further claimed that the Minister had, contrary to normal practice, interfered in the day to day running of the Board in a matter involving the religious upbringing of a state child. A further complaint related to the use of church homes. It was said that differences had arisen between the Department and Frederick Galbraith, the Magistrate of the Children's Court. The Department wanted all wayward girls sent to Parramatta, but Galbraith, encouraged by the Board, sent some to church homes.

The central allegation by Heydon was, however, that officials of the Department were preparing a 'grand report' to sweep away the Board. According to Heydon, this arose from personal animosity between Departmental officials and

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<sup>108</sup> A W Green to Mackellar 8 September 1920, ML MSS 2100.

<sup>109</sup> 'Progress Report 11 April, 1916, from the Select Committee on the Whole Administration of the State Children Relief Act, 1901', p. 10.

<sup>110</sup> 'Further Progress Report of the Select Committee to Inquire into the Whole Administration of the State Children Relief Act, 1901' p. 1018.

Mackellar, during his term as President. As evidence of the intentions of the officials, Heydon also complained bitterly that the Board had been forced to move from its premises in Richmond Terrace to the new Education Department building in Bridge Street, 'right under the heel and the eye of our tyrant'.<sup>111</sup> A number of the claims related to matters of religion. Heydon was a Catholic and sectarian feeling was running high at the time, fuelled by the Easter Rebellion in Dublin and the controversy over conscription.<sup>112</sup>

A Select Committee, with Heydon as Chairman, was established to inquire into the matter. The breadth of its terms of reference, covering the whole administration of the State Children Relief Act, 1901, illustrated that the wider context was of course the administrative in-fighting between the Board and the Department. This had persisted during the whole of the time Mackellar was President of the Board. The evidence disclosed that there had indeed been Ministerial interference, but this was defended by Peter Board, Under Secretary, on the ground that the legislation made the Board subject to the direction of the Minister. The evidence also revealed that, since the transfer of the Board to the Public Instruction portfolio in 1905, appointments to the Board had been made without always preserving what had previously been proportional representation of the major religious bodies. Consultation with those bodies prior to appointments, also the convention before 1905, had also ceased then.<sup>113</sup>

It was further claimed in evidence from Annie Golding that Peter Board had tried to block efforts to appoint her to the Board because she was a Catholic, and that

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<sup>111</sup> NSWPDLC 23 March 1916 pp. 5667-5674.

<sup>112</sup> J Rydon, R N Spann & H Nelson New South Wales Politics 1901-1917: An Electoral and Political Chronicle Department of Government, University of Sydney, 1996, p.17

<sup>113</sup> C K Mackellar to Under Secretary, Department of Public Instruction 30 October, 1908, and also 18 January, 1910. SR 11/14068.6.

her appointment only went ahead later because of Board's absence overseas.<sup>114</sup> This may well have been so, but on the other hand, Golding, a member of the Labor Party, as well as being a supporter of Mackellar, had been active in the Teacher's Association and various feminist organizations. Such a background was unlikely to appeal to Board.<sup>115</sup> A number of other issues were also traversed. These included the bitter dispute between the Board and the Department over a training home for girls. There were also complaints by Mackellar (who, although retired, gave evidence) that the Board should properly be in the Chief Secretary's portfolio. Charges of administrative mismanagement recently investigated by the Public Service Board were aired, as were the expansion of the Board's activities and expenditure. Complaints of ill-treatment of boys placed on dairy farms by the Board were also revisited. The Select Committee never actually concluded its inquiries, but did recommend that the Board be transferred back to the Chief Secretary's administration. It also considered its former independence should be restored, its membership should reflect the interests of the major churches, and in future the President should be a permanent head but not a public servant.<sup>116</sup> The findings were a rebuff to the Department, but the Government ignored them.

Although the Board had been wounded by these inquiries, it managed to survive for the time being. Its demise was, however, brought about by the findings of the Allard Royal Commission into the Public Service. Initially, the setting up of this Royal Commission had no special significance for the juvenile correction system. Well after it had embarked on its investigations, the Commissioner was asked to focus

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<sup>114</sup> 'Progress Report 11 April, 1916, from the Select Committee on the Whole Administration of the State Children Relief Act, 1901', p. 48.

<sup>115</sup> See entry for Annie Mackenzie Golding in B Nairn & G Serle (eds.) Australian Dictionary of Biography, vol 9, Melbourne University Press, Melbourne, 1983, pp. 41-42. See also S Kennedy Faith and Feminism, Studies in the Christian Movement, Sydney, 1985, pages 10 and 93.

directly on this sector of government administration, as a result of claims by Mackellar, now retired for some years, that innocent children were being 'contaminated' by being placed in delinquent institutions. George Mason Allard had been appointed Royal Commissioner in 1917, as a consequence of a pre-election promise by the Premier, William Holman.<sup>117</sup> Allard was a prominent Sydney accountant and was selected because the Government was concerned that there was 'room for greater efficiency and better economy' in the public service, and that 'political and other patronage' still existed.<sup>118</sup>

Allard's first report dealt with the Public Service Board and was something of a bombshell. He found it had failed to exercise proper supervision over Departments and recommended it be sacked.<sup>119</sup> This part of the activities of the Royal Commission is beyond the scope of the thesis, but, briefly, there were strong claims that the existing Board had been denied natural justice in the way the Royal Commission was conducted. There was considerable disquiet about the way Allard had operated, and sympathy for the members of the Public Service Board. There were suggestions that the Government was in danger of being defeated on a Public Service (Amendment) Bill giving effect to Allard's recommendation. This was after a leading King's Counsel, Adrian Knox, appeared before the Bar of the House and produced a damning case against Allard. Eventually, the members of the Board agreed to resign, and one

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<sup>116</sup> 'Further Progress Report of the Select Committee to Inquire into the Whole Administration of the State Children Relief Act, 1901', p. 1026.

<sup>117</sup> B Page 'Public Service Management and Political Control : The 1917-1918 Mason Allard Inquiry and the Public Service Board of New South Wales' in J J Eddy & J R Nethercote (eds.) From Colony to Coloniser: Studies in Australian Administrative History Hale and Iremonger, Sydney, 1987.

<sup>118</sup> G M Allard 'First Sectional Report of the Royal Commission to inquire into the New South Wales Public Service', p. 9. A copy is in the NSW State Archives. SR 8/535.1.

<sup>119</sup> ibid., p. 41.

member of parliament claimed that the Government facilitated this by a generous monetary settlement.<sup>120</sup>

Allard considered the failure of the Public Service Board to be at the root of the efficiency problems of the public service. Three further reports by him dealt mainly with commercial activities and he would not have dealt with child welfare matters at all had it not been for the intervention of Mackellar. He had written to Premier Holman, in 1917, claiming that 'vicious adolescents are ...being put into the same institutions as young boys and girls who are convicted of small offences... due to a large extent to the actions of certain officers of the Department of Public Instruction, not the State Children's Relief Board'. Holman referred the allegations to Allard and asked him to investigate them. The terms of reference were not amended, although Allard was specifically asked to look at questions of policy, as well as administration. The terms of the original Royal Commission itself had been limited to administration.<sup>121</sup>

Allard duly inquired into the principal activities of the State Children's Relief Board and carried out a number of inspections of various facilities operated by the Board as well as the Department. He discovered a number of unsatisfactory situations. In relation to Parramatta, the centre of Mackellar's allegations, he found that nine girls committed to the Training Home were in fact in the Industrial School, without the required Ministerial approval. The Superintendent, Thompson, claimed this was because the Training Home was full, and that in any event, there was 'little variation between the moral character of the girls sent to the two institutions'. Allard regarded it as a serious oversight, but seems to have accepted Thompson's explanation, and in fact made some complimentary remarks about him. He described the place as

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<sup>120</sup> D R Hall, Attorney General, NSWPDLA 10 December 1918 pp. 3670-3683.

<sup>121</sup> G M Allard 'Fifth Sectional Report of the Royal Commission to inquire into the Public Service of New South Wales Concerning the Administration of the Acts Relating to State Children', p. 455.

looking like a gaol and not adequate for 'classification' of girls, although he thought the high walls justified, since absconding by a girl was 'much more serious...than in the case of a boy'. He also identified thirteen cases where the recommendation of the Magistrate had not been followed, but found no fault with the administrative action in any of these instances.<sup>122</sup>

At Gosford, he was disturbed by a 'looseness of administration'. There was no admission register, and no proper system of recording essential details relating to the inmates. At Mittagong, he found 'considerable looseness' and was extremely critical of what he described as 'shocking' arrangements for the classification of children. There had been 'indiscriminate grouping' of juvenile offenders with state wards, mental deficient, and invalids, part Aborigines with white children, in apparent disregard of the fact that only part of the institution had been gazetted as an industrial school. He also found that boys had been returned to detention without due process of law, and that trade training provided was unsatisfactory.<sup>123</sup> At the Metropolitan Boys Shelter, he again found indiscriminate grouping of state wards together with juvenile offenders. There was also criticism of the small proportion of boys committed or detained in the shelter who were given medical and psychological examinations, and of the fact that girls were not examined at all. Allard was also critical of the release from Raymond Terrace of a sex offender who he considered had been unwisely released, this being a 'shocking danger to his fellows'. He pointed to Mackellar's 1913 recommendations that such people should be permanently segregated in farm colonies to prevent propagation of their kind.<sup>124</sup>

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<sup>122</sup> *ibid.*, p. 466-467.

<sup>123</sup> *ibid.*, p. 472.

<sup>124</sup> *ibid.*, p. 497.

As to the Board's administration, he found that its records were in an unsatisfactory state and there were arrears in the accounts department. There was also overlap with the Chief Secretary's Department in relation to outdoor relief. In dealing with people in need, there were chaotic investigations, inherent delay and mistakes, and that the system of having all applications go before a monthly meeting of the Board was intolerable.<sup>125</sup> He bestowed some faint praise on the President A W Green, who was then aged sixty-three and close to retirement, describing him as 'a large hearted and kindly man', but too much away from head office. In all, it was a damning report, showing that the administration of the Board, however noble its ideals might be, was slipshod. While some adverse comments were made about institutions under the control of the Department, the main criticisms were reserved for the Board. It was hardly surprising that, apart from those designed to correct particular problems, his core recommendations were that the existing executive Board be replaced by an advisory one, and the State Children's Relief Department be administered by a permanent head. He left open the question of which portfolio the Department should report to, but made it clear that if the industrial schools were moved from the Department of Public Instruction, that would mean the loss of access to a large body of men 'trained in the handling and management of children'.<sup>126</sup>

Mackellar's initiative, aimed at exposing the deficiencies of the Department in contrast to the Board, thus had the opposite effect. There were attempts, probably instigated by Mackellar, to contest Allard's findings, largely on the ground that he lacked expertise in the area, and had been unduly influenced by officials of the

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<sup>125</sup> *ibid.*, p. 482-488.

<sup>126</sup> *ibid.*, p. 494.

Department of Public Instruction.<sup>127</sup> Green also tried to contest some of Allard's findings, for example one criticizing the accommodation of crippled boys with 'juvenile criminals' at Mittagong. He pointed out that there were only three such boys and that it was ridiculous to suggest that a home should be kept going just for them. Also, the boys referred to as 'juvenile criminals' had been convicted only of minor infringements, and could just as easily have been committed as neglected.<sup>128</sup> However, the damage had been done. Allard's report was the final nail in the Board's coffin. An independent review had revealed administrative disarray, and those officials in the Department who had for so long opposed the Board, now had ample justification for its abolition. They could hardly conceal their glee. Thompson, then Superintendent at Parramatta, later spoke of Green's 'execution'.<sup>129</sup>

Early in 1922, following further administrative problems at the Board, the Minister directed that Green immediately be sent on leave prior to retirement.<sup>130</sup> Walter Bethel, the eminence grise within the Department for the past twenty years, and Green's principal adversary, was then appointed Boarding Out Officer and shortly afterward, President of the Board.<sup>131</sup> Thompson became his Deputy.<sup>132</sup> When the 1923 Child Welfare Act became law and the two administrations were united in the new Child Welfare Department, Bethel became Secretary, and Thompson Assistant Secretary.

A number of writers have commented upon the period in which the Board was eventually absorbed into the bureaucracy. Dickey identifies it as the period when

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<sup>127</sup> See anonymous article, probably written by Mackellar, 'The State Children of New South Wales' *Medical Journal of Australia* 2 & 9 October, 1920, pages 350-51 and 367-369.

<sup>128</sup> A W Green 'Public Service Commission: Acts Relating to State Children-Reply by the Boarding-Out Officer to the Report and Findings' pp. 6-8. Unpublished undated typed manuscript, c. 1920. copy in possession of the author.

<sup>129</sup> A W Thompson: Diary, unpublished, entry undated, but in the volume for 1922.

<sup>130</sup> J E McCulloch 'Report of Commission of Inquiry: Child Welfare Department', p. 244. Copy in possession of the author.

<sup>131</sup> *Government Gazette* 10 March, 1922.



services of this kind began to take on an increasingly bureaucratic air, as the ‘upper middle class reformers’, many of them women, were replaced by public servants, mostly men. He also pointed out that in other States, similar Boards were being taken over by Government Departments, Victoria in 1919, South Australia in 1926, and Western Australia in 1927.<sup>133</sup> It does seem clear that such a process really began in New South Wales in 1905, when the Board came under the Public Instruction portfolio. On the other hand, it can be argued that firm central control and inspection of individual institutions, as the conventional interpretation of the term bureaucracy would require, did not result from the absorption. Already, Allard had found ‘looseness’ in the administration of institutions. In the next chapter, it will be shown that those who inquired into complaints of serious ill-treatment of children in industrial schools in 1923 and 1934, found similar deficiencies. Another essential feature of a bureaucracy is that it is governed by regulations. Again, those inquiries found an absence of regulations, or where they existed, disregard for them.

Robert Van Krieken is critical of Dickey’s ‘cursory approach’ and claims that it would be more precise to say that child welfare ‘gradually became absorbed and integrated into the administrative apparatus of the State bureaucracy as a whole’. In his view, there was fundamental conflict between Mackellar and the bureaucrats (in the Department) and the bureaucrats won, rather than a process of bureaucratization, and this seems the more accurate interpretation.<sup>134</sup> He also viewed the developments during this period in the wider context of a general movement towards ‘expansion of State and professional control’.<sup>135</sup> While this is certainly tenable, closer examination is necessary.

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<sup>132</sup> W E Bethel to A W Thompson 26 February 1923, original of letter notifying Thompson of his appointment with effect from 30 January, 1922, located between leaves of Thompson’s Diary for 1923

<sup>133</sup> B Dickey *No Charity There: A Short History of Social Welfare in Australia* Allen & Unwin, Sydney, 1987, p. 154.

<sup>134</sup> R Van Krieken *Children and the State* Allen & Unwin, Sydney, 1992, p. 110-111.

<sup>135</sup> *ibid.*, p. 84.

Roy Wettenhall has analyzed administrative boards, largely independent of Parliament, in the nineteenth century. He found that they were common in many disparate fields of activity, including education, health, agriculture, roads, railways, orphans, destitution, Aborigines. As with the State Children's Relief Board, a common feature was to include sitting members of parliament. However, he points out that towards the end of the nineteenth century, there began a 'strong movement towards centring all administrative functions in Ministerial Departments', with only a few surviving in 'administrative byways'.<sup>136</sup> In fact, it is clearly arguable that the Board only survived as long as it did because of the prestige and determination of Mackellar. Wettenhall further considered that small administrative boards were particularly vulnerable to charges of poor administration.<sup>137</sup> Thus, the days of semi-autonomous bodies like the Board were numbered, although the demise of the Board was hastened by bureaucrats in the Department of Public Instruction.

Dealing with Van Krieken's other point, that of the expansion of professional control, it does seem that the absorption of the activities of the Board resulted in an expansion of professional control in so far as the Department of Public Instruction can be said to have represented a professional educational ethos, but this notion also requires closer examination. It is true that Mackellar advocated a more scientific approach through the medical and psychological examination of children coming before the courts. From another viewpoint, he very much favoured supporting children in their own families, for example through the probation system, and also using the 'family system' for the care of children who had to be in institutions. In those

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<sup>136</sup> R Wettenhall 'Administrative Boards in Nineteenth Century Australia' in Public Enterprise and National Development: Selected Essays PAIP Administration, ACT Division, Canberra, 1987 pp. 7 -12

<sup>137</sup> R Wettenhall 'Administrative Debacle 1919-1923' Public Administration (Sydney) vol 23 no 4 December, 1964, p. 315.

circumstances, the main qualifications sought for the carers related to their personalities, arguably a deliberate avoidance of professionalism.

The Department, under the guidance of its respected permanent head, Peter Board, may have been becoming more professional, but it does not necessarily follow that this applied to juvenile corrections. Board had articulated a vision of the State providing a comprehensive continuum of education from kindergarten to University. A significant omission from this grand plan was, however, any place for the education of delinquents; they simply didn't appear in his scheme.<sup>138</sup> Mr. A C Carmichael, Minister of Public Instruction, advanced the same ideal of a co-ordinated education system in his Report as Royal Commissioner inquiring into, amongst other things, agricultural education in 1915. Significantly, he failed to mention the agricultural education being provided at the Farm Home for Boys, Gosford, only recently opened by Carmichael himself.<sup>139</sup> One is entitled to infer from this, that while provision had to be made for delinquents, they were really regarded as belonging to an inferior class, an appendage to the education system rather than an integral part.

One of the most significant influences on policy development in the first two decades of the century came from Walter Bethel, whose background was entirely as a clerk in the public service. It is true that, once the Department took over, teachers tended to be put in charge of the institutions. Some of them, such as Stayner at Gosford and Parsonage, his successor there, had received only the short and rudimentary training given to pupil teachers, and could not be said to have had any claims to professional status.<sup>140</sup> An exception was Alexander Thompson,

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<sup>138</sup> Annual Report of the Minister for Public Instruction, 1914, NSWPP 1915-1916, vol 1, p. 481.

<sup>139</sup> A C Carmichael Sectional Report as Commission Regarding Agricultural Schools and Their Place in a Co-ordinated System of Education in Great Britain, the Continent and Europe etc. NSW Government Printer, Sydney, 1915, p. 5.

<sup>140</sup> see Regulation 117 under the Public Instruction Act, 1880, Government Gazette 28 October, 1915. Parsonage was employed as a probationary pupil teacher at the age of fifteen years: Teacher Rolls

Superintendent of Parramatta, who was one of the very few relevant officials who had a university degree. However, he gave no indication of being a reformer, and in fact continued to be an advocate of the discredited barrack system. He was supported by other officials such as Bethel, who were seemingly more concerned with economizing rather than the effectiveness of treatment programs.

As to Van Krieken's point about the expansion of State control generally, it is relevant to view the absorption against the contemporary background of the State taking over responsibility for many activities previously operated by the non-government sector. In 1921 the Australian Labor Party had adopted socialism as its objective, and its Federal Leader, Matthew Charlton was a firm advocate of Ministerial responsibility rather than statutory authorities.<sup>141</sup> In New South Wales, the State was already operating numerous enterprises, some of them monopolies, in a very wide range of industries. This included banking, insurance, electricity, bricks, timber, clothing, quarrying, building construction, concrete manufacture, even trawling.<sup>142</sup> It was an age when there was a belief that the Government could operate just as efficiently, if not more efficiently than the private sector. It is therefore not surprising that direct Ministerial control was asserted at this time. In summary, the advent of control by the Department in practice meant financial stringency and cost-cutting. It did not result in any great leap forward in professionalism in the administration of child welfare or juvenile corrections, in fact the reverse.

The enactment of legislation to abolish the State Children's Relief Board was a natural consequence of Allard's findings of maladministration, but it was not achieved

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microfilm, State Records. See also A C Carmichael, Minister of Public Instruction 'Education in New South Wales' Lone Hand December, 1913, p. 12.

<sup>141</sup> R L Wettenhall 'Federal Labor and the Public Corporation under Matthew Charlton' Labour History no 6, May 1964, pp. 13-15.

<sup>142</sup> See List of State Enterprises NSWPP 1916, vol 1, p. xxiv.

without incident. A Child Welfare and State Relief Bill was introduced in Parliament in 1922. Its main provisions were the abolition of the Board and the substitution of advisory committees, the consolidation of all eleemosynary relief in one Department, with all under the control of the Minister of Public Instruction. It was conceded that this Bill was the same as one prepared for introduction by the Labor Party before its defeat at the 1922 election, so it was treated as uncontroversial.<sup>143</sup> However, the Bill lapsed when Parliament was prorogued.<sup>144</sup> When it was re-introduced in 1923, the provisions relating to relief had been dropped, and it was stated that this issue was being considered by a Cabinet committee. Otherwise, it was much the same, except for some technical re-drafting after advice from the Magistrates of the Children's Court in Sydney. The Minister claimed that, for the most part it merely consolidated four existing Statutes.

The Hon. J. Lane-Mullins, MLC, a Board member, and prominent Catholic, claimed that the Board had been denied natural justice before the Allard Royal Commission and had in fact made a full written response to the findings, which was never made public. Lane-Mullins read the full text of this report, which had not previously been made public, into Hansard. It claimed numerous errors on the part of Allard, and presented strong arguments against Allard's conclusions.<sup>145</sup> The claim of denial of natural justice echoed that made against Allard by the dismissed Public Service Board back in 1918.<sup>146</sup> However, by now, the abolition of the Board was accepted on all sides as inevitable, on the ground that its administration had been 'ineffective'. Further damning evidence of the Board's inefficiency was introduced,

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<sup>143</sup> Albert Bruntnell, confirmed by the former Minister, Thomas Mutch. NSWPDLA 17 August, 1922 p. 1146.

<sup>144</sup> NSWPDLA 10 October, 1923 p. 1457.

<sup>145</sup> NSWPDLC 31 October, 1923 pp. 1952-55.

<sup>146</sup> Adrian Knox QC, before the Bar of the House, representing members of the Public Service Board. NSWPDLA 10 December 1918 pp. 3670-3683.

when reference was made to an investigation made in 1922 by Bethel, which resulted in savings of £15,000. The main reason for getting rid of the Board, cited by various speakers in the debates on the Bill, was that its expenditure, then £600,000 per annum, had grown at an exponential rate. This not only needed to be reined in, but it was considered 'absurd' that government expenditure of such magnitude should not be under direct Ministerial control.<sup>147</sup>

Apart from the abolition of the Board, one of the Bill's main features was raising the upper age limit of the Children's Court jurisdiction from sixteen to eighteen years.<sup>148</sup> This gave legislative sanction to the experiment tried at Gosford for a while after 1914, and recommended in the classification system adopted as a consequence of the opening of Gosford.<sup>149</sup> The debates contain no explanation for the move, and it would appear to have been non-controversial. Edward McTiernan, MLA, later a Justice of the High Court, made a suggestion that the upper age limit should be twenty-one years for those of 'lesser mental development', but the Government said the issue would be covered in a Mental Deficiency Bill, then being drafted.<sup>150</sup> No such legislation was introduced, although it was mentioned from time to time in the 1930s as being an urgent necessity.<sup>151</sup>

There was also a suggestion that suggestion that the new Child Welfare Department should be run by a woman, and reference made to a number of precedents in the United States, but the Government was apparently not ready for such a radical

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<sup>147</sup> R Innes-Noad MLC, NSWPDLC 31 October, 1923 p.1948. See also Sir Joseph Carruthers, NSWPDLC 7 November, 1923 pp. 2122, 2131.

<sup>148</sup> Child Welfare Act, 1923, section 3. Statutes of New South Wales.

<sup>149</sup> Minister for Public Instruction Annual Report 1914, NSWPP 1915-1916, vol 1, p. 500. See also 'Report of the Conference Re Industrial School Matter' (P Board chairman) 1 April, 1914 together with submission by P. Board 22 April, 1914, approved by Minister for Public Instruction, 3 May, 1914. Copy in the possession of the author.

<sup>150</sup> The Minister, Albert Bruntnell, gave this assurance in reply to McTiernan's suggestion. NSWPDLA 17 October, 1923 p. 1623.

<sup>151</sup> Annual Report, Child Welfare Department, 1930 & 1931 NSWPP 1932, vol 1, p. 525 et seq., p. 2.

move.<sup>152</sup> Ramsland claimed that the 1923 legislation was progressive in that it included 'a specific code of behaviour for officers working in ... institutions', but close examination of the Act does not bear this out. The only provision which could fit Ramsland's description made it an offence for an officer to ill-treat, terrorize, overwork or injure an inmate, but this was merely a re-enactment of a similar provision in the 1905 Act.<sup>153</sup> There is no evidence that either provision, or indeed similar provisions in the 1939 Act, were ever used to prosecute any officer, despite many breaches over the years. There was an instance in 1944, where an officer at Gosford was dismissed for ill-treating inmates by making them crawl on their hands and knees over rough coir matting, until their knees were red raw. One boy required hospital treatment. Heffron, in announcing the dismissal, said that the Crown Law authorities had been asked to consider prosecuting the officer. As far as can be ascertained, that did not eventuate<sup>154</sup>

### *Conclusion*

In this period, the administration of juvenile corrections regressed. The reforms of the Mackellar era came to an end, in part because the freedom to innovate and experiment which the Board had exercised was lost through the increasing control exercised by a large Ministerial Department. Absorption, viewed in the wider context of changes to the machinery of government, was probably inevitable. The administration headed by Peter Board opted for barrack institutions rather than the family system. In practice, this meant that, instead of a model cottage home complex

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<sup>152</sup> Mr. Bagnall MLA made the suggestion that a woman should run the Department. NSWPDLA 10 October, 1923 p. 1431.

<sup>153</sup> J Ramsland 'The Anatomy of an Australian Borstal: Mt. Penang Boys Home, Gosford 1912-1940'. Section 27 of the Child Welfare Act, 1923 appears to be the section to which Ramsland referred. See section 43 of the Neglected Children and Juvenile Offenders Act, 1905, and Section 27 of the 1923 Act. Under section 19 of the 1923 Act, Superintendents were given the control of all inmates.

earlier envisaged, Parramatta continued to operate, and indeed was expanded. This was despite the inadequacy of its buildings, condemned in 1920 and previously as looking 'like a gaol' and unsuitable for classification of girls.<sup>155</sup>

The barrack policy was again implemented when Gosford was established to replace *Sobraon*. Thus the opportunity to try an extension of the 'family system', already in operation at Mittagong, was rejected. This decision had repercussions far beyond the Gosford campus itself, because, once it was established, Gosford, as the largest institution, became the model for others. It was also the place where staff who would later be in charge of other institutions, for both males and females, for delinquents and non-delinquents alike, received their practical training. Perhaps the most regrettable feature of the demise of the Board was that the bureaucrats in the Department were much more interested in economizing, in contrast with promoting the welfare of children, as had been the case under Mackellar.

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<sup>154</sup> SMH 23 October, 1944.

<sup>155</sup> G M Allard 'Fifth Sectional Report of the Royal Commission to inquire into the Public Service of New South Wales Concerning the Administration of the Acts Relating to State Children', p. 467.



Sir Charles Mackellar-*courtesy Mitchell Library*

Walter Bethel- *by courtesy Mitchell Library*

**CHAPTER 4**  
**A SERIES OF SCANDALS**  
**1923 to 1934**

**‘MOB SAVAGERY ALLEGED AT WELFARE FARM’** trumpeted *Truth* in 1933, one of the first attacks by the tabloid press on the administration of the Child Welfare Department. Inquiries conducted by Commissioner John McCulloch arising from these allegations suggested that the allegations had substance. In fact, the Department spent much of the 1920s and early 1930s defending its administration. Despite this preoccupation, there were some progressive innovations. Privilege cottages were established, as a means of accommodating better behaved delinquents separately. The establishment of the Riverina Welfare Farm at Yanco also meant that some classification of boys at Gosford was possible.

As a consequence of the abolition of the Board in 1923, the Child Welfare Department became the sole body responsible for the care of juvenile delinquents, but almost immediately, there were allegations of ill-treatment at Gosford, and an independent inquiry found that there had been excessive corporal punishment. The administration of the Department was again criticized in 1926-27 in a series of Reports by the Auditor General, Public Service Board and finally a Royal Commission. In 1934, Public Service Board Inquiries once more found that boys at Yanco had been ill-treated through excessive corporal punishment. As a consequence of evidence which emerged during those inquiries, a much wider inquiry was commissioned by the

Government. This revealed mismanagement in institutions as well as other sectors of the Department, and as a result the services of its Secretary were terminated.

In summary, the bickering between the Department of Public Instruction and the State Children's Relief Board ceased. The punitive approach of the Department triumphed, but at what cost? The policies followed by the Department led to public condemnation of disciplinary systems, and calls for radical reform.

### *Fincham Inquiry*

In 1923, the new Child Welfare Bill was before the Parliament when the Minister, Albert Bruntnell, tabled a report completed some seven months before, by William Fincham, Children's Court Magistrate, into allegations of punishment irregularities at Gosford Farm Home.<sup>1</sup> Normally, such a report would have led to an attack by Members on the administration, but in fact, no further mention was made. Instead, Parliament meekly accepted the Minister's assurance that any problems were in the past and that 'nothing but good order and discipline exist to-day'. Probably this was because the Government had only changed the year before, and the Opposition may have been afraid that it would be blamed for a situation which had developed during its term of office. The report wasn't even ordered to be printed.<sup>2</sup>

The Inquiry followed allegations that an inmate at Gosford Farm Home, Joseph Bayliss, had been punished excessively. It would not have taken place, but for political pressure by the Gosford Labor League.<sup>3</sup> Only a very short exercise had been envisaged by Walter Bethel, the Secretary of the Department, but instead the

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<sup>1</sup> NSWPDLA 11 October, 1923, p. 1465

<sup>2</sup> NSWPDLA 16 October, 1923, p. 1571

<sup>3</sup> W E Bethel, Minute dated 6 February, 1923. 'Papers dealing with A W Parsonage Inquiry by J E McCulloch' SR 14/6305. See also Gosford Times 28 February, 1924, letter to the editor by G E Cross, Secretary of the Gosford Labour League.

Magistrate embarked on a much wider investigation.<sup>4</sup> The evidence disclosed that Bayliss was insolent to an officer while standing in a queue waiting to go in to tea. The officer, Basil Topple, hit him on the head with a cane he was carrying. Bayliss had harboured resentment against Topple for an earlier (in Bayliss' opinion, unfair) punishment, which, it transpired, had never been recorded. He retaliated by punching Topple, knocking him down some steps, causing a nasty gash to his head. Bayliss was overpowered by staff after a violent struggle, and was then held down while he was immediately punished. This took the form of about twenty-five strokes of the cane, administered by Frederick Stayner, the Superintendent, on the bare buttocks. After this, Bayliss was made to apologize to Topple, in accordance with the usual protocol, whereupon Topple assaulted him again, twice. Bayliss was then taken to the police station and charged, although that was withdrawn a few days later.

Fincham examined a number of aspects of the case. He found that there was no proper system for recording punishments, and estimated that two-thirds took place without the Superintendent's knowledge. Stayner claimed that only punishments on the buttocks were recorded, but evidence disclosed a number of such punishments which were not. Fincham was naturally critical of the summary nature of the flogging, since Bayliss had been given no chance to put his side of the case. He also discovered that there were no Regulations governing the punishment of inmates at Gosford.

Detailed punishment Regulations existed, these having been revised in 1905, but they related specifically to the institutions then operating, *Sobraon*, Carpenterian Reformatory and Parramatta. A specific Regulation should have been made for

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<sup>4</sup> W E Bethel: 'Submission to Minister on the Fincham Report, 6 April, 1923'. [NSW Parliamentary Archives](#) 1923/422

Gosford when it opened in 1913, but this had never been done.<sup>5</sup> There were ‘rules’ for the management of Gosford, dating from 1916, substantially the same as those that had applied at the Carpenterian Reformatory. However, they were in the nature of an administrative instruction, and did not have the force of law.<sup>6</sup> Fincham thus found, as a matter of law, that, in the absence of any statutory provision, Stayner’s powers to punish derived from the common law of England, which recognized the power of the person in charge of a Reformatory to punish a child under his control. There was however, an important restriction at law on such punishment, it had to be reasonable.

Other interesting issues emerged during the inquiry, for example, boys were not supplied with pyjamas but slept in the shirts they had worked in all day. Fincham also criticized the lack of a recreation room, library, gymnasium, or indeed any suitable books or games. In practice, the boys were confined in their dormitories from sundown and there was virtually nothing to do until lights out at nine o’clock at night. This resulted in boredom and misbehaviour, particularly since there was, as yet, no electric light.

Fincham also observed that much of the trouble occurred in the evenings or at weekends, when the Superintendent was not around. When the Farm Home began to operate, there was no Superintendent’s cottage. Stayner and his family lived in the town of Gosford, some four miles away, he travelling to the Farm Home each day. About 1919 the family moved back to Eastwood, where he had been Superintendent at Brush Farm before transferring to Gosford. From then on, Stayner left Gosford each Friday

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<sup>5</sup> Regulations under the Neglected Children and Juvenile Offenders Act, 1905. Government Gazette 20 October, 1905. Regulation 8 covered *Sobraon*, Regulation 9, the Girls Industrial School, Parramatta, Regulation 10 the Carpenterian Reformatory.

<sup>6</sup> ‘Department of Education: Rules for the Guidance of Officers of the Farm Home for Boys at Gosford, Sydney, January, 1916’ produced in evidence by A W Thompson on 15 February, 1934 at the Public Service Board Inquiry into the conduct of Arthur William Parsonage, and referred to in ‘Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent’ NSWPP 1934-35, vol 1, p. 375. Fincham also referred to this instruction in his 1923 Report.

night and returned on Monday morning, ‘by express permission of the Under Secretary’.<sup>7</sup> For a Superintendent to be absent from the institution at night or weekends was a serious management flaw.

Formally, Fincham found that ‘undue severity was exercised in the administration of certain punishments’ resulting from ‘an error of judgment for which (the Superintendent) could not legally be held responsible’. He recommended that corporal punishment be retained, but with a number of qualifications. The first was that all punishments should be governed by Regulations made under the Act. Secondly, he considered the maximum number of cuts with the cane should, following English and Victorian precedents, be twelve. If administered, for grave offences, on the buttocks, it should be ‘over ordinary trousers’.

Other recommendations were that punishments should be recorded and that the practice of officers carrying canes be stopped. Fincham also considered that corporal punishment should be inflicted by an officer other than the Superintendent, but not without the ‘express direction’ of the Superintendent or Deputy. He went on to suggest that discipline be enforced as far as possible by other means, and suggested a system of rewards and denial of privileges, as well as isolated detention of up to twenty-four hours for particularly refractory boys. Fincham drew attention to the fact that the cane was no longer used in Victorian Industrial or Reformatory Schools and suggested that inquiry be made in that State before Regulations were framed. Also recommended was the appointment of an Official Visitor from outside the Department. Fincham

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<sup>7</sup> V A Heffernan: ‘Notes on the History of Mt. Penang’ unpublished manuscript, 1989, p 7. Copy in the possession of the author. See also the Public Service List, which shows only a partial deduction from Stayner’s salary for the use of ‘quarters’, indicating that he did not occupy the Superintendent’s residence. See also ‘Interview with Dr. F E Stayner’ (Stayner’s son) the original of which is held by the Gosford District Historical Society. The reference to the Under Secretary sanctioning his absence from the home at weekends appears in a minute by W E Bethel, 6 February, 1923. SR 14/6305

suggested an amendment to the Act to enable older refractory inmates to be sentenced to an additional six months detention by a Children's Court.<sup>8</sup>

Fincham's Report was, on the whole, sympathetic to Superintendent Stayner. In several places there is mention of how difficult the inmates were, the good reputation Gosford enjoyed, as well as favourable remarks about Stayner himself: "a kinder-hearted man than Mr. Stayner it would be difficult to find".<sup>9</sup> He appeared to accept without question Stayner's remarkable claim that this was the very first time he had ever caned a boy on bare buttocks.<sup>10</sup> There was also the inconsistency between the practices disclosed in the evidence, and the administrative instruction. The instruction was couched in similar terms to Regulations under which Stayner had operated at the Carpenterian Reformatory, where he had been Superintendent. It required charges against inmates to be made in writing to the Superintendent, and a hearing during which the boy would have an opportunity to defend himself. Any punishment of more than six strokes had to be recorded. It could only be awarded by the Superintendent, and was not to be inflicted by the reporting officer. Specifically, the instruction warned officers not to strike a boy without authority, indicating that this problem was not a new one.<sup>11</sup>

Even if Stayner was governed by the common law, he had breached a number of the requirements of the administrative instruction. Ramsland and Cartan maintained that Stayner had, when he first arrived at Gosford, forbidden the carrying of canes by officers at Gosford, as part of his attempt to introduce an 'honour system'. The same claim was made by other visitors to the institution down the years, but it

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<sup>8</sup> W M Fincham: 'Gosford Farm Home for Boys: Papers Concerning Inquiry held by W M Fincham Esq., Special Magistrate, Children's Court, Sydney, Concerning the Punishment of Joseph Bayliss' NSW Parliamentary Archives 1923/ 422.

<sup>9</sup> ibid., p. 36.

<sup>10</sup> ibid., p. 27.



seems clear that the practice did continue.<sup>12</sup> A similar prohibition on summary punishment was in the *Vernon* Regulations, dating back half a century.<sup>13</sup> Fincham did not refer directly to the marked discrepancy between practice at Gosford and the earlier Regulations. Nor did he offer any criticism of the fact that Stayner was apparently not at the institution at weekends.

More seriously, his main finding was flawed. Having come to the conclusion that corporal punishment was, subject to it being reasonable, authorized by common law, it was not open to him to find that it was excessive (in other words, unreasonable), and also find that Stayner could not be held liable, although this is what he did. If the punishment was excessive, it was unreasonable, and at very least, a common assault, as well as a breach of public service discipline. Confronted with exactly the same situation in the Yanco inquiry in 1934, McCulloch had no hesitation in finding that excessive punishment was *ipso facto* unlawful.<sup>14</sup>

A second issue was that, following the common law theme, Stayner must be the *only* person entitled to inflict corporal punishment on inmates, since by statute, they were 'under his custody and control'.<sup>15</sup> Thus, it followed that, in condoning punishments by subordinate officers, Stayner had failed in his duty, and the other officers had committed assaults. Fincham made no mention of this, although it was an obvious consequence of his concluding that common law applied.

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<sup>11</sup> Regulation 8 under the Neglected Children and Juvenile Offenders Act, 1905, Government Gazette 20 October, 1905

<sup>12</sup> J. Ramsland & G. A. Cartan 'The Gosford Farm Home for Boys, Mt. Penang 1912-1940' JRAHS vol 75 part 1, June, 1989, p. 70. See also M Tenison Woods Juvenile Delinquency With Special Reference to Institutional Treatment Melbourne University Press, Melbourne, 1937, p. 52

<sup>13</sup> Nautical School Ship *Vernon*: Regulations under the Industrial Schools Act, 1866, Government Gazette 13 January, 1869.

<sup>14</sup> J E McCulloch : 'Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent' NSWPP 1934-35, vol 1, p. 389.

<sup>15</sup> Neglected Children and Juvenile Offenders Act, 1905, (NSW), section 34.

A third problem was that the charge brought against the boy which led to his being locked up in the police station was clearly a breach of the ‘double jeopardy’ principle of law. Bayliss had already been punished and could not be punished again, and so had been unlawfully imprisoned. Small wonder the charge was withdrawn within a few days. Fincham’s recommendation for an outside visitor was sensible, but he failed to mention that the existing legislation already provided that every institution was to be inspected every three months by a person appointed by the Minister.<sup>16</sup> There was no comment on failure to comply with this statutory requirement.

The newly installed Secretary of the Department, Walter Bethel, largely rejected the recommendations. He down-played the seriousness of the findings by asserting that, as no complaints had been made by parents, everything must be all right. He opposed the making of Regulations, claiming that this would be ‘the sort of advertisement of a feature which no Department wishes to intrude unnecessarily’. Instead, he proposed an administrative instruction to Superintendent and staff, covering, presumably the sorts of things that would have been in a Regulation, including recording of punishments. This simply maintained the status quo, which had been shown to be defective. No instruction was issued.<sup>17</sup>

There was no mention in his response of what was to happen at other institutions which also had no regulations, specifically the Training Home at Parramatta, and Raymond Terrace, regarded as an adjunct of Gosford. Later, this problem was complicated when, in 1924, both the Training Home and the Industrial School at Parramatta were ‘disestablished’ but then re-established as the one institution, named the Industrial School for Girls Parramatta. In practical terms this merely

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<sup>16</sup> *ibid.*, section 8.

<sup>17</sup> J E McCulloch: ‘Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent’ p. 376.

recognized the fiction of two institutions, whereas in fact they were one. Legally, however, it meant that the Regulations made for the old Industrial School no longer applied to the new one.<sup>18</sup> Bethel also undertook to arrange for the provision of a 'punishment house', in order to provide isolated detention as an alternative to corporal punishment. In fact, nothing was done.<sup>19</sup> An undertaking was also made to provide recreational facilities, and pyjamas. His strongest opposition was reserved for the suggestion to appoint an external visitor, claiming this would create indiscipline among the boys. He reported that an Inspector of Institutions had recently been appointed, and this would deal adequately with the issue.<sup>20</sup>

Bethel omitted to mention that, some years earlier, in 1913, the Chief Clerk of the Department had been similarly appointed, but apparently failed to discharge his duties, an issue which had been the subject of public comment in the Allard Royal Commission in 1920.<sup>21</sup> The person now appointed, James Connolly, formerly Superintendent at Mittagong, was then fifty-eight years of age, and does not appear to have had much impact. When Connolly was appointed to another position in 1926, Arthur Parsonage was appointed Inspector of Institutions, while retaining his position as Superintendent at Gosford !<sup>22</sup> This was a ludicrous situation, since Parsonage could hardly report on Gosford, where he himself was the Superintendent. Clearly the holder of the position was not meant to make any serious criticism of any institution. Bethel quietly abandoned the position in 1927, arranging that inspection duties would be shared between himself and the Assistant Secretary, although Parsonage was

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<sup>18</sup> Government Gazette 23 March, 1924, p. 2446.

<sup>19</sup> J E McCulloch: 'Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent', p.376.

<sup>20</sup> W E Bethel: 'Submission to Minister on the Fincham Report, 6 April, 1923', p. 2.

<sup>21</sup> G M Allard: 'Fifth Sectional Report of the Royal Commission to Inquire into the Public Service of New South Wales, Concerning the Administration of the Acts Relating to State Children' NSWPP 1920, vol 4, p. 477.

apparently never informed of this.<sup>23</sup> In 1934, McCulloch, Royal Commissioner, again reported that institutions had not be regularly inspected.<sup>24</sup>

In short, Bethel regarded the Inquiry as a nuisance. He either rejected or simply failed to carry out those recommendations which he regarded as interfering with his administration. He particularly fought against any outside scrutiny.

Consideration was apparently given to transferring Stayner to Parramatta, this position being vacant at the time because of Alexander Thompson's promotion to Assistant Secretary.<sup>25</sup> He was sent on 'extended leave' and later transferred to Head Office, albeit in a lesser position.<sup>26</sup> After a discreet interval, in 1928, he was promoted.<sup>27</sup>

Stayner and Thompson were personal friends, and both freemasons.<sup>28</sup> Their friendship may have saved Stayner from dismissal, which must have been a possibility, given the

<sup>22</sup> Parsonage was appointed on 10 May, 1926. See J E McCulloch: 'Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent', p. 391.

<sup>23</sup> The position did not appear in the Public Service List for 1927. See also J E McCulloch 'Child Welfare Department: Report on the General Organization, Control and Administration of, with Special Reference to State Welfare Institutions', p. 201 in original manuscript, a copy of which is held by the author.

<sup>24</sup> J E McCulloch 'Child Welfare Department: Report on the General Organization, Control and Administration of, with Special Reference to State Welfare Institutions', NSWPP 1934-35, vol 1, p. 146

<sup>25</sup> A W Thompson, Diary, 29 January, 1923

<sup>26</sup> Albert Bruntnell, NSWPDLA 16 October, 1923, p. 1571. Public Service List, 1923 shows that at 31 December, 1923, Stayner was on extended leave, and Parsonage was acting as Superintendent. NSWPP 1924, vol 1, p 750 et seq.

<sup>27</sup> Stayner was appointed a relieving inspector from 1 November, 1924, and promoted to Inspector in Charge of the School Attendance Branch on 12 September 1928. See Public Service Lists for 1924 and 1928.

<sup>28</sup> See photograph of Stayner in masonic regalia, reproduced in V Rubie Sent to the Mountain: A History of Mt. Penang Juvenile Justice Centre 1911-1999, Ligare Pty Ltd, Gosford, 2003, p. 16. Thompson, in the daily diaries he kept from 1907 to 1934, makes many references to his attendance at masonic lodge meetings.

seriousness of the ill-treatment.<sup>29</sup> Topple was also promoted subsequently to senior instructor.<sup>30</sup>

At Gosford, Stayner was replaced by Parsonage. Otherwise, little was done, and the inference to be drawn was that Bethel and others in authority regarded the treatment meted out to inmates as pretty much what they deserved. Alexander Thompson, who had been present while Fincham questioned some witnesses at Gosford, complained about being bored by Fincham's 'incessant talk about English Industrial School Regulations as to corporal punishment and suggested reforms'.<sup>31</sup> There was little evidence of any serious attempt, at the executive level of the Department, to reform what, at least in retrospect, appears to have been serious ill-treatment, poor administration and deficient executive oversight. A year after the Fincham inquiry, Parsonage reportedly claimed that corporal punishment was now 'unknown', boys were spending an average of five months there, and there had only been four abscondings in eight months.<sup>32</sup> These claims are open to doubt, since no statistics on abscondings were kept or published at the time. Evidence which emerged later at the Yanco inquiry showed that corporal punishment was indeed inflicted at Gosford at this time, albeit in a different form from the traditional birching.

### *Allegations of Maladministration in the Department*

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<sup>29</sup> A W Thompson's Diary, 17 February, 1923, records that Stayner stayed with the Thompsons at Parramatta at the time of the Fincham Inquiry. The connection between the two was of long standing. Thompson's diary indicates that he took over Stayner's class at Fort Street when Stayner went to *Sobraon* in 1894. When Stayner was promoted from schoolmaster to Lieutenant on *Sobraon* in 1896, Thompson succeeded him as Chief Schoolmaster (see Teacher Roll entries for Stayner and Thompson SR 5/343 and 4/87 respectively). Many entries in Thompson's Diaries in ensuing years show regular social contact between the families, for example, the entry for 26 February, 1934, during the Public Service Board inquiry into the conduct of Parsonage at Yanco.

<sup>30</sup> Topple was promoted to act as senior instructor from 5 August, 1924. See Public Service List

<sup>31</sup> A W Thompson, Diary, 20 February, 1923.

In 1926, further allegations, including poor general administration, inadequate supervision of institutions and under-staffing emerged. Inquiries by the Auditor-General, the Public Service Board and a Royal Commissioner followed. They had a bizarre origin. In 1926, Bethel sought to have his salary increased, possibly as part of an attempt to get his position raised to the status of a Permanent Head.<sup>33</sup> Treasury, however, recommended against the increase, citing a report from the Auditor-General. This referred to large numbers of overpayments which had not been reported by Bethel to the Auditor-General as required by law. There were also unsatisfactory accounts and estimate preparation, as well as waste of government monies on the home at Raymond Terrace during a time when it was in fact closed. The report stated that the 'marked unsatisfactoriness of the Child Welfare Department is of long continuance'.<sup>34</sup>

Bethel contested the matter vigorously, and the Public Service Board then held an inquiry, finding no fault with Bethel.<sup>35</sup> The Auditor-General in reply then tabled in Parliament a lengthy Special Report, highly critical of both Bethel and the Public Service Board.<sup>36</sup> In the face of this disagreement, a Royal Commissioner, Justice John Musgrave Harvey, was appointed. In the end Bethel was cleared, but certain facts emerged which were disquieting. The Director of Education, Stephen Smith complained that since 1923, Bethel had reported directly to the Minister, and that the Department had been 'practically removed' from his control.<sup>37</sup>

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<sup>32</sup> G E Cross, Secretary of the Gosford Labour League, *Gosford Times*, 28 February, 1924.

<sup>33</sup> See Parliamentary Question by Mr. Akhurst MLA. *NSWPDLA* 3 November, 1926.

<sup>34</sup> The Hon T D Mutch, Minister for Public Instruction, quoted from the report of the Auditor-General during a Ministerial Statement to the Legislative Assembly, *NSWPDLA* 13 October, 1926, p. 247. See 'Report of the Royal Commission (Mr. Justice Harvey) to inquire into matters relating to the Administration of the Child Welfare Department' *NSWPP* 1927, vol. 2, p. 773 et seq. See also papers relating to the Royal Commission by Mr. Justice Harvey. *SR* 8/75.

<sup>35</sup> 'Report by Public Service Board under Section 9 of the Public Service Act Regarding the Manner in which the Secretary Mr. W. E. Bethel has Performed his Duties' *NSWPP* 1926-27, vol 1, p. 678.

<sup>36</sup> 'Special Report by Auditor-General 10 February, 1927' *NSWPP* 1926-27, vol 1, p. 716.

<sup>37</sup> S H Smith to Auditor-General, 5 August, 1926 *SR* 8/751.

The evidence in relation to Raymond Terrace indicated that it had been closed down in 1923, but re-opened because of pressure of numbers at Gosford. However, the re-opening had to be delayed because of staff shortages, resulting in staff being retained at Raymond Terrace for six months even though there were no inmates. It also emerged that Raymond Terrace, an institution for 'subnormal' boys, who at this time were considered to be prone to sexual malpractice, had to make do without dormitory supervision at night, because of lack of staff. Also, it had no resident Superintendent, being regarded as part of Gosford. In fact, Parsonage referred to it as 'Dormitory no 5'.<sup>38</sup>

The affair probably had its genesis in the hatred which John Lang, then Treasurer, had for Thomas Mutch, Minister for Education. Lang seems to have taken the opportunity to wound Mutch via an attack on Bethel. In 1924, Lang had beaten Mutch by one vote for leadership of the Labor Party.<sup>39</sup> After that, Mutch became the leader of an anti-Lang faction in the Party, and Lang claimed that he was involved in efforts to overthrow him late in 1926.<sup>40</sup> Newspaper reports at the time referred to factional infighting and a Cabinet split within the Labor Government.<sup>41</sup> Prominent labor lawyers appeared for different parties, including Andy Watt QC, and Dr. Herbert Evatt, who appeared for Mutch. Certainly, Mutch was openly critical of Lang during debate on the Bethel matter, an event so unusual as to confirm the existence of serious conflict between the two Ministers.

There also seems to have been an element of personal animosity in the affair.

The Auditor-General, Frederick Coghlan, and Bethel had worked together from 1881 to

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<sup>38</sup> E W Challoner, minute dated 14 February, 1927 SR 8/751.

<sup>39</sup> H Radi & P Spearritt Jack Lang Hale & Iremonger, Sydney, 1977, p.54.

<sup>40</sup> J T Lang I Remember, Invincible Press, Sydney, 1956 p. 312

<sup>41</sup> M Fox 'The Provision of Care and Education for Children in Catholic Charitable Institutions in New South Wales 1881-1981' Ph D Thesis, University of Sydney, 1994, p. 194. See also The Sun, 14 February, 1926 and SMH 14 February, 1926

1888 in the same branch of the Department of Public Instruction.<sup>42</sup> The acerbity of Coghlan's report suggests they were enemies, in fact, it was said that he had pursued Bethel like a 'malignant prosecutor'.<sup>43</sup> Whatever hidden agendas there might have been to these events, the numbers of overpayments, as well as the failure to report them, reflected poorly on Bethel's administrative capacity. The Raymond Terrace episode showed staffing matters in disarray. Bethel survived, even securing a year's extension beyond the normal retirement age. Nevertheless, the episode had a debilitating effect on the administration of the Department, with a number of senior officers going on sick leave, and the work of the Department disrupted.<sup>44</sup>

### *Institutional Reform*

Despite these damaging events, there were some advances. In 1926, the opening of a new industrial school for boys at Narara, near Gosford, was significant because it represented a new type of institutional treatment, the first of a number of institutions later to be referred to as 'privilege cottages'.<sup>45</sup> Narara operated as an adjunct of Gosford Farm Home (it was about 16 km away) and was under the control of its Superintendent.<sup>46</sup> It provided work for about 30 boys, described as 'the better type of lad'.<sup>47</sup> They lived on the site, and worked on a viticultural nursery, under the

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<sup>42</sup> Public Service Lists 1881-1888. Before appointment as Auditor-General in 1914, Coghlan had been chief clerk (1903) and then Under Secretary (1910) of the Chief Secretary's Department. See Coghlan's entry in F Johns Who's Who in Australia, Angus and Robertson, Sydney, 1922.

<sup>43</sup> T D Mutch, NSWPDLA 10 March, 1927, p. 2221.

<sup>44</sup> See J E McCulloch 'Child Welfare Department: Report on the General Organization, Control and Administration of, with Special Reference to State Welfare Institutions', p. 196. With regard to the extension of Bethel's term of office, see Question in the Legislative Council, 12 February, 1929. Journal of the Legislative Council of New South Wales 1928-29, vol 105, p.161.

<sup>45</sup> Proclaimed as an Industrial School until 29 November, 1927. Government Gazette 23 December, 1927, p. 6004

<sup>46</sup> J E McCulloch 'Child Welfare Department: Report on the General Organization, Control and Administration of, with Special Reference to State Welfare Institutions', p. 207

<sup>47</sup> M Tenison Woods Juvenile Delinquency With Special Reference to Institutional Treatment, p. 30.



supervision of the Department of Agriculture.<sup>48</sup> Discipline was more relaxed than at Gosford, and boys were paid five shillings a week for their efforts.<sup>49</sup> In part the initiative was a recognition that the soil at the main institution, situated as it was on the crest of the escarpment, was poor, and therefore unsuitable for farming instruction.<sup>50</sup> The Narara site, located down on the flats, had much better soil, and was used to grow vegetables for the main institution.<sup>51</sup>

A new industrial school for girls, opened in 1927 at La Perouse, also had similar status.<sup>52</sup> It accommodated fifty girls in a building previously used as a Cable Station, on the shores of Botany Bay. La Perouse operated under the supervision of the Superintendent of Parramatta, who, in the 1930s, was reported as visiting weekly. It was designated for 'less depraved and younger girls whose general conduct and good health justify it'.<sup>53</sup> Privilege cottages were smaller institutions, operated as annexes of larger ones, the distinguishing feature being that conditions there were less harsh, with inmates of the larger campus earning transfer as a reward for good behaviour, and conversely, being returned there for misbehaviour.

Essentially, both of these places were opened to relieve pressure on accommodation at the larger institutions. At Parramatta numbers had grown from 121 in 1923 to 208 in 1927. At Gosford, the numbers had also risen, from 121 in 1923 to 263 in 1926.<sup>54</sup> These increases would appear to be largely attributable to the 1923 legislation, which raised the jurisdictional limit of the Children's Courts from

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<sup>48</sup> J E McCulloch 'Child Welfare Department: Report on the General Organization, Control and Administration of, with Special Reference to State Welfare Institutions', p. 65

<sup>49</sup> G. A. Cartan 'Farm Home for Boys Gosford 1912-1939' B. Ed. Studies Thesis University of Newcastle 1986, p. 68

<sup>50</sup> Annual Report Child Welfare Department 1926-1929 NSWPP 1930-31, vol 4, p. 756.

<sup>51</sup> C T Wood, Secretary to Under Secretary, Department of Agriculture, 3 December, 1935. SR 12/3506.

<sup>52</sup> Proclaimed as an industrial school on 29 November, 1927. Government Gazette 30 December, 1927, p. 6100.

<sup>53</sup> Annual Report Child Welfare Department 1926-1929, p.755.

<sup>54</sup> Annual Reports, Child Welfare Department.

sixteen to eighteen years of age. Privilege cottages also provided a useful means of separating inmates into different classes.<sup>55</sup> They were also consistent with the social reform ideals of the Labor government, elected in 1925.

The opening of Yanco in 1927 was yet another attempt to institute farm training for boys at a location well away from the city. It was also an opportunity to separate different classes of older boys, previously all held together at Gosford. However, the compelling factor in its establishment was that Gosford had grown 'uncomfortably overcrowded'.<sup>56</sup> Numbers had increased from 238 in 1925 to 363, plus another twenty at Narara.<sup>57</sup> David Drummond, then Minister, was personally responsible for securing from the Agriculture Ministry a property suitable for use as an institution which could train boys for farm work.<sup>58</sup> Drummond had been on the land himself and, like many others at the time, held the view that boys would be reformed through the benefits of working in the open air, away from the contamination of the city.<sup>59</sup>

The Secretary of the Department, Walter Bethel regarded the establishment of Yanco as of critical importance to the juvenile correction system. At the time, he detached himself from ordinary duties to concentrate entirely on the task. Apart from the advantage of being able to train boys in farm work, he also saw it as an opportunity to rationalize the whole institutional system, in particular, Mittagong. Bethel was a supporter of the 'barrack' system of accommodating delinquents, and had never been in favour of the cottage system used at Mittagong. While he was reluctant to abandon it for the younger boys, he wanted to replace it with dormitory style accommodation for

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<sup>55</sup> M Tenison Woods, Juvenile Delinquency With Special Reference to Institutional Treatment, p. 56

<sup>56</sup> Annual Report Child Welfare Department 1926-1929, p.756.

<sup>57</sup> ibid., p.779.

<sup>58</sup> Report from W E Bethel to Drummond 6 June, 1928. SR 9/6151.1.

<sup>59</sup> J M Holl Juvenile Reform in the Progressive Era: William George and the Junior Republic Movement Cornell University Press, London, 1971, p 99.

the boys up to fourteen years at Mittagong.

He proposed to expand one of the cottages at Mittagong to provide dormitory accommodation for a hundred boys. This would be operated in competition with the existing cottage system, with the weaker system eventually going to the wall. A further element in his plan was that all boys committed would initially go to Gosford for 'character training'. After that, they would be transferred either to Yanco for farm training or to Mittagong for trade training. Thus, discipline would first be instilled into the inmates, who could then be subjected to some form of vocational training. Drummond gave guarded support.<sup>60</sup> The plan had serious flaws. In the first place, it would have meant the mixing of offenders of different ages and experience at Gosford, whereas the existing system kept the younger ones separate at Mittagong. Also, converting half of Mittagong to a dormitory system would have meant tampering with the segregation made possible by having some ten different cottages. It would also have affected the separate accommodation of Protestant and Catholic children. Perhaps for those reasons, it was never implemented.

The one hundred and fifty boys at Yanco were all volunteers, and had already completed their 'disciplinary training' at Gosford.<sup>61</sup> Sexual offenders were excluded 'to protect farming communities, where... females are left alone in the homesteads for periods, from any possibility of danger'. The boys were generally older, compared with Gosford, being close to, or over eighteen. 'Major' Parsonage, who had been regarded by the Department as a success at Gosford, was appointed Superintendent. The property consisted of some 2043 acres, of which 500 were under irrigation. It was a mixed farm, with some dairy and beef cattle, sheep and an orchard. Vegetables

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<sup>60</sup> Address by W E Bethel to Conference of Superintendents of Industrial Schools 14/15 January, 1929. Drummond's approval in principle is dated 8 November, 1928. SR 9/6153.

<sup>61</sup> Annual Report, Child Welfare Department, 1930 & 1931, NSWPP 1932, vol 1, p. 525 et seq., p. 2.

were produced for other government instrumentalities in that part of the State.<sup>62</sup> There was little cost involved in its acquisition, since it had previously been a Department of Agriculture Experiment Farm. The existing accommodation was makeshift, with old farm buildings being used as dormitories.<sup>63</sup>

When work began on building proper dormitories, inmate labour was used, in order to save money. The design was a quadrangle, and eventually was to consist of four dormitories, kitchen, hall, lecture rooms, and single officers quarters on three sides of the square. In part, the staffing costs were reduced by savings at Gosford.<sup>64</sup> No provision was made for a detention block, even though Bethel had given an undertaking to provide one at Gosford following the Fincham Report. The need for one at Yanco was arguably greater, since the boys were older.<sup>65</sup> Later, following criticism in the McCulloch Report, a detention block, containing windowless cells about two square metres, was constructed at Yanco some time after 1934.<sup>66</sup>

Parsonage brought with him the 'prefect' system he had used at Gosford, and also his interests in sporting activities. Although he claimed to have instituted this system at Gosford, it had in fact been used on *Sobraon*, where the staff used boy 'petty officers' to assist in the management of the ship.<sup>67</sup> He laid down an oval at Yanco, and encouraged a good deal of interaction with the local community, mainly through visits from sporting teams. There was also some attempt to provide evening activities. A woman was engaged to play the piano at weekly community singing sessions.<sup>68</sup> The idea of adolescent delinquents participating in activities of this kind may seem strange

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<sup>62</sup> Annual Report Child Welfare Department 1926-1929, p.778.

<sup>63</sup> Annual Report, Child Welfare Department, 1930 & 1931, p. 29.

<sup>64</sup> see Public Service List.

<sup>65</sup> J E McCulloch: 'Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent', p.376.

<sup>66</sup> 'CWD Riverina Approvals and Instructions Book', entry no H 34464 for 14 August, 1934 SR 8/2138.

<sup>67</sup> Annual Report *Sobraon* 1898, JLC 1898, part 1, vol. 58.

to-day, but educationists believed that music could be a 'humanizing and civilizing influence' on children.<sup>69</sup> There was a liedertafel group on *Vernon*.<sup>70</sup> Community singing was also part of the program at Gosford and Parramatta. Girls from Parramatta regularly sang at local churches and sometimes at the cinema, providing entertainment before the showing of films.<sup>71</sup>

Yanco was soon being referred to as a 'show place'.<sup>72</sup> Even though it had been condemned again and again, most recently by Allard in 1920, the barrack system was once more used rather than any attempt at a cottage system. The whole project seems to have been driven by the desire to minimize costs, and so the cheapest option was to build dormitories using inmate labour, along the lines of the barrack system used at Gosford. In fact, in nearly every respect, the operations at Yanco copied the Gosford model.

### *The Yanco Inquiries, 1934*

The Public Service Board Inquiries into the conduct of the Superintendent and other staff at Yanco and their sequel, an inquiry into the whole Department, were among the most significant and traumatic in the history of juvenile corrections in New South Wales. This was not only because of the unprecedented publicity generated, but because afterwards administrators were fearful of any recurrence of an inquiry of this kind.

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<sup>68</sup> See records of payments to pianist in 'Child Welfare Department: Riverina Welfare Farm, Approvals and Instructions' SR 8/2138

<sup>69</sup> R Stevens 'Music: A Humanizing and Civilizing Influence in Education' in G Featherstone (ed.) The Colonial Child Royal Historical Society of Victoria, Melbourne, 1981, p. 67. See also M Carpenter Reformatory Schools for the Children of the Perishing and Dangerous Classes and for Juvenile Offenders Gilpin, London, 1841, p. 176.

<sup>70</sup> See D Peyser 'A Study of the History of Welfare Work in Sydney from 1788 to about 1900' JRAHS vol 25, 1939, p. 186.

<sup>71</sup> See 'Transcript of Evidence Given Before Public Service Board Enquiry at the Parramatta Girls Reformatory, May 1898' SR 8/300.1, and also exhibit 15 to the McCulloch Commission, SR 7/7586.

The trouble began in late 1933, when serious allegations about the Riverina Welfare Farm, Yanco, appeared in *Truth*, a weekly Sydney newspaper with a reputation for muck-raking and sensationalism. Under the headline ‘Mob Savagery alleged at Welfare Farm’, and referring to Yanco as ‘Little Siberia’, *Truth* claimed that boys were being systematically bashed by other inmates, with the approval of staff, as punishment for absconding. These bashings took the form of a boy being forced to fight up to a dozen boys, one after another, until he had been severely beaten. This was known as the ‘bag room’ system, named after the place where this kind of punishment had been instituted at Gosford. Another form of punishment was ‘keeping stations’, which required a boy to stand on a mound of gravel and jump into the air, doing knee bends at each jump. This might continue for days on end. Boys were also alleged to have been forced to run around a playing field for as many as one hundred circuits, approximately fifty kilometres. This took place regardless of the weather, and those being punished were kicked by other inmates if they faltered.<sup>73</sup>

Some staff were accused of beating boys sometimes for no reason at all. It was further claimed that there were frequent abscondings and that there was no useful education or trade training, so that Yanco was merely a breeding ground for criminals.<sup>74</sup> There is some suggestion that the *Truth* publicity had its origin in personal conflict between Parsonage and Mr. F. C. Mountford, who was engaged on some building work at the farm. Mountford was also President of Willimbong Shire Council. Both were contenders for the position of Chairman of the local Hospital Board. The builder was in a position to make first-hand comments on what he saw there, and these, when

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<sup>72</sup> Annual Report Child Welfare Department 1926-1929, p.756.

<sup>73</sup> *SMH* 24 January, 1934.

<sup>74</sup> *Truth* 26 November and 3 December, 1933.

published, were very damaging to Parsonage.<sup>75</sup> In any event, after the publicity began, many others came forward and gave evidence, including a number of former inmates. The members of a visiting football team, who had seen boys running around a field being kicked and punched when they faltered, confirmed the allegations. Thompson, Secretary of the Department, was dispatched to Yanco immediately. As a result of his preliminary investigation, the Superintendent and another Officer were suspended from duty pending a formal inquiry by the Public Service Board.<sup>76</sup>

This inquiry began on 22 January, 1934 in the Leeton courthouse, and was conducted by John McCulloch, an experienced Magistrate.<sup>77</sup> There was some attempt made by Departmental officials to prevent interviews by counsel with inmates. This was quickly abandoned in view of the campaign in *Truth*, which continued during the course of the inquiry.<sup>78</sup> Contrary to the usual practice in such inquiries, the public were admitted, no doubt because of the publicity generated. The proceedings began in sweltering heat. It was 104° F, and the participants had difficulty in sleeping at night because of the heat and mosquitoes, prevalent in the irrigation channels in the district.<sup>79</sup> The inquiry sat during the week, and on Fridays, those who had come down from Sydney, including the Magistrate, counsel and Departmental officials, all went back there by train for the weekends, returning on Sunday night.

The inquiry was formally conducted, with counsel appearing for the parties, and some seventy-nine witnesses examined under oath.<sup>80</sup> Outside the hearings, however, there was a surprising informality. Thompson and McCulloch sometimes shared a sleeping compartment on the train. On one occasion they had a yarn together

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<sup>75</sup> V A Heffernan, 'Notes on the History of Mt. Penang', p. 5.

<sup>76</sup> *Truth* 10 December, 1933.

<sup>77</sup> For McCulloch's record of service, see *SR* 7/7227.1.

<sup>78</sup> A W Thompson, Diary, 11 January, 1934.

<sup>79</sup> *ibid.*, 23 January, 1934.

after dinner at the hotel, where they both stayed, during which they discussed both Parsonage and Bethel. Significantly, on this occasion, Thompson recorded that McCulloch had confided to him that 'I might be too kind to handle my responsibilities'.<sup>81</sup> On another occasion, the inquiry adjourned and the participants then went to watch a cricket match between Victoria and Riverina.<sup>82</sup>

Attention focused on Parsonage, since his conduct was the subject of the first of the inquiries, held under the Public Service Act. Born in 1883, he had become a pupil teacher in the Department of Public Instruction at the age of sixteen. In 1904, however, he was almost dismissed for falsification of class rolls, but survived to teach in a number of country schools. Later he was appointed to Fort Street High School as military instructor. As 'Captain' Parsonage, he was chosen to lead a contingent of school cadets to the coronation of King George V in 1911.<sup>83</sup> His commission, however, was not in the regular army, but in the school cadet corps.<sup>84</sup> Later, he appears to have been promoted to 'Major' in the cadets. He did not serve overseas in the war, but was teaching in New South Wales.<sup>85</sup> In 1917, again during World War I, he transferred to the State Children's Relief Board as a school attendance officer.<sup>86</sup> He was very keen on sport, and this quality may have been significant in subsequent promotion, since the Secretary of the Department, Bethel, was also a keen sportsman.<sup>87</sup> When appointed to Gosford, the fact that he was 'an experienced sportsmaster' was

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<sup>80</sup> J E McCulloch : 'Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent', p. 370.

<sup>81</sup> A W Thompson, Diary, 29 January, and 9 February, 1934.

<sup>82</sup> *ibid.*, 1 February, 1934.

<sup>83</sup> R S Horan Fort Street: The School Honeysett Publications, Sydney, 1989, p. 155.

<sup>84</sup> When the school cadet corps was established in 1906, Parsonage was commissioned as a Captain. See Commonwealth Gazette 30 June, 1906, p. 833. He was later referred to as Major Parsonage, indicating a later promotion in the same school cadet corps.

<sup>85</sup> Information supplied by the NSW Department of Education. See also R S Horan Fort Street: The School Honeysett Publications, Sydney, 1989, p. 155. Parsonage's name does not appear on the AIF Nominal Roll of those who served overseas in the 1914-1918 War.

<sup>86</sup> Public Service List.



emphasized. The inference was that getting the boys interested in sport would somehow overcome the problems revealed by Fincham.<sup>88</sup>

He was especially fond of cricket, and supervised the construction of the main oval at Gosford. Boys engaged as 'weed pickers' traversed the couch grass surface on their knees. According to staff who later served there, Parsonage attracted sportsmen to the staff at Gosford and later to Yanco. He was said to have extended the period of detention of boys who were good at sport, so they could keep on playing in the Farm Home teams. One inmate was appointed to a staff position because of his sporting prowess.<sup>89</sup> Undoubtedly, Parsonage was held in high esteem by Bethel. He arranged for Parsonage to accompany him on a tour of Victoria, South Australia and Western Australia, to inspect child welfare systems.<sup>90</sup>

At Gosford, Parsonage introduced the system by which selected inmates were given authority over other inmates. Senior boys, referred to as 'junior officers', and posted in front of the 'quarter deck', recorded misbehaviour by other boys and allocated deprivation of points. These were then collated into a 'King Book' which became the Superintendent's guide to punishments and rewards. Parsonage was apparently given to addressing musters of boys at great length, apparently aimed at improving morale among inmates.<sup>91</sup>

Witnesses at the inquiry included another Shire Councillor George Enticknap, who no doubt relished the adverse publicity the Government received over the events at Yanco. He was an active member of the Labor Party, then in opposition, stood for election to State Parliament the following year, and subsequently held a number of

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<sup>87</sup> Bethel lived at McMahon's Point and was a keen swimmer. He was President of a local swimming club.

<sup>88</sup> Albert Bruntnell, Minister, *NSWPDLA* 16 October, 1923, p. 1571.

<sup>89</sup> V A Heffernan, 'Notes on the History of Mt. Penang', pp. 4-5.

<sup>90</sup> J E McCulloch 'Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent', p. 376.

portfolios between 1952 and 1965.<sup>92</sup> It quickly became apparent that there was a considerable amount of evidence of excessive punishment.

Parsonage's defence was that the disciplinary system, under which inmates were allowed to punish other inmates, had been started at Gosford. He claimed that it had been sanctioned by Bethel. This assertion was not challenged in evidence. Bethel was not called as a witness, although he followed the proceedings and was in touch with Thompson during the inquiry.<sup>93</sup> Parsonage's evidence in that regard was corroborated by Edward Challoner, Chief Clerk, who accompanied Thompson to all sittings of the Inquiry. Some years later, further corroboration was provided by a former Minister for Public Instruction, William Davies, who said that, during a visit to Gosford when he was Minister, Parsonage had told him that it was practically self-governing.<sup>94</sup>

Another aspect of the proceedings was the evidence that punishment was often administered by other boys, spontaneously, for example during the recapture of an absconder. This was referred to as the practice of 'stepping up'. Parsonage explained that it derived from military practice- 'if a man was shot you stepped up into his place'. This meant that if a senior boy saw someone doing wrong, he would hit him, and later be rewarded by Parsonage at a muster.<sup>95</sup>

Parsonage was also questioned about the Fincham Report, which he said he had never seen, nor had its contents been discussed with him by Bethel. This was an incredible claim since Parsonage had been sent to Gosford in the immediate aftermath

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<sup>91</sup> V A Heffernan, 'Notes on the History of Mt. Penang'.

<sup>92</sup> see list of witnesses published in J E McCulloch 'Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent', p. 394. See also Enticknap's entry in H Radi, P Spearritt and E Hinton, Biographical Register of the New South Wales Parliament 1900-1970 ANU Press, Canberra, 1979.

<sup>93</sup> A W Thompson, Diary, records a phone call from Bethel on 4 February, 1934, about the inquiry.

<sup>94</sup> W Davies NSWPDLA 18 September, 1935, p. 176

of the Fincham inquiry and for the express purpose of rectifying the problems attributed to the administration of the previous Superintendent, Stayner.<sup>96</sup> Evidence in support of Parsonage was also called from Dr. A. Jolley, Government Medical Officer, who regularly attended boys at the institution. He defended the punishment system, referring to the practice of supervised fighting and corporal punishment administered by prefects at the Great Public School he had attended. He also extolled a form of ‘communal punishment’ used in the Army, in which a soldier was tied to a block and tackle and every one who went past kicked him. According to Jolley, this promoted *esprit de corps*.<sup>97</sup>

In a later phase of the hearings, in Sydney, Dr. J. Hoets, a respected surgeon, gave similar evidence of corporal punishment by prefects at The King’s School, where he had been a pupil.<sup>98</sup> Discipline of pupils by prefects, including appearances before a ‘prefects’ court’ and the right to administer beatings, had long been a feature of the English Public School system.<sup>99</sup> Similar practices were introduced in private schools in Australia in the nineteenth century. Prefects in such schools held meetings before which boys appeared, and they administered corporal punishment.<sup>100</sup> Punishment systems of this kind persisted in such schools into the 1950s.<sup>101</sup>

In fairness to Parsonage, Yanco and Gosford were not the only institutions to use some form of ‘prefect control’. On *Vernon*, some limited powers were given to

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<sup>95</sup> See evidence given to the Public Service Board Inquiry into the conduct of Hector Melville, instructor at Yanco, in May 1934, conducted by John Scobie, Magistrate, SR 8/929

<sup>96</sup> J. E. McCulloch ‘Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent’, p. 375

<sup>97</sup> Truth, 28 January, 1934.

<sup>98</sup> A W Thompson, Diary, 2 March, 1934.

<sup>99</sup> R Lambert The Hothouse Society Weidenfeld & Nicholson, London, 1968, pp. 181 -182.

<sup>100</sup> C E W Bean Here, My Son: An Account of the Independent and Other Corporate Boys’ Schools of Australia Angus & Robertson, Sydney, 1950, pp. 138 -140.

<sup>101</sup> J Menadue Things You Learn Along the Way David Lovell Publishing, Melbourne, 1999, p. 25

boys who were 'Captains of Mess'.<sup>102</sup> Neitenstein, in his 1904 Report, referred to the fact that the renowned Elmira institution in America made extensive use of 'monitors and sub-officers selected from the better behaved inmates'.<sup>103</sup> Inmate 'prefects' were also used for night supervision of dormitories at Raymond Terrace in the 1920s.<sup>104</sup> There is also mention of 'prefect' systems at Parramatta and La Perouse at the same time.<sup>105</sup>

There was also an attempt by Parsonage to justify the punishment regime at Yanco by reference to 'self-governing' juvenile institutions which operated in America, Britain and other countries in the first half of the twentieth century. A common feature of these institutions was that entitlement to meals had to be earned through labour. There was also a variety of mechanisms by which inmates exercised limited control over their operations, including discipline.<sup>106</sup>

An Australian example of a 'Republic-style' institution quoted by McCulloch was a Methodist home, 'Tally Ho', which operated in Melbourne from about 1930 on a 'self governing' system. According to Mary Tenison Woods, it was based on Lane's 'Little Republic'. The system at Tally Ho included a 'parliament' elected by inmates,

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<sup>102</sup> Refusal to obey the captain of the mess at mealtimes was punishable, but by the Superintendent. See Regulation 40 of the Regulations for the Nautical School Ship, *Vernon*, made under the Industrial Schools Act, 1866. Government Gazette 13 January, 1869.

<sup>103</sup> F W Neitenstein, Report by the Comptroller- General of Prisons on Prisons, Reformatories, Asylums and other Institutions recently visited by him in Europe and America N S W Government Printer, Sydney, 1904, p.11.

<sup>104</sup> Public Service Board Inquiry into the Child Welfare Department 1926, SR 8/751.

<sup>105</sup> For mention of prefects at Parramatta, see Annual Report, Child Welfare Department 1926-1929, p.755. Prefect systems are also mentioned at Parramatta and La Perouse in the Annual Report, Child Welfare Department, 1930 & 1931, NSWPP 1932, vol 1, p. 5252 et seq., p. 2.

<sup>106</sup> For America, see J M Holl, Juvenile Reform in the Progressive Era: William George and the Junior Republic Movement pp. 2-6 and p. 13; L Ashby Saving the Waifs: Reformers and Dependent Children 1890-1917 Temple University Press, Philadelphia, 1984, pp. 134, 150, 160; entry for Father Edward Flanagan, founder of 'Boys Town' in the New Catholic Encyclopedia Mc Graw Hill, Washington, 1967, vol 5, p. 957; H T Lane Talks to parents and children Scholken Books, New York, 1969, pp. 1-4. For Italy, see J P Carroll-Abbing But for the Grace of God Secker & Warburg, London, 1966, pp. 195-197 and 253-259. For Australia (Sydney), see Greetings from Boys Town, Pinnacle Press, Sydney, 1941, p. 51 (copy in the Mitchell Library). For the Soviet Union, see W Citrine I Search for Truth in Russia George Routledge & Sons London, 1936, p. 183. For Britain, M Curtis et al Report of the Care of

a 'court' and its own money system.<sup>107</sup> McCulloch firmly rejected the analogy, finding that the self-government principle was practically non-existent at Yanco, and that inmates given authority were the equivalent of prefects in the Public Schools.<sup>108</sup>

As the inquiry progressed, it became clear that not only might Parsonage be culpable, but also the executive officers of the Department, who were responsible for oversight of institutions. The role of Alexander Thompson, Secretary of the Department, began to come under scrutiny. He had succeeded Bethel in 1929, but was a very different person from his predecessor. Bethel was ever the professional public servant, with a close personal involvement in every problem that cropped up, constantly concerned with saving money and avoiding public scrutiny. By contrast, before his promotion to Assistant Secretary in 1923, Thompson had had little administrative experience. Born in 1872, he had started as a pupil teacher at the tender age of fourteen, progressing through various teaching appointments, including Fort Street High School in 1893, where he took over from Fred Stayner, later Superintendent at Brush Farm and Gosford. He also succeeded Stayner as Chief Schoolmaster on *Sobraon*.<sup>109</sup> He also enrolled as an evening student at Sydney University and graduated in Arts in 1895, taking second place in French, with passes in English and History.<sup>110</sup> Subsequently, he lectured in History and Literature at Sydney Teachers College, where he was proud to number among his students George Mackaness and A

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Children Committee, Cmnd 6922, HMSO, London, 1946, p. 92; E T Bazeley Homer Lane and the Little Commonwealth New Education Book Club, London, 1928 (1948 edition).

<sup>107</sup> For a description of the system operating at Tally Ho, see M Tenison Woods Juvenile Delinquency With Special Reference to Institutional Treatment, pp. 41-42. Apart from 'Tally Ho', there had also been some experimentation with schemes of self-government at Seaside Garden Home for Boys, Victoria, but management of this place was taken over in about 1935 by the Church of England after what was described by Tenison Woods as a 'tragedy', and the self-management system may not have survived after the change of management. See D Alley 'The History and Development of the Children's Court of Victoria' Australian Crime Prevention Council Forum 1980, vol 3, no 3, p. 11.

<sup>108</sup> J. E. McCulloch 'Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent', p. 376.

<sup>109</sup> Public Service List 1898.

H Martin.<sup>111</sup>

In 1907, he was appointed Superintendent at Parramatta Industrial School for Girls, and Allard concluded that Thompson was successful there.<sup>112</sup> His diaries, however, show that this success may have been due to the efforts of others. He entrusted the management of girls largely to his staff, and found plenty of time to make frequent trips in to Head Office in the city and play golf. He attended evening classes in electrical engineering at Sydney Technical College two evenings a week and carried out practical homework for this course during the day. He also indulged in his passion for reading, and frequently went to the Blue Mountains or Manly at weekends. He also was an avid recorder of weather details for the Bureau of Meteorology over many years.<sup>113</sup> Much of his private life, and sometimes his public service time too, was taken up with his activities as a freemason, with frequent attendance at meetings of a very large number of lodges. He certainly presented as a man who had a rather remote management style, given the volatile history of the place.

He was appointed Assistant Secretary of the Child Welfare Department in 1923. There were five contenders for the job, and he recorded that, when interviewed for the job, he had difficulty persuading the Public Service Board that idealism was important. They were much more interested in matters of finance and economy.<sup>114</sup> According to Thompson, the job might have gone to James Connolly, formerly Superintendent at Mittagong, but the Minister, Bruntnell, vetoed the appointment

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<sup>110</sup> University of Sydney Calendar of the University of Sydney for the Year 1895 W E Smith, Sydney, 1895.

<sup>111</sup> A W Thompson: Diaries . Diary for 1934 includes a photograph of Fort Street with an arrow pointing to the location of class 5B, identified as the class he took over from Stayner, and including the information about his students at the Teachers College

<sup>112</sup> G M Allard, 'Fifth Sectional Report of the Royal Commission to Enquire into the Public Service of New South Wales Concerning the Administration of Acts Relating to State Children', p. 467.

<sup>113</sup> These observations based on A W Thompson's Diaries for 1914.

<sup>114</sup> A W Thompson, Diary, 3 January, 1923.

because he was a Roman Catholic.<sup>115</sup> Bruntnell had played a prominent part in the affairs of the Protestant Federation, which had run a campaign based on anti-Catholic sectarianism in the 1922 elections.<sup>116</sup>

At a time when seniority was an important element in staff appointments, Thompson was the most junior of the five people interviewed. One factor in his favour was that all the others had served in the State Children's Relief Board, whereas Thompson had been in the Department of Public Instruction proper. This was surely an important advantage in the continuing process of erasing the influence of the former Board so that the new Child Welfare Department would operate in the direction set by the Department of Public Instruction.

Curiously, Thompson does not seem to have been involved in handling policy matters during the time he was Assistant Secretary, that task falling to Edward Challoner, then a senior clerk.<sup>117</sup> In fact, once Thompson took up duty, and Connolly was moved to the position of Inspector of Institutions, the position of Chief Clerk was not filled, and in effect Thompson carried out the duties of that position. Thompson's diaries show that he was preoccupied with coping with paper work, rather than looking at broader issues. His lack of experience in policy development may have reflected his lack of interest in this aspect. It certainly seems to have left him exposed later when major difficulties arose. For example, in the midst of the McCulloch Inquiry, he was shown not to have a good grasp of the way the Department operated, and had to rely heavily on Challoner's expertise. He was essentially an educationist, rather than an administrator. He had a great love of literature, and his diaries are full of

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<sup>115</sup> *ibid.*, 22 January, 1923.

<sup>116</sup> J Rydon & R N Spann *New South Wales Politics 1901-1910*, Cheshire, Sydney, 1962, p. 46. See also D E Hansen 'The Churches and Society 1919-1939' Ph D Thesis, Macquarie University, 1978, p. 347.

<sup>117</sup> J E McCulloch 'Child Welfare Department: Report on the General Organization, Control and Administration of, with Special Reference to State Welfare Institutions', p. 247.

references to books he was reading, drawn mainly from the classics, sometimes in French. Annual and other reports he wrote are typically prolix documents, written in a didactic style, and punctuated with classical references.

While at Parramatta, he strongly favoured the view that treatment of girls there should be pedagogic and not punitive. This was the basis for his view that the process of reforming girls was necessarily a lengthy one in which their attitudes could only be changed over time as they observed and came to emulate the example of those in charge of them. In Thompson's view, it was a matter of supreme importance that female staff consist of educated 'women of culture and refinement' so that they could set a good example to the girls.<sup>118</sup> In his subsequent executive career at the head office of the Department, Thompson was less successful. A number of people commented on his kindliness. McCulloch's verdict was that although he had 'good educational attainments and many excellent personal qualities, including a kindly disposition, and trusting outlook on life', he had been 'advanced to a position calling for administrative ability beyond his capacity, experience and training'.<sup>119</sup>

Thompson publicly stated that Parsonage was held in high esteem.<sup>120</sup> Privately, however, he was critical, finding that Parsonage in the witness box had displayed 'pompous conceit', in trying to justify his punishment system.<sup>121</sup> Thompson was questioned about executive supervision of the institution at Yanco. He had to concede that, on his inspections of the place, he had not paid much attention to punishments, in

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<sup>118</sup> Annual Report 1914, Superintendent, Girls Industrial School, Parramatta, NSW Government Printer, 1915, pp. 14-15.

<sup>119</sup> J E McCulloch 'Child Welfare Department: Report on the General Organization, Control and Administration of, with Special Reference to State Welfare Institutions', p. 244. See also comments by D H Drummond NSWPDLA 23 February, 1939, p. 3770.

<sup>120</sup> Truth 28 January, 1934.

<sup>121</sup> A W Thompson, Diary, 6 March, 1934.



fact had never asked to see the punishment book.<sup>122</sup> He also said that he did not regard absconding as a serious matter.<sup>123</sup> Regardless of whether this was a correct view or not, it was certainly politically naive. His Minister, Drummond, was a member of the Country Party, representing a rural constituency, and could not possibly support any toleration of absconding. Absconders from country institutions like Yanco, Mittagong and Gosford frequently stole property from neighbouring properties.

Thompson was questioned about Regulations governing punishments, an obvious question since this had been one of the principal recommendations of the Fincham Report in 1923. He advised that no orders or Regulations had been made because the system was 'in a developmental stage and not sufficiently crystallized' to frame Regulations. The evidence had disclosed that the system used by Parsonage had also been employed at Gosford since 1925, and then transferred to Yanco in 1928. Thompson's response therefore stretched credulity, and simply made him appear weak. He said that he considered the Child Welfare Act, 1923, which made it an offence to ill-treat an inmate of an institution, was sufficient protection.<sup>124</sup>

Similarly, he was unable to say whether officers at Gosford still carried canes, a practice condemned by Fincham.<sup>125</sup> In fact the line of questioning of Thompson, who gave evidence about a week after the inquiry started, showed that McCulloch had shrewdly assessed Thompson as incompetent. He was arguably already considering issues of administrative responsibility extending beyond the charges under the Public Service Act against Parsonage. McCulloch was to discover later that Thompson did have knowledge of the 'Parsonage system'. He had been warned specifically about the

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<sup>122</sup> A W Thompson, Diary, 1934, contains a list of visits he made to Yanco since it opened in 1928. There were 8 visits, usually of about two to three days.

<sup>123</sup> J. E. McCulloch 'Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent', p. 378

<sup>124</sup> Section 27 Child Welfare Act, 1923 NSW).

<sup>125</sup> Truth 28 January, 1934.

physical exercise punishments in 1932 by Charles Litherland, an officer who possessed legal qualifications.<sup>126</sup>

McCulloch found that boys had been punished excessively and was particularly critical of the 'bag room' system. He pointed to evidence which suggested that not only had boys been required to fight up to twelve opponents in succession, sometimes with bare knuckles, but that on occasion, up to three boys were pitted against one at the same time.<sup>127</sup> There was a recognized scale of defaults for various offences, ranging from one hundred for stealing to a thousand for absconding. Twenty defaults meant that a boy would have to 'keep stations', that is, perform repetitive physical exercises sufficient to redeem the number of defaults.<sup>128</sup> That masturbation and sodomy featured in this scale indicates that sexual misbehaviour was common.

Some of the instances of punishment were bizarre. For example, a boy named Etherden was made to 'keep stations' for more than a month, because he had accumulated more than a hundred thousand default points, an enormous number and impossible for him to extinguish.<sup>129</sup> Other aspects of the punishment regime were arguably cruel, for example the requirement that absconders go barefoot and not be allowed to wear hats. This was particularly oppressive in the harsh weather conditions

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<sup>126</sup> J E McCulloch 'Child Welfare Department: Report on the General Organization, Control and Administration of, with Special Reference to State Welfare Institutions', p. 245. Litherland later was responsible for much of the drafting of the 1939 Child Welfare Act. In 1940, he published a handbook explaining the law on child welfare, affiliations and adoptions. J C Litherland The Law Relating to Child Welfare, Affiliations and Adoptions Law Book Coy, Sydney, 1940.

<sup>127</sup> J. E. McCulloch 'Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent', p. 380

<sup>128</sup> Parsonage, in giving evidence to the Inquiry conducted by John Scobie into Hector Melville, instructor at Yanco in May, 1934, gave details of the scale of defaults :

stealing	100 defaults	
masturbation	200	
mutual masturbation	400	6 cuts of the cane
sodomy	1000	
absconding	1000	12 cuts of the cane

Record of Exhibits at the Scobie inquiry into the conduct of Hector Melville, SR 8/929

<sup>129</sup> J. E. McCulloch 'Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent', p. 381.

experienced at Yanco.<sup>130</sup> Professional prize-fighters had been deliberately recruited to the staff.<sup>131</sup>

Although harsh by to-day's standards, the punishment system must nevertheless be seen against other contemporary punishment systems, for example in schools and child care systems. Corporal punishment was widely practised in Britain, America and Australia until after the Second World War. Some of it was administered by 'prefects'.<sup>132</sup>

Apart from the punishment issues, which formed the core of the investigations, the Inquiry also revealed some other disquieting features. Not the least of these was the lack of control exercised by the Head Office of the Department over the operations of institutions. In the year he was appointed Secretary, Thompson had visited three

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<sup>130</sup> Truth 28 January, 1934.

<sup>131</sup> D. H. Drummond, Minister for Education, NSWPDLA 23 April, 1936 p. 3264. This was a reference to Hector Melville, who was, effectively Parsonage's deputy at Yanco, and who had also served under him at Gosford. Melville was the subject of a Public Service Board Inquiry conducted at Leeton in May, 1934, by John Scobie, Magistrate, which resulted in his being reduced in grade and transferred to another Department. The evidence showed that he had been a boxing instructor at a number of public schools in Sydney before working in institutions. See Record of Exhibits for Scobie's Inquiry SR 8/929.

<sup>132</sup> In Britain in 1935 there were 218 judicial birchings of boys under fourteen years. See G R Scott Flagellation: A History of Corporal Punishment Tallis Press, London, p. 57. In 1942, there were approximately three hundred judicial birchings in England and Wales. See Home Secretary's answer to a question in the House of Commons, Hansard, 4 November, 1943. Between 1939 and 1948 there were 300 judicial birchings of boys under sixteen. See I Gibson The English Vice: Beating, Sex and Shame in Victorian England and After, Duckworth, London, 1978, pp. 90-92 and p. 178; T W Bamford Rise of the Public Schools Nelson, London, 1967, pp. 66-67. For punishment at Eton, see R Ollard An English Education Collins, London, 1982, p. 170. See also comments in Daily Mail 8 April, 1936; C Burt The Young Delinquent University of London Press, London, 1931, p. 123; R Lambert The Hothouse Society, pages 2, 70, 169, 184, 187. For America, see I A Hyman and J H Wise (eds.) Corporal Punishment in American Education Temple Press, Philadelphia, 1979; D R Raichle 'The abolition of corporal punishment in New Jersey schools' in I A Hyman and J H Wise (eds.) Corporal Punishment in American Education, p. 73. In 1977 in the case of *Ingraham v. Wright*, the US Supreme Court upheld the right of teachers to administer corporal punishment to children (95 S. Ct. 1401). For Australia, see Regulations under the Public Instruction Act of 1880 (NSW), Government Gazette 28 October, 1915, regulations 18 and 186; C E W Bean Here my son: An account of the independent and other corporate boys' schools of Australia, p. 140; E Lea-Scarlett Riverview Hale & Iremonger Sydney, 1989, pages 127-137, 242, 290, 313; Schools Commission, Report of Committee on social change and the education of women 13 November, 1975, Australian Government Publishing Service, Canberra, 1975, p. 66; A D Spaul Australian Education in the Second World War, University of Queensland Press, St. Lucia, 1982, pp. 100-101.; B Coldrey The Scheme: The Christian Brothers and Childcare in Western Australia Anglo-Pacific Press, Perth, 1993; A Gill Orphans of the Empire Millennium Books, Sydney, 1997. For evidence of the acceptance of corporal punishment by courts in the twentieth century see B Boer & V Gleeson The Law of Education Butterworths, Sydney, 1982, pp. 151-155.

times, but after that, only once per year.<sup>133</sup> Apart from the infrequency of visits, the evidence showed that the Secretary claimed not to be aware of the disciplinary system at Yanco. It also disclosed that Parsonage had been allowed almost unfettered discretion in many aspects of operations at Yanco. While at Leeton for the Inquiry, Thompson made a more detailed inspection of Yanco than in the past and recorded that he found 'bugs and dirt' in the officers quarters, and the 'kitchen disgraceful, with flies, dirt, cockroaches'.<sup>134</sup> As his diary shows that he had visited Yanco only a few weeks before the allegations appeared in the press, one can infer that previous inspections were not properly conducted. McCulloch highlighted this same aspect of unsatisfactory executive control when he said that he was 'astounded' to find that there were no general orders or regulations governing the management of the institution.<sup>135</sup>

There was also the issue of the detention of boys who were not delinquents subject to committal orders imposed by a court. These were of two kinds, boys over eighteen years and state wards. Of the 189 boys at Yanco in November, 1933, thirty-seven were over the age of eighteen, the age at which they were required by law to be discharged. The official explanation for this was that the severe depression which had affected Australia since 1929 had made it difficult for boys of this kind to return to society after a period of detention. There were high levels of unemployment, and their families could not afford to look after them. There may have been another explanation. As we have seen, some staff were prone to keeping boys on because they were key members of sporting teams or bands.<sup>136</sup>

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<sup>133</sup> A W Thompson, Diary, list of dates on which he had visited Yanco, appearing at the beginning of the volume for 1934.

<sup>134</sup> A W Thompson, Diary, 6 March, 1934.

<sup>135</sup> J E McCulloch 'Child Welfare Department: Report on the General Organization, Control and Administration of, with Special Reference to State Welfare Institutions', p. 193

<sup>136</sup> See comments in material reporting on juvenile corrective institutions in New South Wales at the time. League of Nations Child Welfare Committee Institutions for Erring and Delinquent Minors League of Nations, Geneva, 1934, p. 36.

The policy of continuing the detention of boys after they turned eighteen had been drawn to the attention of the Minister in 1930. In reporting on a case, Thompson had provided a list of some forty-two over age boys, some of them approaching the age of twenty ! Drummond then ordered that all boys over eighteen be 'released unless special reasons can be advanced'.<sup>137</sup> This instruction had clearly been disregarded. Drummond was not pleased to find that this instruction had been disobeyed. What made the position worse was that the evidence had revealed that several boys who had absconded well after attaining the age of eighteen years, had nevertheless been forcibly recaptured. They too were subjected to the 'bag room' punishment regime, quite illegally, since the power to detain had ceased at eighteen.

The second group consisted of state wards, who had not been guilty of any offence at all. In November, 1933, there were thirty-nine of them at Yanco. These were boys who had been returned from foster care during the depression, mainly because the Department ceased financial support at fourteen years of age. The boys could not find work, and foster parents could not afford to support them.<sup>138</sup> The Department explained that it simply didn't have anywhere else for them to stay. The only other home for male wards, Royleston at Glebe, was overcrowded.

This was an issue of some sensitivity to Drummond. He had, as a boy of eleven years, come under the control of the State Children's Relief Board, because of financial problems experienced by his family.<sup>139</sup> Later, in 1939, he conceded that he had approved wards going to Yanco. He claimed that he was then new to the job and

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<sup>137</sup> J. E. McCulloch 'Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent', p. 7. See also minute by W E Bethel 6 February, 1923, and the approval of Drummond dated 15 May, 1930, papers produced at the Public Service Board Inquiry held into the conduct of A W Parsonage, by J E McCulloch SR 14/6305.

<sup>138</sup> J E McCulloch 'Child Welfare Department: Report on the General Organization, Control and Administration of, with Special Reference to State Welfare Institutions', p. 168.

<sup>139</sup> B Nairn & G Serle (eds.) Australian Dictionary of Biography Melbourne University Press, Melbourne, vol 8, p. 344.

did not ‘fully recognize the implications’ and blamed officials for not having made him more aware of the situation.<sup>140</sup> However, it is plain this was not the case, since, in giving an approval for the accommodation of wards at Yanco in May, 1933, he had made it a condition that wards be accommodated separately from the delinquents.

In 1942, Drummond, in dealing with the issue yet again, blamed the Labor Party Minister William Davies for sending wards to Yanco, ‘to save a few paltry pounds’.<sup>141</sup> This was probably a reference to the transfer of wards from Mittagong to Yanco in 1930 or 1931, because of a shortage of accommodation in ward establishments, reported at the time in the Department’s Annual Report.<sup>142</sup> In any event, Parsonage simply disregarded Drummond’s condition that they be separately accommodated.<sup>143</sup> In fact, they were subjected, illegally, to the same punishment regime as the delinquents.<sup>144</sup>

The mixing of delinquents and non-delinquents was of course, a flagrant breach of the classification system established by the Premier in 1909, and revised when Gosford opened in 1913. McCulloch identified Ministerial approvals in 1930 and 1934 for transfer of wards to Yanco, but there were also earlier instances. In the 1920s, inmates of Raymond Terrace, which was originally established for wards of the State Children’s Relief Board, and had never been proclaimed as an industrial school, were transferred to Gosford.<sup>145</sup>

Parsonage was found guilty of disgraceful and improper conduct, but

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<sup>140</sup> D H Drummond, NSWPDLA 23 February, 1939, p. 3769.

<sup>141</sup> D H Drummond, NSWPDLA 13 October, 1942, p. 273. Davies was Minister for Education for two periods, the first in 1927, before Yanco was opened, and the second between November, 1930 and May 1932.

<sup>142</sup> Annual Report, Child Welfare Department, 1930 & 1931, p. 28.

<sup>143</sup> J E McCulloch ‘Child Welfare Department: Report on the General Organization, Control and Administration of, with Special Reference to State Welfare Institutions’, p. 197.

<sup>144</sup> D H Drummond, NSWPDLA 23 April, 1936 p. 3263. Some wards were also accommodated at Gosford, the majority being housed separately at the Narara annexe.

<sup>145</sup> E W Challoner, minute dated 14 February, 1927 SR 8/751.

McCulloch considered him ‘administratively absolved’ on the ground that his actions had been condoned by Bethel.<sup>146</sup> However, McCulloch also found that Bethel’s condonation could not absolve Parsonage from legal responsibility for illegal punishments, of which plainly there were many. Despite McCulloch’s finding that Parsonage had been *legally* liable for unlawful assaults on inmates, no criminal charges were laid against him.<sup>147</sup> The Public Service Board directed that Parsonage should be transferred, without loss of salary, to Head Office, on the basis that he had been ‘administratively absolved’. Shortly afterwards, however, this decision was overridden when Cabinet decided to invoke the rarely used Royal Prerogative and he was dismissed from the public service.<sup>148</sup> The Government was unwilling to tolerate the political damage that would have come from continuing to employ someone, given the sensational publicity that had surrounded the case.

In addition to his finding in relation to Parsonage, McCulloch made a number of recommendations, including the making of Regulations to govern punishments, the appointment of an official visitor from outside the public service, greater use of ‘cellular treatment’ in preference to the forms of punishment used until then, a separate institution for recalcitrants, or their transfer to gaol.<sup>149</sup> Subsequently, another inquiry by John Scobie, Magistrate, was held into the conduct of Hector Melville, an instructor at Yanco, and effectively Parsonage’s deputy. He too was found guilty of improper

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<sup>146</sup> D H Drummond, NSWPDLA 26 April, 1934, pp. 41-42.

<sup>147</sup> Quite a few of the assaults had in fact occurred some years before, and so there would have been problems in launching criminal charges. On the other hand, it was normal practice, over many years for the Department not to instigate criminal proceedings. Dismissal from the Public Service was a substantial penalty, since Parsonage forfeited all rights to leave owing, long service leave and superannuation.

<sup>148</sup> D H Drummond, NSWPDLA 26 April, 1934, pp. 41-42. See also D H Drummond NSWPDLA 20 December, 1934 p. 5064 and also D H Drummond, NSWPDLA 13 October, 1942, p. 273. Section 65 of the Public Service Act, 1902 preserved the prerogative of the Crown to dismiss public servants.

<sup>149</sup> J. E. McCulloch ‘Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage, Superintendent’, p. 392

conduct and transferred to another Department, with reduction in grade.<sup>150</sup>

McCulloch's Report on Parsonage had been completed at the end of March, 1934. Initially, Thompson was quite pleased with the outcome, observing that he himself had apparently 'not been assailed'.<sup>151</sup> However, he began to realize that there might be more serious repercussions when he learned that McCulloch was now to undertake a much wider inquiry. Another worrying aspect was that the Minister had issued a number of orders without his knowledge, appointing an acting Superintendent at Yanco. Drummond had also ordered the Superintendent at Gosford to empty out Narara in order to provide accommodation for the wards who were to be moved from Yanco. Thompson was also castigated by the Minister for not moving quickly enough to open the Berry Training Farm and School of Husbandry, designed to accommodate wards then being held at Yanco.<sup>152</sup> At this stage, he had not even been shown a copy of McCulloch's report.<sup>153</sup>

These were all clear indications that Thompson had lost the confidence of his Minister. Plainly, in Drummond's view, the evidence at the Parsonage Inquiry disclosed ineffective direction of the Department. One purpose of the new Inquiry was no doubt to find out whether there were other circumstances elsewhere in the Department like the one uncovered at Yanco. Another, more substantial, reason was to assemble the detailed evidence to get rid of Thompson.

Given the scandalous state of affairs revealed in the public inquiry into Parsonage's conduct, it was almost inevitable that there would be further repercussions, by way of a wider inquiry. On 16 April, 1934, McCulloch began his second inquiry.

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<sup>150</sup> Report of Public Service Board Inquiry conducted into Hector Melville, instructor at Yanco, in May 1934, by John Scobie, Magistrate, SR 8/929

<sup>151</sup> A W Thompson, Diary, 6 April, 1934.

<sup>152</sup> ibid., 4 April, 1934.

<sup>153</sup> ibid., 13 April, 1934. This entry records that he saw McCulloch's Report on Parsonage for the first time.



The terms of reference were very broad, encompassing the whole of the Department's activities, but with special reference to State Welfare Institutions. This inquiry is often referred to as a Royal Commission, but in fact, no letters patent were issued, and, in a legal sense, it was purely an administrative inquiry conducted at the request of the Government.<sup>154</sup>

Initially, McCulloch seems to have considered that it might be run along judicial lines, since he advised Thompson to retain counsel, but Drummond wanted it to be in camera, and that was the form it took.<sup>155</sup> McCulloch approached the task with thoroughness. He claimed to have interviewed every officer in the Department except one, and visited all but one of the institutions. Although the main focus was on institutions, he covered every aspect of operations. As required by the terms of reference, he also presented a supplementary report suggesting legislative changes, dealing mainly with prevention of the punishment excesses revealed in the Parsonage Inquiry.<sup>156</sup>

McCulloch's Report, delivered on 5 September, 1934, was comprehensive. It listed some sixty-five recommendations, but there were another thirty interspersed in the narrative of the document, which ran to some two hundred and sixty-eight pages of typescript. It revealed a very unsatisfactory state of affairs. The main finding was that Thompson was incompetent and had not exercised proper supervision over subordinates, especially those running institutions. Gosford, for example, had not

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<sup>154</sup> For terms of reference see J E McCulloch 'Child Welfare Department: Report on the General Organization, Control and Administration of, with Special Reference to State Welfare Institutions', p. 143. The Inquiry was referred to as a 'Royal Commission' on numerous occasions, for example by J G Arthur MLA, and J M Baddeley MLA, NSWPDLA 9 March, 1939 p. 3959 and p. 3985, also by Mr. J. Tully, MLA NSWPDLA 22 March, 1939, p. 4149, and also, curiously, by D H Drummond NSWPDLA 13 October, 1942, p.275 It is described simply as a 'Commission' in D H Borchardt Checklist of Commissions, Select Committees of Parliament and Boards of Inquiry La Trobe University Library, Melbourne, 1975, p. 314

<sup>155</sup> A W Thompson, Diary, 16 and 20 April, 1934.

been inspected since 1928. He also found that recruitment and training were seriously defective. Most of the existing buildings were found to be unsuitable and in poor repair. New buildings at Gosford as well as a replacement for Parramatta were considered necessary, these to be cottage homes, which would allow greater classification of inmates. It was also recommended that a separate home for mental defectives be built.

Following the earlier Parsonage findings, McCulloch concluded that punishments at Gosford and Yanco had been excessive and indiscriminate. To remedy this, the control of punishments by Regulations and local orders was emphasized. Other findings were that there were disgraceful arrears in the Affiliation section, going back many years.<sup>157</sup> A home for children suffering from venereal diseases had been kept open when it should have been closed, resulting in considerable waste of public money. A depressing feature was that McCulloch believed no one then in the Department was fit to be appointed Secretary. He considered that the job required someone with legal qualifications, no doubt prompted by the way in which legal requirements regarding the treatment of children had been disregarded, over many years.<sup>158</sup> Overall, it portrayed a Department which was poorly managed and in disarray.

The series of inquiries into the administration of the Department between 1923 and 1934 revealed a number of things. The first of these was that the officials running the juvenile corrective system within the Department did not pursue the goal of humane treatment of inmates of institutions with any vigour. They had certainly not matched the commitment evident in the days of Sir Charles Mackellar. Writing of the

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<sup>156</sup> J E McCulloch : 'Child Welfare Department : Supplementary Report on Draft Legislation for Control of Child Welfare Institutions and State Wards' NSWPP 1934-35 vol 1, p.285

<sup>157</sup> Affiliation was a service provided by Departmental officers. They collected evidence to establish the paternity of ex-nuptial children in order to obtain a maintenance order against the father.

<sup>158</sup> J E McCulloch 'Child Welfare Department: Report on the General Organization, Control and Administration of, with Special Reference to State Welfare Institutions', pp. 2 -7

period between the wars, Dickey said there was a ‘reassertion of some of the primitive characteristics of institutional care’.<sup>159</sup> That comment was no doubt prompted by the revelations of the Fincham and McCulloch inquiries, but the evidence disclosed that the harsh and excessively rigid regimes were of long standing. It would therefore be more accurate to say that those characteristics had never been absent, at least from the industrial schools. Secondly, even had those senior officials been disposed towards more progressive methods, there were major difficulties in changing the institutional culture of the industrial schools. With the exception of Mittagong, they all operated on the barrack system, long discredited. Their routines and punishment systems had been founded in the 1860s and had changed little in the meantime.

Key members of their staff had learned, on the job, to manage inmates under the barrack systems operated by the Department of Public Instruction, as distinct from the State Children’s Relief Board. The techniques they used were passed on to new staff, regardless of official instructions. For example, time and again, Superintendents claimed to have abolished the practice of carrying canes, but clearly it persisted, because that was the way inmates had always been managed. Those who actually had to control inmates, face to face, were convinced it was the only effective way of doing so. There was no staff training, so new instructors simply learned on the job from senior officers who were immersed in the old, rigid systems dating from the nineteenth century. The lack of any effective supervision by executives meant that the persistence of cruel and inhumane treatment could persist, sometimes for years, without public exposure.

The official responses to criticism were very negative. In 1923, Bethel conceded as little as possible, because he saw no need for change. Ministers,

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<sup>159</sup> B Dickey No Charity There Allen & Unwin, Sydney, 1987, p. 119.

politicians and officials all continued to claim that delinquents were capable of reform, and that systems were designed to achieve this. One can't help feeling, however, that they really didn't believe their own rhetoric, and were extremely reluctant to spend money on delinquents, for anything except the basic necessities. Thompson, when Superintendent at Parramatta reported complaints from members of the public about the wastefulness of spending of money on girls who they felt would surely end up as prostitutes.<sup>160</sup>

It is arguable that fundamentally, officials didn't believe there was much scope for reforming the likes of Gosford boys and Parramatta girls. From time to time they basked in the reflected glory of ex-inmates like Barney Kieran, the swimming champion who was a *Sobraon* boy, and those who had served in the Great War. The fact that they exulted in these isolated examples of success only emphasized their prevailing view that, for the most part, inmates were a poor lot.<sup>161</sup>

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<sup>160</sup> Annual Report, Girls Industrial School, Parramatta, 1914, NSW Government Printer, Sydney, 1915, p. 5.

<sup>161</sup> For reference to ex-inmates serving in the Great War, see Annual Report, Minister for Public Instruction, 1915, NSWPP 1915-1916 vol 1, p. 27. Bernard Bede Kieran, born 6 October 1886 was committed to *Sobraon* when aged thirteen. In 1905, the year in which he died, he held six Australian freestyle swimming titles and also world records from 200 yards to the mile. B Nairn (ed.) Australian Dictionary of Biography vol 9, 1891-1939, Melbourne University Press, Melbourne, 1983.

‘Major’ Arthur Parsonage-*by courtesy of Ms Valerie Rubie*

front page of *Truth* for the opening of Yanco inquiry-*by courtesy of State Library*

## CHAPTER 5

### A SYSTEM IN DISARRAY

#### 1934 - 1944

In the mid 1930s, some attempts were made to address the deficiencies exposed by the McCulloch Inquiry. These reform efforts were undertaken by Charles Wood, but after only four years as Director, he fell out with his Minister and left. Reforms then stalled, as he was succeeded by less competent men. He was followed by John McKenzie, Deputy Chief Inspector of the Department of Education but this was only until the return of Noel Salmon, who was overseas at the time of Wood's departure.<sup>1</sup> Salmon had no child welfare experience, but had been private secretary to several ministers.<sup>2</sup> Salmon returned to the Department of Education at his own request and was followed in 1939 by George Martin. He had to cope with the difficulties of running the Department during wartime, when Yanco was taken over by the Commonwealth for defence purposes, and significant numbers of key staff in institutions had joined the armed forces.<sup>3</sup> Also, there was a severe shortage of funds as money was diverted for wartime purposes.

After the Labor Party came to office in 1941, its administration came under increasing pressure from outside the Department to carry out major reforms, but little was achieved. There were mass disturbances at institutions including a whole series of major riots at Parramatta Girls Industrial School. This resulted in substantial

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<sup>1</sup> Annual Report, Child Welfare Department 1937-1939, NSWPP 1938/39/40 vol 1, p. 1037 et seq., p.5. See also Public Service Board to Director of Education, 8 September, 1938, SR 20/12872.

<sup>2</sup> See Government Gazette 3 June, 1914. He had also been Registrar of the Conservatorium of Music. See Government Gazette 20 January, 1920. For his return to the Education Department, see Public Service Board to Director of Education 9 November, 1939. SR 20/12872.

numbers of girls being sent to prison. There were also abscondings on an unprecedented scale from Gosford Farm Home. By the middle of the 1940s, juvenile corrective institutions were in disarray.

### *Attempts at Reform*

Long before McCulloch's Reports were made public, Drummond had taken a number of initiatives in the light of their findings. Within a matter of days, the few delinquents at Narara were returned to Gosford, and wards previously held at Gosford or Yanco were transferred to Narara.<sup>4</sup> In June, another twelve wards went to Berry.<sup>5</sup> He also issued an instruction on 6 June, 1934, that no boy over seventeen was to receive corporal punishment. Under that age, they were to be caned on the hands, on the specific instructions of the Superintendent, and in his presence. Staff were required to prevent inmates from being 'unduly physically harassed', punishment by other inmates was forbidden, punishment books were to be kept and all punishments recorded.<sup>6</sup> Drummond also foreshadowed the early introduction of a Child Welfare Bill, which would closely follow McCulloch's recommendations.

Another major sequel to McCulloch's Report on the Department was the removal of Thompson. Following the McCulloch Reports, Drummond plainly thought Thompson was incompetent. Someone else would be needed to carry out reforms, especially in the juvenile correctional institutions. Thompson was offered the chance

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<sup>3</sup> Yanco closed in March, 1942. Annual Report, CWD, 1945, p. 28.

<sup>4</sup> C T Wood: 'Interim Report on the Work of the Child Welfare Department for the Period 26 November, 1934 to 30 June, 1935' NSWPP 1935-36, vol 1, p.201. See also Report by H Moxon 24 May 1939 SR 9/6151.1.

<sup>5</sup> C T Wood: 'Interim Report on the Work of the Child Welfare Department for the Period 26 November, 1934 to 30 June, 1935', p.193.

<sup>6</sup> D H Drummond NSWPDLA 20 June, 1934, p. 1134. See also comments by Drummond NSWPDLA 10 July, 1934, p. 1709 and NSWPDLA 20 December, 1934, p. 5064.



to resign, but refused.<sup>7</sup> However, as he was then aged sixty-two, he was compulsorily retired, two days after the McCulloch Reports on the Department and the conduct of Arthur Parsonage, Superintendent at Yanco, were tabled in Parliament.<sup>8</sup>

Thompson's job was first offered to Noel Salmon, chief clerk of the Education Department, but he declined.<sup>9</sup> Charles Thomson Wood, previously a Children's Court Magistrate, was then chosen.<sup>10</sup> He had served as a Lieutenant in World War I and was a double amputee, having lost an arm and leg in 1917.<sup>11</sup> Wood worked hard, visiting institutions frequently, attempting to introduce much needed staff training, as well as to professionalise the Department. He also had a much better grasp of legal issues than his predecessors. Wood had liberal views and perhaps the most significant initiative he took was to seek support from professionals in child welfare, from outside the Department, academics and people in the voluntary sector.

Although Mackellar had adopted a similar course, with his enlistment of specialists in psychology and child health, nothing had been attempted along these lines since his departure in 1914. In the interim, the attitude of people like Bethel and Thompson was inward looking, their view being that all the knowledge and expertise that was required existed within the Department. Any outside influence that might interfere with administration by officials, such as an official visitor, was resisted. The new direction followed by Wood was a refreshing development, but paradoxically, it also led to his undoing. Throughout his term, Wood had to fight government parsimony. He also had to suffer interference from the Under Secretary of the

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<sup>7</sup> A W Thompson, Diary, 24 September, 1934.

<sup>8</sup> *ibid.*, 12 October, 1934. Reports were tabled in the Legislative Assembly by Drummond on 10 October, 1934. See *NSWPDLA* 10 October, 1934 p. 3033.

<sup>9</sup> D H Drummond, *NSWPDLA* 6 December, 1938, p. 3325.

<sup>10</sup> Wood commenced on 26 November, 1934. See Annual Report, Child Welfare Department 1932-34, *NSWPP* 1935-36 vol 1, pp. 193, 217.

<sup>11</sup> Australian War Memorial: Nominal Roll of AIF Personnel, 1914-1918 War.

Department of Public Instruction, who had sought to assert greater control over the sub-department of Child Welfare, following the failure of Thompson.

Wood's first major task was to review McCulloch's findings with a view to implementation, and he did this by producing a special report, dealing seriatim with every recommendation. A significant step was that an 'extra-Departmental Visitor' was appointed, and charged with visiting all institutions at least once in every six weeks. McCulloch's recommendation that it be someone outside the public service was watered down, since the person appointed, Thomas Sloane, was a public servant on secondment from the Government Insurance Office.<sup>12</sup> No official explanation was given for this, but it was probably an attempt by Drummond to contain any damaging criticism within the confines of the public service. Wood also improved the general supervision of institutions by arranging regular inspections by himself, the Assistant Secretary and Chief Clerk.

He personally carried out a review of the cases of inmates who had been detained in institutions for lengthy periods, and as a result, by October, 1935, numbers had been reduced by one hundred and eighty-seven. The number of inmates cleared out of the institutions was virtually equivalent to a whole institution. Apart from the waste of public money, discharge of inmates at the proper time would have meant that wards would not have had to be mixed with delinquents. The reductions achieved by Wood suggested that the practice of allowing Superintendents to determine when discharge should take place arguably resulted in their delaying discharge so as to 'keep up the numbers'. Such a practice had been identified at the time of the closure of *Sobraon*.<sup>13</sup> It also showed that there was no effective monitoring from head office of

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<sup>12</sup> Public Service List, 1936.

<sup>13</sup> Annual Report of Minister for Public Instruction 1910, NSW Government Printer, Sydney, 1911, p. 29.

whether the terms served by inmates complied with the relevant court order, this being left to the Superintendent.

In staffing matters, McCulloch had recommended the appointment of Deputy Superintendents at Gosford, Yanco and Mittagong. This was not particularly novel since at Yanco, a person had in effect carried out the duties of deputy and Gosford had had them in the past.<sup>14</sup> Wood moved quickly in 1934 to secure the appointment of deputies.<sup>15</sup> However, appointments did not take place for another three years. The main reason was a dispute over the salary level, and the fact that the Director of Education, Ross Thomas, insisted that only teachers be appointed. When the positions were advertised within the Education Department, however, no suitable applicants were found, no doubt because the salary offered was insufficient to compensate for the difficulty of the job. Eventually the teaching qualification was dropped. Three appointments were eventually made in 1937, but they proved short-lived, and in the course of time, serving officers of the Child Welfare Department had to be appointed. This happened in 1939, some five years after Wood had begun the recruitment process.<sup>16</sup> Another recommendation was that women be employed at Mittagong with the younger boys, instead of married couples. This was firmly rejected by the Department on the ground that women could not control some boys there. No commitment was given on a recommendation that instructors' pay be increased.

McCulloch had been critical of the use of old buildings which were unsuitable. This was particularly true of Parramatta, where the buildings had been repeatedly condemned, as far back as 1855.<sup>17</sup> To ensure separation of delinquents from others, he

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<sup>14</sup> Annual Report, Minister for Public Instruction, 1919, NSWPP 1920. The position of Assistant Superintendent at Gosford position was abolished in 1928 when Yanco was established.

<sup>15</sup> C T Wood to Drummond 21 December, 1934. SR 9/6151.1.

<sup>16</sup> CWD file H 36961. SR 9/6151.1.

<sup>17</sup> 'Report from the Commission appointed to inquire into the state of education throughout the Colony' V&PLCNSW 1855, vol 1, pp. 1008-1011; G M Allard, 'Fifth Sectional Report of the Royal

recommended separate shelters. This followed logically on the separation of delinquents and others in the institutions proper, which had been flouted everywhere. The proposal for shelters was minuted as being 'under consideration', a euphemism for inaction, no doubt because of the cost. The same response was made to the recommendation that Parramatta be replaced by a modern complex of cottage homes, and also that new cottage homes for mental defectives be built at Mittagong. In relation to replacement of dormitories at Gosford with vocational workshops, the response was similar. It was considered that the reduced numbers at Gosford meant that there was no urgency, and the whole thing would be looked at in the context of a vocational education system planned for some time in the future.<sup>18</sup>

Woods also instituted a system of 'after care' for boys and girls when discharged from institutions. An employment officer was appointed and assisted them to find jobs, no easy task in the 1930s, when the effects of the Great Depression were still being felt. Honorary probation officers also assisted in finding work. In association with this initiative, a hostel, 'Corelli', was opened at Marrickville for girls being discharged from Parramatta, who did not have a home to go to. This was a place operated on an honour system, with the girls living there and going out to work each day in the city. The idea was that they would be given a chance to settle back into a more normal life after the institutionalization which inevitably occurred in places like Parramatta. Wages were subsidized until the girl was able to support herself. It was a very practical attempt at reducing the recidivism rate, and was probably the first of its kind in Australia.<sup>19</sup>

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Commission to Enquire into the Public Service of New South Wales Concerning the Administration of Acts Relating to State Children', NSWPP 1920, vol 4, p.451 et seq., p. 26.

<sup>18</sup> C T Wood: 'Interim Report on the Work of the Child Welfare Department for the Period 26 November, 1934 to 30 June, 1935'.

<sup>19</sup> M C Tenison-Woods Juvenile Delinquency, With Special Reference to Institutional Treatment, Melbourne University Press, Melbourne, 1937, p. 57.

One of Wood's most interesting and progressive initiatives was the formation of the Child Welfare Conference in 1938. This was a rather radical attempt to widen the outlook of the administration beyond that of the public service.<sup>20</sup> The 1923 legislation had provided for the establishment of advisory bodies, no doubt to compensate for the loss of input from representatives of charitable organizations, which had previously been a feature of the State Children's Relief Board.<sup>21</sup> However, apart from one committee set up in 1924, with the limited focus of advising on assistance to indigent persons, no advisory body was constituted.<sup>22</sup>

Wood saw the Conference's main function as being to co-ordinate Government and non-Government activities.<sup>23</sup> It was meant to be independent of Government, although Wood himself assumed the presidency. A number of public servants from the Departments of Education, Health and Child Welfare were also members, as was McCulloch, who chaired a sub-committee on delinquency. Wood was able to attract a very distinguished and influential membership, drawn from the University of Sydney, the churches, charitable organizations, local government and hospitals. It was a veritable 'who's who' of professionals interested in child welfare.

The Conference was very active and produced a numbers of papers, including reports on services for handicapped and pre-school children, as well as one on juvenile delinquency. Drummond supported it initially, consistent with his view that the

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<sup>20</sup> The first meeting of the Child Welfare Conference took place at the Art Gallery of NSW on 10 March, 1938. SR 20/12872.

<sup>21</sup> Undertaking by Minister NSWPDLA 24 August, 1922, p. 1337.

<sup>22</sup> Government Gazette 13 June, 1924, p. 2773. The committee members were:

Sir George Mason Allard, former Royal Commissioner, an accountant  
C A L Walker, accountant  
Hon. J L Fegan  
Grace Scobie  
Annie Golding  
Mrs Lieut Colonel Orames

Several of the members had formerly been members of the State Children's Relief Board.

<sup>23</sup> Introduction by Professor Harvey Sutton to Reports of the Child Welfare Conference NSW Halstead Press, Sydney, 1940, p.4.

Department needed new ideas. However, Ross Thomas, the Director of Education, in a 'cautionary' note to the Minister, considered it 'most inadvisable' that Wood should be President as well as Secretary of the Department.<sup>24</sup> Drummond agreed to let him hold both positions, provided that if any conflict of interest arose for an officer, the officer would resign from the Conference.<sup>25</sup> As time went on, Drummond came to view it as a threat, particularly after it criticized many of the provisions in the Child Welfare Bill of 1938.

Nonetheless, Drummond found himself in a difficult position, given the prestige of its members, and also the fact that the Secretary of the Department was the President. Refusal to accept advice from the Conference could expose the government to public criticism. Drummond decided that he didn't want it, and his opposition was at the heart of an acrimonious dispute which led to the termination of Wood's appointment in 1938. In its place Drummond established, in 1940, an Advisory Council, under the 1939 Act. Under the Act, no term was specified so members held office during the pleasure of the Minister.<sup>26</sup> Some people who had been members of the Conference were appointed to it, on Drummond's recommendation.

### *Child Guidance Clinics*

Yet another progressive initiative was the establishment of a child guidance clinic, an important step in bringing a more professional approach to the administration of juvenile corrections.

Robert Van Krieken has argued that there was an increasingly scientific approach to the management of social problems between 1923 and 1940, but this was

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<sup>24</sup> G R Thomas to Drummond 3 May, 1938 SR 20/12872.

<sup>25</sup> Drummond to Thomas 13 May, 1938 SR 20/12872.

not evident in relation to the psychological examination and treatment of children coming before the children's courts.<sup>27</sup> In 1920, Royal Commissioner Allard had criticized the service provided by the School Medical Service, because only a fraction of boys passing through the Sydney Shelter were examined, and girls not at all. Boys in an institution at Raymond Terrace for the 'feeble minded' also had not been examined.<sup>28</sup> In 1929, Dr. Bruce of the School Medical Service began to work full time on physical and mental surveys of children appearing before the Metropolitan Children's Court.<sup>29</sup> Even with this enhanced service, by 1936 only about forty per cent of boys were being tested, and hardly any girls. The Medical Officer seems to have operated without any assistance and was only able to examine three boys per day, insufficient to cope with the numbers passing through the Shelter.<sup>30</sup>

In 1935, in response to the perceived inadequacy of testing procedures, Wood proposed the establishment of a 'Behaviour Clinic', in effect to completely replace the Shelter.<sup>31</sup> This proposal was rejected by Treasury.<sup>32</sup> Drummond later claimed that a professionally staffed clinic began in 1936, but this does not make sense in the light of Wood's efforts to establish one.<sup>33</sup> Wood made another attempt in 1937 with an imaginative proposal for a 'preventorium in behavioural disorders'. It envisaged the provision of premises for clinical work, including accommodation for fifty boys and thirty girls, plenty of play space (the Boys Shelter had only a tiny yard), and an

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<sup>26</sup> Section 8, Child Welfare Act, 1939. Appointments were made by the Governor, on the advice of the Minister.

<sup>27</sup> R Van Krieken *Children of the State* Allen & Unwin, Sydney, 1992, p. 112.

<sup>28</sup> G M Allard 'Fifth Sectional Report of the Royal Commission to Inquire into the Public Service of New South Wales Concerning the Administration of Acts Relating to State Children' p. 43 and p. 114.

<sup>29</sup> F W Weatherall 'The Changing Concepts of Child Welfare in N. S. W. in respect of the Child, the Law and the State. Period 1800-1950'. Unpublished typescript, undated, c. 1950. p. 75. Copy held in Mitchell Library.

<sup>30</sup> C T Wood to Under Secretary, Department of Public Instruction, 9 August, 1937. See also G F D Smith, Children's Court Chaplain, letter dated 29 October, 1937 SR 7/4681.

<sup>31</sup> C T Wood to Minister for Education 8 October, 1935 SR 7/4681.

<sup>32</sup> Under Secretary, Treasury to Under Secretary, Department of Education, 28 November, 1935. SR 7/4681.

outpatient service. His submission said that virtually no progress had been made with the scientific treatment of young offenders since 1913, and that New South Wales compared unfavourably with other countries, where early intervention, clinical treatment and probation were preferred to correctional institutions, with consequent monetary savings.<sup>34</sup>

The scheme was opposed by the Department of Education, which wanted to run the operation, as part of the School Medical Service. Eventually, a watered down scheme for a clinic staffed by a psychiatrist, psychologist and social worker, employed by the Department of Education, but working on child welfare cases was approved in December, 1938.<sup>35</sup> The old Shelter was retained, however, for accommodation purposes, and the new clinic operated from May 1939, in separate premises.<sup>36</sup> Thus it took five years of bureaucratic struggle, marked by parsimony and opposition from the Education Department to establish a more professional service which would at last provide an improved assessment of children coming before the courts. It was a modest advance which still, however, left unanswered the problems of sub-standard accommodation at the Metropolitan Boys Shelter. The clinic dealt almost exclusively with the assessment of children as part of the sentencing process of the courts, so there was little professional impact on those committed to institutions.

### *Legislation*

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<sup>33</sup> D H Drummond NSWPDLA 24 September, 1942, p. 45.

<sup>34</sup> C T Wood to Under Secretary, Department of Public Instruction, 9 August, 1937 SR 7/4681.

<sup>35</sup> Secretary, Public Service Board to Under Secretary, Department of Education 30 December, 1938. Funds to employ a typist were declined by the Treasury, even though the Public Service Board had approved clerical assistance. Treasury to Under Secretary, Department of Education, 6 September, 1939. SR 7/4681.

<sup>36</sup> H Moxon, Research Officer (author of the 1937 proposal) to N L Salmon, Secretary, Child Welfare Department, 2 June, 1939. The premises of the clinic were at 366 Bourke Street, Sydney. SR 7/4681.



Efforts to enact legislation to replace the 1923 Act also encountered substantial problems. Drummond had decided that a number of key initiatives, specifically McCulloch's recommendations about punishment, and making it unlawful to keep wards in delinquent institutions unless committed, should be implemented through legislation, rather than administrative direction. A Child Welfare Bill was therefore quickly prepared and introduced in December, 1934, only a short time after Wood took charge. It prohibited excessive physical exercise, as well as admission of wards to delinquent institutions unless pursuant to a court committal. It also provided that there was to be no corporal punishment of girls. Boys under fourteen could be caned, but only for 'grave misconduct'. Isolated detention was to be used instead.

In his speech on the Bill, Drummond made it clear that the purpose of institutions was training, not punishment. If children were recalcitrant to the extent that they needed to be subjected to 'stern discipline', then this should not take place in a training institution, since this would change the whole character of the institution. His solution was to transfer such inmates to prison. Another provision was to allow children aged between eighteen and twenty-one sentenced to imprisonment to be transferred to child welfare institutions. This was to provide more humane treatment for less sophisticated young prisoners who were considered to be better accommodated in training schools than in prison.<sup>37</sup>

The Bill, however, lapsed when an election was called.<sup>38</sup> So, for the time being, the same old, unsatisfactory system applied, whereby the punishment system was purportedly governed by administrative instructions which had no force of law. Drummond later claimed that he wanted the control of punishment entrenched in the Act, so that it could not 'be altered at the whim of the Minister or an officer of the

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<sup>37</sup> D H Drummond, NSWPDLA 20 December, 1934, p. 5064-5071.

Department'.<sup>39</sup> Whilst this was a laudable aim, it was no longer a practical one once the Bill lapsed. He could then easily have had Regulations made, pending a fresh Bill. Such a course would have given the punishment regime a statutory base, removing it from the vagaries of the common law.

A similar Bill was introduced after the 1935 elections. McCulloch, together with other Magistrates throughout the State, was asked for his opinion of this Bill. He criticized the provisions allowing the caning of younger boys and another provision which allowed caning of older boys 'as prescribed'. This he interpreted as allowing caning on the breech. He also objected to the discretion given to officials not to take inmates before the court but to punish internally, comparing this unfavourably with prisons, where corporal punishment could only be awarded by a Visiting Justice.<sup>40</sup> The 1935 Bill also came to nothing, and Drummond then decided to replace the whole Act.<sup>41</sup>

When a further Bill was introduced in 1936, there were few differences from its predecessors, although Drummond was now prepared to concede that some corporal punishment for older boys might be necessary. He also re-stated his view that if boys misbehaved, the proper place for them was in gaol. He referred to suggestions that Borstals might be introduced, to provide, in effect, a type of junior prison for offenders aged sixteen to twenty-one. He said that his investigation of Borstals in New Zealand had convinced him that it would be wrong to place all offenders over sixteen in prisons of this kind.<sup>42</sup> Once again, nothing eventuated, because the 1936 Bill also lapsed, even though there had been quite extensive debate on its provisions. It was

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<sup>38</sup> explanation given by D H Drummond NSWPDLA 24 March, 1936, p. 2774.

<sup>39</sup> NSWPDLA 13 October, 1942, p. 274.

<sup>40</sup> J E McCulloch to Under Secretary of Justice and also to Drummond, 23 September, 1935, SR 3/3162.2.

<sup>41</sup> Annual Report by Minister for Public Instruction on the working of the Child Welfare Act, for the years 1932 -35 , NSWPP 1935-36 vol 1, p. 193.

not until October 1938 that yet another Bill surfaced, and in 1939 this was to become the new Child Welfare Act. It might have been passed in 1938, but for the fact that relations between Drummond and Wood had deteriorated, culminating in Wood's departure.

The long delay of five years between McCulloch's Report and the passage of legislation to rectify serious abuses was embarrassing, to say the least, especially since Drummond, way back in 1934, had promised a Bill 'within a few days'.<sup>43</sup> The urgency for some action had not dissipated either. Within a few months of McCulloch beginning his inquiry, there were claims that boys were still being 'flogged' at both Yanco and Gosford.<sup>44</sup> In 1936, Wood again investigated allegations of bashings by an instructor and senior boys at Yanco.<sup>45</sup> Wood was obliged to issue a very detailed instruction, actually phrased in statutory form, dealing with the way various forms of misbehaviour were to be dealt with. Its wording was similar to what later was enacted in 1939, but of course, it had no force of law, as both the Fincham and McCulloch inquiries had shown.<sup>46</sup> In 1939, Sloane reported an incident at Mittagong in which two boys had been brought together in order to fight, watched by the Superintendent.<sup>47</sup>

No substantial reason for the excessive delay in bringing down legislation was ever given, but possible explanations emerge from comments in Parliament, especially the debate on Wood's departure. Lang, the former Premier, then in opposition, claimed that Wood had wanted to create a new institution for girls, to separate the

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<sup>42</sup> NSWPDLA 23 April, 1936, pp. 3256-3264.

<sup>43</sup> NSWPDLA 10 October, 1934, p. 3033.

<sup>44</sup> Dan Clyne MLA NSWPDLA 20 June, 1934, p. 1134. See also Maurice O'Sullivan MLA. NSWPDLA 4 July 1934, p. 1584.

<sup>45</sup> D H Drummond, NSWPDLA 22 April, 1936, p. 3182

<sup>46</sup> Circular issued 17 July, 1936 SR 9/6153.

<sup>47</sup> T R Sloane, Official Visitor, Report dated 10 January, 1939 SR 9/6156.

hardened ones from the younger ones, but that Drummond had refused.<sup>48</sup> Drummond did mention, in talking about the problem of what to do with those who misbehaved in training institutions, that he had had discussions with the Minister of Justice. This was about the need for an 'intermediate institution', to cater for those over sixteen, as was the case in Britain with Borstals.<sup>49</sup> Earlier, in 1937, he had indicated to Wood that he had raised the matter with the Minister of Justice, but nothing came of that action.<sup>50</sup>

Creation of Borstals would have removed from the juvenile correctional system most offenders, sixteen and over, and placed them in the prison system. This would have had a positive impact on managing industrial schools. However, there would undoubtedly have been political opposition from some within the Labor Party, and also resistance from welfare organizations at the prospect of boys and girls as young as sixteen going routinely to prison. Such a move would have been opposed by officials of the Child Welfare Department, since it would have involved a diminution of responsibilities, as well as substantial transfer of resources to the prisons administration.

A further argument against such a move was that it was only in 1923 that the legislation had been changed to provide for offenders sixteen and above to be sent to industrial schools rather than to prison. The issue was to be raised again in the 1940s in the context of rebellious behaviour by inmates of Parramatta and Gosford. On balance, it would appear that the most likely cause of delay in getting appropriate legislation passed was disagreement within the Government about whether some kind of more punitive institution should be set up for young offenders who did not respond to

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<sup>48</sup> NSWPDLA 1 December, 1938, p. 3143.

<sup>49</sup> NSWPDLA 16 November, 1938, p. 2657.

<sup>50</sup> Drummond in a minute dated 9 December, 1937, relating to the case of Darcy Ezekiel Dugan, later a notorious criminal. Drummond cited him as unsuitable for detention in a Child Welfare Institution. See file B 4928 SR 9/6151.2.

the existing training. There was also the issue of what age group it should cover, and whether it should be located in the prison system.

The 1939 Act finally made good Drummond's undertakings to enact control over the abuses criticized by McCulloch. It provided that wards were not to be accommodated in industrial schools, now called 'training schools'.<sup>51</sup> The punishment of inmates of institutions for delinquents was dealt with exhaustively, with a number of provisions being taken from the English Children and Young Persons Act, 1933.<sup>52</sup> The Superintendent was required to investigate complaints of misbehaviour, and given power to impose punishments. Corporal punishment and isolated detention had to be recorded in a Punishment Book.

For boys, punishments ranged from forfeiture of rewards and privileges, alteration of diet, fatigue duties and physical exercises, to corporal punishment (maximum of six strokes on the hands, for boys under sixteen) or isolated detention up to twenty-four hours, for boys aged fourteen but under sixteen. There were many conditions and restrictions, for example, isolated detention was to be used only as a last resort, and the rooms used had to be 'light and airy', dimly lit at night, with means of communication with staff. Physical exercises were limited to thirty minutes per day, for seven days only. Inmates could not punish other inmates, and only the Superintendent could authorize punishments.

One provision was of particular interest. It preserved the common law right of a parent or teacher to administer punishment, but it included in its scope a 'person having the lawful care of a child or young person'.<sup>53</sup> This had appeared in the 1935

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<sup>51</sup> Child Welfare Act, 1939, section 53(2).

<sup>52</sup> Annotated Copy of the Child Welfare Bill, 1939, marked 'for use by the Attorney General in the Legislative Council (printed pages of the Bill, interleaved with typed and handwritten manuscript notes). Original held in the Library of the Child Welfare Department.

<sup>53</sup> Child Welfare Act, 1939, section 156.

Bill, and McCulloch had complained about it, claiming that it would mean that punishment in institutions would once again be governed by common law and not by the specific provisions of the Act.<sup>54</sup> Nothing was done to clarify the situation, which had been at the core of both the Fincham and McCulloch Inquiries.

For boys sixteen and above, there was to be no corporal punishment, but ‘serious misconduct’ (including insubordination, refusal to conform to rules, destruction of property, assault on an officer) could result in three months imprisonment, on conviction before a Children’s Court. The same regime applied to girls, except that only those under fifteen years could be punished corporally.<sup>55</sup> The Act also allowed the transfer of a prisoner under twenty-one years to an institution, for a maximum of three years, followed by return to prison.<sup>56</sup> This provision seems to have been used sparingly, mainly for those few children convicted of very serious crime, such as murder, and who received long prison sentences.

The 1939 Act was something of a compromise between the aims of the Minister, expressed in the immediate aftermath of the McCulloch inquiry, against the practical difficulties of running institutions for delinquents. For example, initially, Drummond had wanted to abolish corporal punishment for girls, but in the end, it was still allowed for girls under fifteen. The question of what to do with the older, more difficult inmates who misbehaved, was not resolved in the way Drummond had earlier suggested, that is, by taking them out of the training schools and sending them to prison.<sup>57</sup> True, for ‘serious misbehaviour’, they could be sentenced to a maximum of three months in prison, but at the end of that sentence they simply returned to the

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<sup>54</sup> McCulloch to Drummond 23 September, 1935 SR 3/3162.

<sup>55</sup> Child Welfare Act, 1939, Part XI.

<sup>56</sup> ibid., section 94.

<sup>57</sup> D H Drummond, NSWPDLA 23 April, 1936 p. 3264.

training school.<sup>58</sup> They were usually welcomed back as heroes by other inmates. Some preferred gaol to a training school because they claimed to receive fairer treatment there.<sup>59</sup>

There was a *prima facie* requirement that any 'serious misconduct' by an inmate sixteen or over be the subject of court proceedings. This was, however, weakened by the discretion given to the Director not to have the child charged before a court.<sup>60</sup> In practice, the great majority of misbehaving inmates were not taken before courts, and this meant that the investigation of possible official misconduct by a Magistrate, specifically envisaged in the legislation, was rendered nugatory.<sup>61</sup> Instead, those sixteen or older would be charged with 'conduct to the prejudice of good order and discipline', with the actual offence often mentioned in parenthesis. As this did not amount to *serious* misconduct, they could then be dealt with by the Superintendent, and not by the court.

The provisions for absconding were of particular interest. The Act required that any inmate charged with absconding be dealt with by the Children's Court, which had power to order the full range of punishments specified for misbehaviour.<sup>62</sup> However, unlike the other 'misbehaviour' provisions, all cases of absconding had to be brought before a court.<sup>63</sup> The rationale for this was to ensure that the circumstances of an absconding, which might include claims of ill-treatment, would be reviewed by an authority outside the Department, in this case, the court.<sup>64</sup> In practice, this requirement was frequently disregarded. Punishment Books for Parramatta Girls

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<sup>58</sup> Child Welfare Act, 1939, Section 57 (2)(c).

<sup>59</sup> SMH 22 March, 1947.

<sup>60</sup> Child Welfare Act, 1939, section 57 (4).

<sup>61</sup> ibid., section 57 (3).

<sup>62</sup> ibid., 1939, section 139 (2)(b).

<sup>63</sup> ibid., 1939, section 56 (12).

<sup>64</sup> See note accompanying the section dealing with absconding in the Annotated Copy of the Child Welfare Bill, 1939.

Training School show numerous examples of punishments awarded for absconding, and when absconding occurred on a massive scale at Gosford in the 1940s, most boys were not taken before the courts, but were returned to the institution and punished there, despite the fact that the Act did not permit this.<sup>65</sup>

It was claimed by Departmental officials that the punishment provisions were taken from the English Children and Young Persons Act, 1933.<sup>66</sup> There were many similarities, but also significant differences. In the British legislation, the punishment for absconding was an extension of the period of detention by the length of time spent at large.<sup>67</sup> Decisions to bring a child before a court for serious misbehaviour, or to alter an inmate's diet, could only be taken by the Home Office.<sup>68</sup> Rules made under that Act included measures designed to protect the interests of inmates, for example, 'similar clothing to that worn in ordinary life', home leave, annual holidays, pocket money, at least two women to be on the staff of male institutions and vice versa.<sup>69</sup> Nothing like this appeared in the New South Wales legislation.

Another significant difference was that a large number of approved schools in England had local committees of management, a significant degree of external oversight, missing from the New South Wales system. Placement of the mechanism for control of punishment in the Act itself was criticized by the Child Welfare Conference, even though Drummond had stated, many times, his determination to do

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<sup>65</sup> Punishment Books for Girls Training School, Parramatta, inspected by the author in 1984 when they were still held at the institution.

<sup>66</sup> Annotated Copy of the Child Welfare Bill, 1939.

<sup>67</sup> Children and Young Person Act, 1933, section 82. The Statutes, 3rd Revised Edition, HMSO, London, 1950.

<sup>68</sup> ibid., 4th Schedule, clause 8. See also Approved School Rules, 28 July, 1933 Statutory Rules and Orders, 1933, HMSO, London, 1934, rule 24.

<sup>69</sup> Approved School Rules, 28 July, 1933.



so. The Conference wanted the issue covered by Regulations, as was the case in the English legislation.<sup>70</sup>

One very significant omission was any provision for an ‘intermediate institution’, foreshadowed by Drummond. He had, in 1938, prepared and had printed draft amendments to the Bill introduced in 1938, to establish what were called ‘Special Institutions’. They were to be a new sentencing option for those aged sixteen to twenty-one (extending to twenty-three in some circumstances), convicted of an indictable offence. So, in one sense, they were to be Borstals. Other amendments would also have allowed absconders and those who committed disciplinary offences in institutions liable to be sent to them. Under one provision, anyone committed to an institution could be sent instead to a Special Institution by the Minister, provided the Advisory Council so recommended.

These institutions were to be controlled by the Minister administering the Child Welfare Department but run by the Comptroller-General of Prisons, a very unusual arrangement.<sup>71</sup> These amendments were never introduced in Parliament, so it can be assumed that Drummond was unable to secure Cabinet’s approval for this radical step. The result was that the Department was left with the duty of dealing with the problem of absconders and serious disciplinary problems within the institutions it controlled. This led to the creation of secure facilities within the juvenile correction system, beginning with the sub-institution at Gosford.

The Act also for the first time, made provision for the care of ‘mental defectives’, something which had long been foreshadowed, although usually as an issue

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<sup>70</sup> Reports of the Child Welfare Conference p. 44.

<sup>71</sup> D H Drummond to Minister of Justice 25 November, 1938, enclosing a printed draft of a proposed Part XXI for the Act, with other amendments. In the correspondence, he stated the purpose of the new Part as being in order to contain absconders. SR 3/3163.

to be dealt with as part of the health system.<sup>72</sup> It had long been known that there were significant numbers of intellectually disabled children in juvenile correctional facilities.<sup>73</sup> Similar problems were experienced in other countries.<sup>74</sup> Many people over the years had drawn attention to the need for intellectually disabled children to be removed from the ordinary corrective system.<sup>75</sup> The legislation was copied to some extent from similar British legislation.<sup>76</sup> It enabled children who were certified by two doctors to be mentally defective, and whose cases 'called for segregation and special treatment', to be admitted to homes for 'reception, detention, maintenance, education and training'.

Guardianship could be extended into adult life, and there was power to discharge as well as release on licence. Provision was also made for their punishment. The purpose appears to have been to remove such people from the community, in order to reduce the possibility of them producing mentally defective offspring, so it had a distinctly eugenic flavour. However, this Part of the Act,

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<sup>72</sup> Annual Report, Child Welfare Department, 1930 & 1931, NSWPP 1932, vol 1, p. 525 et seq., pages 2 and 10. See also D H Drummond NSWPDLA 23 April, 1936, p. 3263.

<sup>73</sup> F W Neitenstein Report by the Comptroller-General of Prisons on Prisons, Reformatories, Asylums and other Institutions recently visited by him in Europe and America N S W Government Printer, Sydney, 1904, p. 11; C K Mackellar The Treatment of Neglected and Delinquent Children in Great Britain, Europe and America NSW Government Printer, Sydney, 1914, p. 73; G M Allard 'Fifth Sectional Report of the Royal Commission to Enquire into the Public Service of New South Wales Concerning the Administration of Acts Relating to State Children', p. 14; 'Inquiry into the Suspension of Miss L. Hodgkinson, Supervisor of Mental Defectives, Department of Public Instruction' SR 8/669; J E McCulloch Child Welfare Department. Report on the General Organization, Control and Administration of, with Special Reference to State Institutions N S W Government Printer, Sydney, 1934, pages 145, 179; Reports of the Child Welfare Conference p. 31

<sup>74</sup> S Garton 'The Rise of the Therapeutic State: Psychiatry and the System of Criminal Jurisdiction in NSW 1890-1940' Australian Journal of Politics and History vol 32 no 3, p. 378. See also Great Britain Home Office, Report of the Care of Children Committee (Curtis Report) 1946 HMSO London, 1946, p. 95

<sup>75</sup> C K Mackellar, The Treatment of Neglected and Delinquent Children in Great Britain, Europe and America pages 22, 73.; Annual Report, State Children's Relief Board, 1918, NSWPP 1917-1918 vol 2, p. 395-398; G M Allard, 'Fifth Sectional Report of the Royal Commission to Enquire into the Public Service of New South Wales Concerning the Administration of Acts Relating to State Children', pages 14, 43; J E McCulloch Child Welfare Department. Report on the General Organization, Control and Administration of, with Special Reference to State Institutions, pages 145, 179; D H Drummond, NSWPDLA 23 April, 1936, p. 3263; D H Drummond NSWPDLA 23 February, 1939, p. 3774; J G Arthur, NSWPDLA 9 March, 1939, p. 3962.

<sup>76</sup> Mental Deficiency Act, 1913 (UK).

although proclaimed to commence with the rest of the legislation, was not implemented at the time. No homes were established, and in effect, these provisions lay dormant for more than thirty years.<sup>77</sup> Intellectually disabled children continued to be detained in delinquent institutions. The only real attempt to segregate this class of child, the home for boys at Raymond Terrace, had ceased to operate in the late 1920s, and the inmates transferred to Gosford.

By the time the Child Welfare Bill had finally been passed by Parliament, however, Wood was no longer head of the Department. In October, 1938, allegations were made by Dr. John McGeorge, a prominent psychiatrist, that innocent children were being accommodated with delinquents at the Metropolitan Boys Shelter.<sup>78</sup> Drummond denied the allegations, but later conceded they were, in part, true. This was the incident that, technically, led to the termination of Wood's tenure as Director.

The circumstances of his departure were the subject of an extensive parliamentary debate. This revealed that Wood was seen by many people, especially by representatives of voluntary organizations active in child welfare, as an idealist with progressive views, who had worked hard to reform the Department. Outside Parliament, the *Labor Daily* also claimed that Wood was sacked because Drummond wanted to send serious offenders to gaol, but Wood wanted them to receive scientific treatment in special institutions.<sup>79</sup> Drummond claimed that Wood had requested the

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<sup>77</sup> Part IX of the Child Welfare Act, 1939. The Act commenced on 1 December, 1939, see Government Gazette 24 November, 1939, p. 5541. Regulations relating to Part IX were included in general regulations for the new Act, made in 1940. See Government Gazette 3 May, 1940, p. 2025. The Child Welfare (Amendment) Act, 1967 substituted a new Part IX, but that Part did not commence until 1 January, 1974. See Government Gazette 1 February, 1974 p. 305.

<sup>78</sup> Sydney Sun 2 October, 1938.

<sup>79</sup> Labor Daily 16 November, 1938.

transfer, complaining of the stress of the position, but in fact Wood was forced out by Drummond, because of his activity in the Child Welfare Conference.<sup>80</sup>

Drummond claimed that, at the Metropolitan Boys Shelter, Wood had breached specific instructions not to mix delinquents and others. While this was undoubtedly true, Wood's problem was that there were simply not sufficient facilities available to enable a proper separation, a situation which would persist for another five years.<sup>81</sup> The more substantial reason was undoubtedly the question of relations with the Child Welfare Conference. Drummond revealed that he had problems with the draft of the Child Welfare Bill, prepared by officials under Wood's direction. In the draft, the position of Director had been that of a statutory office-holder, something that would have given the position power independent of the Minister. Drummond had directed that this be removed, so that the Minister would remain the source of power, and secured Cabinet's endorsement for his action. Subsequently, the Conference had recommended that the power nevertheless be vested in the Director.

Drummond took umbrage, and clearly saw Wood, President of the Conference, as responsible for this challenge. He then directed that officers who were members terminate their connection with the Conference. It was this direction that co-incided with Wood's departure. Drummond went on to make claims about Wood's administrative incompetence. He said Wood was too trusting, but it seems clear that the main problem was that the Conference had become too powerful, and Drummond objected to Wood's association with it.<sup>82</sup> Wood's position as Director had been a difficult one. During the 1930s, finance was extremely tight and remained so until

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<sup>80</sup> N Parker 'Differential Policies in Child Care' Australian Journal of Social Issues vol 1, no 1, Spring, 1961, pp. 58-59.

<sup>81</sup> A partial solution to this problem occurred in 1943, when Brougham, an auxiliary shelter for smaller boys was opened in Woollahra. See Annual Report Child Welfare Department, 1945, NSW Government Printer, Sydney, 1946, p. 21.

after World War II. He had been brought in to reform an ailing administration, but there was no money. Even modest advances like the establishment of the Child Guidance Clinic and the appointment of deputies in institutions, took years to achieve, in the teeth of opposition from Treasury and the Department of Education.

One of the deficiencies revealed by the McCulloch Inquiry was the completely inadequate training for staff.<sup>83</sup> As a result of McCulloch's recommendations, Deputy Superintendents were supposed to be appointed at Gosford, Mittagong and Yanco, with a staff training function.<sup>84</sup> According to Ramsland and Cartan, this was because of Drummond's strong commitment to professionalisation, through staff training.<sup>85</sup> The correctness of their view is, however, questionable. In fact, properly functioning Deputies were not in place for about five years.<sup>86</sup> Also, in 1936, Wood proposed a scheme, very like the one later used, for the training of district officers in the 1940s, but Drummond rejected it as 'too ambitious' and expensive.<sup>87</sup>

Drummond himself claimed in 1942 that instructors, that is, staff charged with the control of inmates of institutions, were being trained at Sydney University and the Sydney Teachers College, but this was simply not the case.<sup>88</sup> The reality was that little happened. Vincent Heffernan, who became Superintendent at Gosford in 1944, reported that there was no evidence of staff training when he arrived, and that it was not

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<sup>82</sup> D H Drummond, NSWPDLA 6 December, 1938, pp. 3312-3321. See also N Parker 'Differential Policies in Child Care', pp. 58-59.

<sup>83</sup> J E McCulloch, Child Welfare Department. Report on the General Organization, Control and Administration of, with Special Reference to State Institutions, recommendation 7, see also p. 204.

<sup>84</sup> C T Wood: 'Interim Report on the Work of the Child Welfare Department for the Period 26 November, 1934 to 30 June, 1935', p.37.

<sup>85</sup> J Ramsland & G A Cartan 'The Gosford Farm Home for Boys, Mt Penang 1912-1940' JRAHS vol 75 part 1, June 1989, p. 78.

<sup>86</sup> The saga of attempts to fill these position is set out in Child Welfare Department file H 36951, spanning the period 1934 to 1939. SR 9/6151.1.

<sup>87</sup> Wood to Drummond 23 December, 1936. The course was prepared by Horace Moxon, Research Officer. See Public Service Board to Director of Education 15 November, 1937 SR 20/12872). See also Child Welfare Department file 36/12436, copy held by author.

until the late 1940s that correspondence courses, of a fairly simple kind, run by Sydney Teachers College, were started.<sup>89</sup>

### *Serious disturbances in institutions*

In 1941, the government in which Drummond had been Minister for Education was defeated by the Australian Labor Party. The new Minister, Clive Evatt almost immediately became a central figure in the disturbances which took place at Parramatta. On Christmas Day 1941, a serious riot took place. In one sense, such an event was by no means exceptional, since the Girls Industrial School had a long history of them.<sup>90</sup> However, since 1900, there had been no public reports of rioting there. That does not mean that riots did not happen, but more likely that they were controlled by staff before they got out of hand and so came under public scrutiny.<sup>91</sup> According to the Superintendent, William Peake, the riot was directly caused by the actions of Evatt. Peake claimed that Evatt had undermined the administration of the school by discharging girls against departmental advice and also by preventing the imprisonment of serious offenders. He further claimed that, at a Christmas function at the school, Evatt had behaved improperly by putting his arms around the girls, telling them that they could wear lipstick and smoke.

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<sup>88</sup> For Drummond's claims, see NSWPDLA 24 September, 1942, p. 43. For the in service correspondence course for institutional staff, see Annual Report, Child Welfare Department, 1946 NSWPP 1947, vol 1, p. 125 et seq., p.9.

<sup>89</sup> V A Heffernan, 'Notes on the History of Mt Penang', unpublished manuscript, 1989, p. 23.

<sup>90</sup> N Williamson, 'Hymns, Songs and Blackguard Verses: Life in the Industrial and Reformatory School for Girls in NSW 1867-1887' JRAHS vol 67 part 4, March 1982, pp. 375-377. See also evidence given by C H Spier, Superintendent, 2 March, 1892 in Report from the Select Committee on the Infants and Children Protection Bills, NSW Government Printer, Sydney, 1892, p. 21; T E Dryhurst, Superintendent, to Under Secretary, Department of Public Instruction, 6 June, 1898, Letter Book of Girls Industrial School, Parramatta, SR 3/ 3433; Report in the Cumberland Argus and Fruitgrowers Advocate, 26 October, 1938. Riots had also occurred at the Parramatta Female Factory, on the site adjacent to the Girls Industrial School.

<sup>91</sup> Harold Hawkins, who became Minister in 1956, later stated that 'for every riot the public heard about, a dozen were quelled before they got out of hand'. SMH 12 March, 1961.

Evatt denied this, and claimed that the reason for the riots was the oppressive regime, under which Peake had bashed girls and kept them in solitary confinement on bread and milk for up to a month.<sup>92</sup> Following Peake's departure, Evatt tried to bring about change by having a female appointed Superintendent. Mary Lamond, a well-qualified teacher was appointed, but after six months resigned, claiming that she had been unable to make inroads on the existing management of the institution, which had, in practice, been in the hands of an unsympathetic Matron. She was followed by Miss Marion, who had previously been in charge of Myee Hostel at Arncliffe, and who had nursing qualifications. When she too failed, the Public Service Board insisted on a male being appointed, and selected William Simms, who had experience at Gosford Farm Home.<sup>93</sup>

Riots continued, there were also many abscondings and it took months to restore order. By September, 1942, forty-five girls had been sent to prison for disciplinary offences.<sup>94</sup> The committal of girls to prison for misbehaviour in institutions was by no means unusual, in fact, between 1937 and 1941, the period immediately preceding this series of riots, nineteen girls had been so imprisoned.<sup>95</sup> However, the imprisonments of 1942 were much more extensive than ever before. Further riots, sufficient to attract public notice, occurred in 1942, 1943, 1945 and

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<sup>92</sup> Peake denied this allegation, in evidence given under oath to the Inquiry by the Public Service Board held into the Child Welfare Department under Section 9 of the Public Service Act, SR 14/6347.

<sup>93</sup> Mary Lamond, a Scot, had previously been Principal of Lynwood Hall, Guildford and had also taught at Brush Farm. She was a bachelor of economics. See evidence given at Inquiry by the Public Service Board into the Child Welfare Department in 1942. SR 14/6347. For details of Miss Marion's qualifications, see Report of Public Service Board Inquiry into the Child Welfare Department under Section 9 of the Public Service Act, p. 18. SR 14/6346.

<sup>94</sup> See statutory declaration from the Rev. E. Walker, also a guest at the Christmas Party, referred to by Mr H. Mair, Leader of the Opposition, NSWPDLA 13 October, 1942, pp. 260-274.

<sup>95</sup> See evidence given by William Peake on 21 November, 1942, to the Inquiry by the Public Service Board into the Child Welfare Department. SR 14/6347.

1946.<sup>96</sup> These disturbances were serious and at times frightening affairs.

Typically, windows, furniture, crockery were smashed, and girls threw themselves on the floor, weeping hysterically. Some would strip naked, climb on the roof, tear up roof tiles, and scream obscenities to people passing by in the street.<sup>97</sup>

While it may well have been true that some rather foolish behaviour by a new and inexperienced Minister may have created an unsettled atmosphere, it seems clear that there were more fundamental problems. In the aftermath of the 1941 riot, the Child Welfare Advisory Council, constituted in 1940, put pressure on Evatt to improve conditions in institutions, particularly Parramatta and Gosford, but very little happened. After the riot of October 1942, a leading member of the Council, Mary Tenison-Woods, resigned and publicly attacked Evatt's inaction.<sup>98</sup> The Chairman, Professor Tasman Lovell, and prominent Catholic historian, Dr. Eris O'Brien, also threatened to resign.

Apart from complaints about the failure to take positive action to correct the situations at Parramatta and Gosford, the Council members complained that they had been denied access to figures on absconding and refused permission to visit institutions. They also claimed that their recommendations were not even acknowledged, let alone acted upon. Evatt retreated, and promised to make regulations, including the right to access Departmental files, and to visit institutions. Evatt persuaded Tenison-Woods to withdraw her resignation, in return for an inquiry to be conducted by a committee of the Council, to be chaired by her.<sup>99</sup> Charles Wood, the former Secretary, and Dr.

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<sup>96</sup> See evidence given by G D Martin Director, on 22 October, 1942, to Public Service Board Inquiry into the Child Welfare Department under Section 9 of the Public Service Act, SR 14/6347. See also SMH 19 October, 1942, 23 February, 1943, 28 February, 1945 and 30 April, 1946.

<sup>97</sup> Acting Superintendent to Under Secretary, 14 April, 1958 SR 3/9867.

<sup>98</sup> SMH 24 October, 1942. For Tenison Woods' background, see L Kirk 'Portia's Place: Australia's First Women Lawyers' Australian Journal of Legal History vol 1, no. 1, 1995, p. 78. See also M C Tenison-Woods Juvenile Delinquency, With Special Reference to Institutional Treatment, Melbourne University Press, Melbourne, 1937.

<sup>99</sup> Minutes of meeting of the Child Welfare Advisory Council held on 27 October, 1942, attended by Evatt. SR YC3/3K39221.



McGeorge, whose complaint had led to Wood's departure, were both members.

Alek Hicks, a Public Service Board Member, also conducted a confidential inquiry into the Department, although it was never made public.<sup>100</sup> The Tenison-Woods committee carried out a careful examination of the institution, and one of the members, Norma Parker, lived in for a week.<sup>101</sup>

Its Report, presented in June, 1943, was a damning one. It found that Parramatta was being operated as a punitive institution, that it had inadequate buildings and equipment, and was being run by 'enthusiastic amateurs', who lacked the training to be effective. It drew attention to the fact that there were mixed together in one institution, girls who were mentally defective, those who were there solely because they required investigation for venereal disease, together with girls who were sophisticated in delinquency. It recommended that a new industrial school be built on the cottage plan, so as to enable proper classification and segregation. It also suggested greater emphasis on vocational training, a planned recreational program, professional support for behaviour problems, and an upgrading of staff qualifications and training, recognizing that this would require considerable expenditure.<sup>102</sup>

Initially, it seemed that something would be done, since the Report was welcomed by the Government.<sup>103</sup> However, as the months went by, it became clear that nothing was being planned. In 1943, a Child Welfare Reform Association was formed, and it urged the government to take action.<sup>104</sup> Again, there was little response so, in February, 1944, Tenison-Woods returned to the attack, with two scathing

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<sup>100</sup> Exhibits presented to the Public Service Board Inquiry. SR 8/1182.

<sup>101</sup> R J Lawrence (ed.) Norma Parker's Record of Service Department of Social Work, University of Sydney, 1969.

<sup>102</sup> M C Tenison-Woods (chair of the Delinquency Committee of the Child Welfare Advisory Council)) A Report on the Girls' Industrial School Parramatta, NSW: A Study in the Principles and Practices of Child Welfare Administration, Melbourne University Press, Melbourne, 1945, pp. 62-66

<sup>103</sup> SMH articles on 2 June, 1943 and the following two days.

<sup>104</sup> SMH 23 October, 1943.

newspaper articles, in which she claimed that ‘deplorable and scandalous’ conditions existed at both Parramatta and Gosford.<sup>105</sup> Evatt’s reply was to announce that £ 20,000 had been provided for the purchase of land at Thornleigh for a new industrial school.<sup>106</sup> This was scornfully rejected by Tenison-Woods, who reminded Evatt that the system was in need of wholesale reform, not just new buildings. In yet another newspaper attack, she maintained that much more than a ‘bricks and mortar’ approach would be necessary to deal with such complex problems: ‘We ask for bread and are given stone’.<sup>107</sup>

In 1944, in the face of this renewed criticism and demands by the Council for a Royal Commission, Premier William McKell set up a committee chaired by Justice Ernest Roper of the Supreme Court, and including Mary Tenison-Woods. This was in response to a request by the Child Welfare Advisory Council for a Royal Commission, which the government refused. At the meetings of this committee, those members of the Child Welfare Advisory Council who was also on the committee argued for the establishment of a Child Welfare Commission. This was to be responsible to, (but at arm’s length from) the Minister, but not part of the public service, the aim being to encourage greater flexibility, particularly in employment of staff.

They also pressed the view that George Martin, the Director, was not appropriately qualified, as well as being ineffectual in the job. The Education Department defended Martin and argued that if he had not been effective the appropriate course was to charge him under the Public Service Act. The conclusions of the committee were never made public, but clearly were influential in persuading the

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<sup>105</sup> SMH 2 and 3 February, 1944

<sup>106</sup> SMH 5 February, 1944.

<sup>107</sup> SMH 6 February, 1944.

government that a new Director should be appointed.<sup>108</sup> As a result, Robert Heffron was appointed Minister, as a direct consequence of Evatt's failure to handle child welfare problems.<sup>109</sup> Soon after Martin was replaced as Director by Richard Hicks.

Parramatta was not the only institution to encounter severe disturbances. After war broke out in 1939, and in the early 1940s, significant numbers of boys began to abscond from Gosford, sometimes together in large groups.<sup>110</sup> Abscondings do not appear to have been a significant problem until the 1930s. Parramatta had always been difficult to escape from because it had a nine foot wall and most of the internal doors were locked. So far as the Nautical Schools were concerned, the fact that they were anchored in the harbour provided a natural obstacle, and there were in any event constant deck patrols and bright lights kept burning at night.<sup>111</sup> Even at the Carpenterian Reformatory, where there were no walls and some of the dormitories not very secure, it was said to be not a major problem.<sup>112</sup> In the early days at Gosford, it is not mentioned as a significant problem. Much the same applied to Yanco. However, it is open to some doubt as to whether this was really the case, particularly at open institutions like Gosford and Yanco.

Superintendents were not, until 1936, required to report abscondings routinely. It is likely that, if an absconder were recaptured in the vicinity of the institution, he or

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<sup>108</sup> SMH 5 July, 1944. The other members were Professor H Tasman Lovell, Chairman, and Kath Ogilvie, members of the Child Welfare Advisory Council, John McKenzie, Noel Salmon (former Director) and John Goodsell of the Department of Education. SR 14/6346.

<sup>109</sup> SMH 6 June, 1946. Robert James Heffron, born 1890. Represented ALP as Member for Botany (later Maroubra) 1930-1950. Minister for National Emergency Services 1941-1944. Minister for Education on 8 June, 1944. Later Deputy Premier and Premier. Parliament of New South Wales NSW Parliamentary Record Sydney, 1996.

<sup>110</sup> During December, 1939, 32 boys absconded from Gosford. SR 7/7584. Figures supplied to the Public Service Board in 1942, show that abscondings continued to be at high levels from 1939 to 1941, but then escalated alarmingly in 1942. SR 14/6346.

<sup>111</sup> Annual Report of Superintendent *Vernon*, 1890, V&PLANSW 1890, vol 2, p. 261.

<sup>112</sup> Department of Public Instruction Brush Farm Home for Boys, NSW Government Printer, Sydney, 1910

she would simply be returned and punished.<sup>113</sup> Both the Fincham and McCulloch Inquiries found that only a small proportion of punishments was recorded. No statistics of abscondings were published, although occasionally an Annual Report would record the fact that there were none.<sup>114</sup> Thompson recorded in a diary entry in 1923 that there had been a mass absconding of fifteen boys at Gosford at the time of the Fincham Inquiry into the bashing of Joe Bayliss. There was no mention of that in the Annual Report.<sup>115</sup> Similarly, William O'Meally, an inmate in 1934, claimed that on one occasion, eighty-eight absconded in a group, but there was no public mention of this.<sup>116</sup> Given the incidence of abscondings later disclosed, it seems likely that significant abscondings did occur, but that they did not attract public notice, and also, at times were not regarded as a serious problem. In fact, McCulloch criticized Thompson for not treating absconding seriously.<sup>117</sup>

In 1937, however, absconding began to attract public comment. In that year, it was revealed, after complaints by the police, that there had been one hundred and twenty-one abscondings at Gosford. On that occasion, the Minister indicated that consideration was being given to the establishment of an 'intermediate institution', to be run by the Department of Justice, although the Director, Wood, favoured one run by the Child Welfare Department.<sup>118</sup> This institution was, however, never established. The position didn't improve. In 1939, the Official Visitor reported that they were running at about a hundred per annum.<sup>119</sup> Salmon considered it a matter 'of grave

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<sup>113</sup> Instruction no 36/1296 dated 17 March, 1936 from Secretary. SR 8/2138.

<sup>114</sup> see for example, Annual Reports of Superintendent, NSS *Vernon* for 1890 and 1892.

<sup>115</sup> A W Thompson, Diary, 26 March, 1923.

<sup>116</sup> W J O'Meally The Man They Couldn't Break Unicorn Press, Melbourne, 1980, p. 52.

<sup>117</sup> J E McCulloch 'Riverina Welfare Farm: Report on the conduct of Arthur William Parsonage under Section 56 of the Public Service Act, 1902' in NSWPP 1935, vol 1, p. 317.

<sup>118</sup> D H Drummond, NSWPDLA 6 December, 1938.

<sup>119</sup> T R Sloane, Official Visitor, to Minister, 22 February, 1939, SR 8/1754.

concern', but felt that the construction of a wall, although bound to reduce escapes, would detract from efforts to improve the character of the boys.<sup>120</sup>

In the same year a senior police officer claimed that one hundred and thirty boys had absconded in the past twelve months, some of them in large groups. Thirty were still at large, and the escapes co-incided with housebreakings in the Metropolitan area. Although Drummond denied the accuracy of this claim, it was clear that the state of affairs at Gosford was becoming politically embarrassing.<sup>121</sup> By 1944, about two hundred boys were absconding each year from Gosford.<sup>122</sup> The Government was being lampooned in the press over the lack of control exercised at the institution. A cartoon showed a conversation between two officials: 'But if the Gosford Boys' Home receives boys at the rate of 25 per week, and they escape at the rate of 50 per fortnight, why do we have to build a new home?'.<sup>123</sup> In one fortnight in July, 1944, it was claimed that fifty boys had escaped, and some of those were from the sub-institution, the secure area built within the institution to contain persistent absconders.<sup>124</sup> Heffron announced in November 1944, that two new institutions would be established, and that two-thirds of the population at Gosford would be transferred elsewhere. Some fifty were expected to leave within six weeks.<sup>125</sup> In fact, it was not until 1946 that four boys were sent, as an advance party, to St. Heliers at Muswellbrook, and another ten years before there were any sizeable transfers away from Gosford.

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<sup>120</sup> N L Salmon, Secretary, to Drummond, Minister for Education, 29 March, 1939, SR 8/1754.

<sup>121</sup> The Sun 30 January, 1941.

<sup>122</sup> D H Drummond gave the figures as 103 for 1940, 150 for 1941, and 150 for the first nine months of 1942. NSWPDLA 24 September, 1942, p. 43. R J Heffron gave the figure for 1944 as 200. NSWPDLA 7 November, 1944, p. 750.

<sup>123</sup> Daily Telegraph of 12 December, 1944

<sup>124</sup> A newspaper article at the time referred to 'oxy welding' repairs being carried out to the paling and barb wire fence which had been erected around the 'compound' or sub-institution. Daily Telegraph 7 July, 1944.

<sup>125</sup> SMH 8 November, 1944.

The treatment of absconders was also of concern. The McCulloch Inquiry had shown that absconders were hunted down by other boys, then beaten up or caned, forced to perform excessive physical exercise, deprived of footwear and hats, and sometimes have their hair cropped.<sup>126</sup> While McCulloch had been critical of these practices, instigated by Parsonage, he had made favourable comments about Gosford. He was of the view that, when Parsonage left Gosford, his successor, 'Major' Christopher Cookson, had discontinued some of these practices, including the 'bag room', where boys were required to fight a succession of other boys with their fists.<sup>127</sup>

In contrast, Mary Tenison-Woods, who visited Gosford in 1933, remarked that the system introduced by Parsonage, much the same as he later introduced at Yanco, had persisted. She found that 'very little constructive work...to rehabilitate (boys) as useful members of society' was being done. She specifically reported that the 'dingo' system was in use. This was the practice, begun by Parsonage at Gosford, of trusted inmates, sometimes known as 'charge boys' being allowed to hunt down a 'dingo' (absconder).<sup>128</sup> Also, the Official Visitor, Thomas Sloane, who reported directly to the Minister, made a series of complaints about the treatment of inmates under Cookson's administration. He alleged that the system of inmates administering beatings to absconders had survived. Sloane described seeing an absconder being brought in, with clear evidence of having been beaten up. Others, when captured, were led back by belts around their throats.<sup>129</sup> He also gave details of several

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<sup>126</sup> See instruction no H 36267 dated 1 November, 1934, by Minister Drummond, curtailing this practice. SR 8/2138. In an entry dated 29 September, 1948 in the Muster Book for Parramatta Training School, the Superintendent, W B Simms warned staff not to crop girls hair as punishment, indicating that the practice was still being followed. SR 3/9193

<sup>127</sup> Cookson's commission was in the school cadets. Appointed Captain. Commonwealth Gazette 5 January, 1907, p. 11. Promoted to Major. Commonwealth Gazette 8 July, 1911, p. 1651.

<sup>128</sup> M C Tenison-Woods Juvenile Delinquency, With Special Reference to Institutional Treatment, p. 53. Similar evidence was given to McCulloch at the Parsonage Inquiry. See SMH 25 January, 1934.

<sup>129</sup> Salmon to Superintendent, Gosford, 2 March, 1939. SR 8/1754.

instances of double punishment.<sup>130</sup> Boys who were taken to the Metropolitan Boys Shelter in Sydney after recapture were routinely given isolated detention.

In a book written many years later, William O'Meally, an inmate at Gosford in the 1930s, and later a notorious criminal, described punishments at Gosford as including a flogging with a strap on arrival, indiscriminate punching of inmates by staff, 'junior officers' administering a beating to absconders after recapture, caning on bare buttocks, all of which would indicate the persistence of undesirable practices.<sup>131</sup>

There were also problems at Mittagong, where a boy was so severely beaten by other inmates that he required hospitalization. An investigation by the Secretary of the Department of Public Instruction, John McKenzie, found that it was not an isolated instance. In January, 1939, the Acting Superintendent reported 'mob rule, mutiny or rebellion' led by a group of a dozen inmates.<sup>132</sup> The Secretary of the Department, Noel Salmon, actually defended some of the illegal punishment, claiming that the boy wouldn't have known the difference any way, and if he hadn't been caned, he would have escaped punishment altogether!<sup>133</sup>

The situation at Gosford was made worse after the outbreak of war in 1939. Experienced staff who went off to serve in the defence forces were difficult to replace. There were also financial stringencies, as money was diverted into the war effort. Then, in 1942, Yanco was taken over by the Commonwealth for defence purposes, and all the inmates had to be transferred to Gosford. As a result, the numbers at Gosford rose, although the increase was spread over time, and the total number was still below

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<sup>130</sup> Two boys who had absconded were charged with that offence before Narrandera Children's Court and sentenced to be returned to Gosford, but on their return, they were caned. Salmon to Drummond 29 March, 1939. SR 8/1754. In another instance at Gosford, a boy was awarded isolated detention for absconding, but later charged at the police station with absconding. Superintendent to Secretary, 5 January and 2 February, 1939) SR 8/1754.

<sup>131</sup> W J O'Meally, The man they couldn't break pp. 32-61.

<sup>132</sup> T R Sloane to Minister 22 February, 1939. SR 8/1754.

<sup>133</sup> Salmon to Drummond, 29 March, 1939, SR 8/1754.

its nominal capacity of two hundred.<sup>134</sup> In 1942 there was a serious escalation in the numbers of abscondings at all major institutions, as the following table shows.<sup>135</sup>

<b>Year</b>	<b>Gosford</b>	<b>Parramatta</b>	<b>Mittagong</b>
1939	159	18	140
1940	156	24	76
1941	155	29	88
1942 (to Sept only)	310	109	271

In retrospect, it seems remarkable, that with the excesses revealed at Yanco in 1934, the deteriorating situation at Gosford from 1937 onward, trouble at Mittagong in 1939, and the serious riots at Parramatta from 1941, there does not appear to have been any attempt by the administration of the Department to look seriously at the adequacy of the system under which institutions were operated. It was left to the Minister to initiate an inquiry by the Public Service Board into the Department in 1942. This was instituted mainly because of ‘the prevalence of abscondings’ which had reached ‘unprecedented proportions’. Because abscondings were seen as indicating a general breakdown in management, it extended to ‘the effectiveness of the present organization and control’.

The Board expressed confidence in the Director, Martin, but found that little worthwhile training was taking place at Gosford or Parramatta, blaming the war and changed societal conditions for the breakdown in control. One remedy it suggested for

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<sup>134</sup> Yanco ceased to operate in March, 1942. By 30 June, 1942, there were 194 boys at Gosford. See Annual Report, Child Welfare Department for 1942 and 1943, NSWPP 1945-1946, vol 1, p.85.



this was to second police cadets for three years at a time, to work as instructors at Gosford. This does not seem to have been implemented.<sup>136</sup> It also reported unfavourably on some of the changes instituted after the change of Government in 1941. For example, the removal of bars on windows at Gosford had been ordered, but this meant that windows in the dormitories had to be kept closed at night to prevent escapes, and as a result, conditions were stifling in summer. Its main recommendations were for 'intermediate institutions' to be established for both boys and girls, along Borstal lines. It also recommended that 'punishment houses' be constructed at Gosford and Mittagong, as well as a privilege cottage at Parramatta, as recommended by Allard twenty years before. It suggested a correspondence training scheme for institutional staff, and a re-organization of vocational training of inmates. It also favoured the establishment of an expert committee to classify juveniles committed to an institution, and to determine the time of release.<sup>137</sup>

The inquiry was completed in a very short time, and the recommendations were similar to schemes earlier proposed by Wood before his dismissal.<sup>138</sup> These findings were re-inforced by the inquiry by the Child Welfare Advisory Council into conditions at Parramatta in 1943, forced on the Government largely by adverse publicity. Evatt himself had blamed the riots at Parramatta on the oppressive nature of the regime there.<sup>139</sup> That there were so many abscondings from Gosford seemingly would have

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<sup>135</sup> 'Report of the Public Service Board under Section 9 of the Public Service Board, into the Child Welfare Department', dated 2 December, 1942. SR 14/6346.

<sup>136</sup> Secretary, Public Service Board to Under Secretary, Department of Education, 21 February, 1944. SR 6346.

<sup>137</sup> The Board suggested that the committee consist of Dr. S Jones, psychiatrist, D E Rose, psychologist, W M O'Neil, psychologist, and C T Wood, Magistrate and former Secretary of the Child Welfare Department. Where girls were being dealt with, it suggested that Dr. I Sebire, psychiatrist, and the Deputy Superintendent at Parramatta, be members. See 'Report of the Public Service Board under Section 9 of the Public Service Board, into the Child Welfare Department' p. 36 SR 14/6346.

<sup>138</sup> The Report was completed between 28 September and 2 December, 1942, by Alek Hicks and Thomas Kelly, members of the Board. SR 14/6346.

<sup>139</sup> NSWPDLA 13 October, 1942, pp. 268 -272.

indicated, at very least, that the place was not effective.<sup>140</sup> There was also evidence that some abscondings had occurred because boys had refused to engage in sexual malpractice with other inmates.<sup>141</sup> There was also some attempt to blame the troubles at Gosford on overcrowding caused by the closure of Yanco, but as Gosford was still below its capacity of two hundred boys, this lacked credibility.<sup>142</sup>

Instead of attempting fundamental change to institutional programs, the Government initially implemented those parts of the Public Service Board Report aimed at containment and more secure control. Other measures, such as privilege cottages and training, were perceived to be less urgent. In relation to boys, this was reflected in an attempt to segregate those inmates who misbehaved or were chronic absconders, and detain them in secure accommodation.<sup>143</sup> For girls, the ringleaders were sent to prison, even though Evatt had earlier stated that he was opposed to this course of action.<sup>144</sup>

To give effect to the policy of containment, in 1943, construction began, within the grounds of Gosford, of a 'sub-institution', surrounded by a barbed wire fence.<sup>145</sup> The idea was not a new one. As far back as 1897, Neitenstein had proposed that a 'special quarter' be set aside at the Carpenterian Reformatory '(to) ... be held *in terrorem* over would be offenders'.<sup>146</sup> In 1923 Bethel had proposed a sub-institution at

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<sup>140</sup> Later research into similar institutions in Britain demonstrated that there was a significant correlation between a high level of absconding and an ineffective regime. See S Millham, R Bullock & K Hosie *Locking Up Children* Saxon House, Westmead UK, 1978, p. 71.

<sup>141</sup> Letter to the Editor by Mr. A E Bennett, Secretary of the Australian Child Welfare Association *SMH* 5 February, 1944.

<sup>142</sup> *SMH* 5 March, 1944.

<sup>143</sup> Annual Report, Child Welfare Department for 1942 and 1943 *NSWPP* 1945-1946 vol 1, p. 171.

<sup>144</sup> *NSWPDLA* 1 October, 1942, p. 98.

<sup>145</sup> T A Hingston, Superintendent to Director 31 December, 1943, requesting that beds be supplied for the sub-institution *SR* 8/1754. In February, 1944, it was stated publicly that it would be ready in a few weeks. See *SMH* 5 February, 1944. Again, in November, 1944, it was stated that it would be ready in a few weeks. See *SMH* 8 November, 1944.

<sup>146</sup> F W Neitenstein: Report of 16 March 1897, 'Correspondence Respecting the Carpenterian Reformatory' *V&PLANSW* 1897 vol 7, p. 955 et seq., p. 8.

Gosford and McCulloch recommended it again in 1934.<sup>147</sup> Some time between 1932 and 1938, a detention block had been built at Gosford, but it was insufficient to deal with the problem of absconding and misbehaving inmates.<sup>148</sup>

The stated purposes were to segregate serious sex offenders and incorrigibles, but also to provide a 'powerful deterrent'.<sup>149</sup> It housed twenty boys in individual cells, and was about four hundred metres from the main institution. Life there was more spartan than in the main institution, with a higher degree of regimentation. Talking was prohibited for most of the day, and there was little activity other than work in a small vegetable garden. In effect, it was a place of secondary punishment, but with the difference that boys could be transferred to it, as punishment, without the necessity of either court proceedings or even disciplinary action under the new Child Welfare Act. There were also vague proposals to acquire several farms, in order to greatly reduce the numbers at Gosford, and to be able to segregate the inmates better.<sup>150</sup> Nothing happened, although several years later, there was talk of a property at Scheyville being acquired to relieve Gosford's problems. This, too, came to nothing.<sup>151</sup>

### *Oppressive Nature of Institution Routines*

Repressive institutional routines seem to have been the cause of many of the troubles experienced in all of the institutions in the 1930s and 1940s. Close examination of the evidence suggests that the reports of a punitive and harsh institutional culture were not

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<sup>147</sup> J E McCulloch Child Welfare Department. Report on the General Organization, Control and Administration of, with Special Reference to State Institutions pages 146 and 373.

<sup>148</sup> See 'Expenditure of Repairs etc. by Public Works Department 1/7/32 to 30/6/38' which contains an item showing expenditure of five hundred pounds at Gosford for this purpose. SR 9/6156.

<sup>149</sup> Annual Report Child Welfare Department 1940, NSWPP 1940-41, vol 1, p. 105 et seq., p. 18.

<sup>150</sup> R J Heffron, Minister for Education, SMH 8 November, 1944.

<sup>151</sup> SMH 17 February, 1946. See also Public Service Board Inquiry into J F Scully, Manager, Government Training Farm, Scheyville, SR 8/138.

exaggerated. On admission, all children had traditionally been stripped, washed and dressed in institutional clothing.<sup>152</sup> For girls this was a drab blue and brown wrap-around overall worn during the day, and some girls went barefoot.<sup>153</sup> At Gosford, khaki clothes had replaced the naval dress formerly used, but underwear was not issued, and clothes were only changed weekly.

At Parramatta, girls were not issued with brassieres, and briefs were made from unbleached calico, apparently so that they could be boiled, and so be used interchangeably between inmates. They must have been uncomfortable, since underwear was only changed three times a week, the soiled garments being washed ‘under supervision’, no doubt to detect signs of menstruation.<sup>154</sup> Sanitary pads, although widely available from the 1920s, were not used, but wads of cotton wool.<sup>155</sup> A very close watch was maintained on the menstrual cycles of girls, through a card system

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<sup>152</sup> Regulation 3 under the Reformatory Schools Act, 1866. See also Rules for the Guidance of Officers of the Industrial School for Girls, Parramatta and of the Girls Training Home Department of Education, Sydney, 1917

<sup>153</sup> See M C Tenison-Woods A Report on the Girls’ Industrial School Parramatta, NSW: A Study in the Principles and Practices of Child Welfare Administration, p. 14. A similar garment, with similar colours, was used at Shaftesbury Reformatory, according to the SMH 14 April, 1889. Inmates of Borstals in Britain also wore brown or blue uniforms to denote their status. See S Barman The English Borstal System P S King & Son London, 1934, pp. 172-173. In the Victorian era in Britain, women at Lock Hospitals which treated prostitutes for venereal disease, and also those at Magdalens, wore uniforms, often in the penitential colours of blue and brown. See P Bartley Prostitution and Reform in England 1860-1914 Routledge, London, 2000, p. 38. See also W Acton Prostitution Considered in its Moral, Social and Sanitary Aspects in London and the other Large Cities and Garrison Towns John Churchill and Sons, London, 1870, p. 85. Women in Catholic Refuges in Sydney in the late Nineteenth century wore uniforms to help ‘conceal their individuality’. See J Godden ‘Philanthropy and the Woman’s Sphere, Sydney 1870-circa 1900’ Ph D Thesis, Macquarie University 1983, p. 123. Earlier, women at the Female Factory, located next door to the Parramatta site, wore a brown and blue uniform. See Governor L Macquarie, “Rules for Female Convicts in New Factory, Parramatta, 21 January, 1821, Bonwick Transcripts, Series 1, BT Box 26 (2134) Mitchell Library, p. 6075. See also reports of girls appearing barefoot in court. SMH 3 June and 19 June, 1961.

<sup>154</sup> See The Sun, 22 March, 1947, for the use of calico briefs. See also M C Tenison-Woods A Report on the Girls’ Industrial School Parramatta, NSW: A Study in the Principles and Practices of Child Welfare Administration, p 14., and Instruction of 1 May, 1945 “Instructions to Staff Book, p. 28, SR 3/3194. Modern underwear was not introduced until 1965. See Superintendent to Under Secretary 23 August, 1965, Local file “Staff Establishment”, in Parramatta Girls Training School Records.

<sup>155</sup> For the invention and use of sanitary pads in the community see J Delaney, M J Lupton, E Toth The Curse: A cultural history of menstruation. University of Illinois Press, Chicago, 1988, p. 129. Sanitary pads were used for the first time at Parramatta in 1964. See Annual Report, Superintendent, 1964, copy in Training School for Girls Parramatta Records.

which recorded meticulously the dates of visits to the 'retiring room'.<sup>156</sup> Any girl who did not 'receive attention' for a month was required to see the doctor, for the early detection of pregnancy.<sup>157</sup> Girls had no lockers in which to store personal belongings.<sup>158</sup> Letters could be written once a week, but all incoming and outgoing mail was censored.<sup>159</sup> Visitors were allowed once a month, but unprivileged inmates (those who had lost enough 'points' to be awarded extra duties) could not have visitors. After visits, inmates were searched.<sup>160</sup>

Most of the activities in institutions were controlled by bells, and inmates marched from one activity to the next, no doubt following the military tradition established in the industrial schools established in the nineteenth century. Ramsland and Cartan claimed that there was, with the opening of Gosford in 1913, a shift away from militarism.<sup>161</sup> However, there is little evidence to support this. In 1933, Tenison-Woods described the discipline used there as modelled on military service.<sup>162</sup> Inmates continued to march to activities and to be counted at 'musters' at regular intervals each day.<sup>163</sup> Some staff had a background in command services, and this tended to preserve an air of military routine.<sup>164</sup>

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<sup>156</sup> Instruction dated 1 May, 1945, Instructions to Staff Book, p. 28, SR 3/3194. The cards were referred to as 'Retiring Room Cards'. SR 3/9057.

<sup>157</sup> Instruction dated 11 July, 1949, Book of Instructions to Staff, SR 3/3194.

<sup>158</sup> See 'Report of the Public Service Board under Section 9 of the Public Service Board, into the Child Welfare Department', dated 2 December, 1942. SR 14/6346.

<sup>159</sup> Instruction dated 4 December, 1942, Book of Instructions to Staff, SR 3/3193.

<sup>160</sup> This practice continued until the 1960s, when, for example at Parramatta, random searches replaced the searches of every inmate. Instruction dated 11 October, 1964, 'Amendments to Set Rules', Rule Book, 1964-1966, MS in Parramatta Girls Training School Records.

<sup>161</sup> J Ramsland & G A Cartan, 'The Gosford Farm Home for Boys Mt. Penang, 1912-1940', p. 79

<sup>162</sup> M C Tenison-Woods Juvenile Delinquency, With Special Reference to Institutional Treatment, p.52

<sup>163</sup> The author personally observed these activities as being the standard routine at all institutions, from the 1950s to 1980s.

<sup>164</sup> Annual Report, Child Welfare Department, 1926-1929 NSWPP 1930-1931 vol 4, p. 755. A number of staff at Gosford had served in the forces in 1914-1918. Daphne Davies, Deputy Superintendent at Parramatta in the 1940s, was a former policewoman. See SMH 19 June, 1961.

During most activities, talking was not allowed, especially in dormitories at night.<sup>165</sup> Most doors were locked, and dormitories were locked immediately after inmates left them and at night.<sup>166</sup> Meals were generally sufficient, but lacking in variety. For example, a seven-day menu cycle applied, so that, on the same day each week, the same meal would be served. This practice had remained unchanged since at least 1914, when the same meals were served on each day of the week.<sup>167</sup> Basic facilities were often lacking, for example, in 1939, boys at Gosford shared one cup between three.<sup>168</sup> Numbers were used to identify dormitories, work companies, cottages, and inmates, a practice which seemed to emphasize the impersonal nature of the system.<sup>169</sup>

Punishments were officially those allowed by the 1939 Act, but there were numerous indications that other forms of punishment were also administered. For example, the Superintendent at Parramatta found it necessary to warn staff in 1948 not to carry sticks.<sup>170</sup> Hair cropping was practised, and although McCulloch had condemned the practice in 1934, leading to its abolition at Mittagong, it was still being

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<sup>165</sup> Disciplinary Records show inmates frequently being punished for 'T.O.S.' (talk on silence). For early instances of this, see Transcript of Evidence given at Public Service Board Inquiry at Parramatta Girls Reformatory, May 1898, SR 8/300.1 p. 66

<sup>166</sup> Superintendent's Instructions to Staff, Parramatta, 18 September, 1947 SR 3/3193.

<sup>167</sup> See Diet Books, Parramatta, 1947-1969, Records of the Parramatta Girls Training School. See also Annual Report, Industrial School for Girls, Parramatta, 1914, NSW Government Printer, 1915, p.16. The author visited Gosford regularly during 1960, always on a Thursday, and the midday meal was always corned beef.

<sup>168</sup> T R Sloane, Official Visitor, Report in 1939, SR 8/1754.

<sup>169</sup> Dormitories at Parramatta were not given names until 1973. See Superintendent to Chief of Residential Care Division, 21 January, 1974, Training School for Girls Parramatta, Local file . (copy in the possession of the author). During this period at Mittagong homes for delinquents were referred to by number, although the homes for wards were referred to by name, for example Turner and Waverley Cottages. William O'Meally claims that numbers were used for boys at Gosford in 1934. See W.J.O'Meally, The man they couldn't break, p. 33

<sup>170</sup> W B Simms, Superintendent, Instruction dated 29 September, 1948. See Muster Book, Parramatta Girls Training School Local Records. The practice of staff carrying sticks at Parramatta had been commented upon as far back as 1898. See evidence of Thomas Dryhurst, Superintendent, to Public Service Board Inquiry held in May 1898 . SR 8/300.1

used as a punishment at Parramatta in 1948, as were cold baths.<sup>171</sup> There were claims that inmates were given lengthy periods of unlawful isolated detention.<sup>172</sup>

The Official Visitor complained of boys being bashed at Mittagong and Gosford, and there were further claims in Parliament and the press of bashings at Parramatta and Gosford.<sup>173</sup> There was also a general practice of all absconders being placed in isolated detention, regardless of any other penalty which might follow.<sup>174</sup> In summary then, the institutions followed a rigid, unchanging routine which was harsh, impersonal, and contained many elements which were not only unlawful but had the effect of degrading the lives of institution inmates.

The reasons for this were complex. There was certainly the 'institutional culture' factor. Those charged with managing inmates were very reluctant to make changes to lessen the harshness of the routine, because the conventional wisdom among instructional staff was 'if you relax the discipline you'll never control this type...'.<sup>175</sup> Even when reforms were attempted, very often the old system persisted covertly or was tolerated by management. As Tenison-Woods put it, the smooth operation of an institution had priority over inmate welfare.<sup>176</sup>

There was also an economic factor. From the beginning of the Depression in 1929, through to the end of World War II, there was very little money available to spend on juvenile corrections. This might explain some of the financial stringency

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<sup>171</sup> W B Simms, Superintendent, Instruction dated 29 September, 1948. See Muster Book, Parramatta Girls Training School Local Records. Hair cropping was at this time still being used as a punishment for repeat absconders from approved schools in Britain. See Great Britain Home Office (M Curtis, chair) Report of the Care of Children Committee Cmdnd 6922, HMSO, London, 1946, p. 99.

<sup>172</sup> Clive Evatt, Minister for Education, NSWPDLA 13 October, 1942, p. 274.

<sup>173</sup> T R Sloane, Official Visitor reported bashings at Gosford and Mittagong in 1939. See SR 8/1754. See claims by Mr. Lamb MLA that girls were bashed at Parramatta NSWPDLA 13 October, 1942 p. 278. There were claims of boys being bashed at Gosford for refusing sex SMH 5 February, 1944. Further allegations of bashing at Parramatta were made by Mrs Fowler MLA NSWPDLA 13 March 1945, p. 2559.

<sup>174</sup> Superintendent's Instructions to Staff, Parramatta, 18 September, 13 December, 1945 SR 3/3193

<sup>175</sup> D J McLean Children in Need, p. 129.

<sup>176</sup> M C Tenison-Woods Juvenile Delinquency, With Special Reference to Institutional Treatment, p. 65.

evident in the running of institutions, but it was hardly justification for some of the practices followed, for example, in relation to underwear and sanitary pads, hair cropping and the dull routine. In retrospect, the use of inmates in the discipline of other inmates seems difficult to justify, but one possible excuse for this, in relation to Gosford and Yanco at least, was the inadequacy of staffing. The Public Service List for 1936 shows only four instructional staff (this included two specialist instructors, in carpentry and bootmaking) at Gosford, and none at all at Yanco.<sup>177</sup> Making allowances for teaching staff, who were employees of the Education Department proper, and the need to provide round the clock staffing, this meant that these institutions were seriously understaffed, and would have had to rely on local casual staff, who were not public servants. With so few experienced staff available at Gosford and Yanco, it is little wonder that Superintendents continued to use inmates in this way, since they probably had no alternative.

### *Conclusion*

The period after the Yanco inquiry had begun with high hopes. There was a new Secretary of liberal views committed to reform. In the wake of the Yanco scandal, there was the prospect of new legislation designed to ensure that such excesses would not be repeated. The period covered by this chapter, however, came to a close with the system once more in disarray. Repeated riots at Parramatta were met with prison sentences, and a solution to mass abscondings at Gosford was sought in building a fenced compound. Even when one takes into account some of these mitigating factors, it seems undeniable that the principal cause of the major disturbances which occurred was the oppressive nature of the routines followed, routines which, in some

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<sup>177</sup> Public Service List, 1936, NSW Government Printer, Sydney, 1937, p. 112.



respects, had hardly changed at all since they were instituted in the 1860s.

Boys dining in the open at Gosford-*courtesy State Library*



‘Cottage home’ at Mittagong-*courtesy State Library*

## **CHAPTER 6**

### **THE SYSTEM UNDER FIRM CONTROL ?**

#### **1944 -1961**

The problems facing the juvenile corrective system in 1944 were considerable. The administration of the Department was at a low ebb, with five different Directors within the space of ten years. A Report by the Public Service Board in 1942, which focused on the juvenile correction system, had found much to criticise. In 1944 there were calls for a Royal Commission, and the Department was even under attack from its own Advisory Council. It was subject to mocking criticism in the press. Its officials were poorly trained and for many years it had been starved of funds since the beginning of the Great Depression in 1929, right through to the end of the war in 1945. The Department lacked any capacity to segregate delinquents in institutions, and faced major problems of control at Parramatta, where there had been serious riots. There was also a serious absconding problem in virtually all institutions. Its Minister, Clive Evatt, had been criticised for ineptitude and inaction, and its Director, George Martin, was under attack from the government's own advisory council.

The government's response was to appoint a new Minister, Robert Heffron and a new Director, Richard Hicks. Together they set out to reform the administration of the Department. In particular, the opening of new institutions for boys enabled better classification and segregation of different classes of offender. However, similar efforts

were not undertaken in relation to girls, even though the problems in girls institutions were far more serious. The methods used to counter the problems of riots and large-scale abscondings were coercive. There was no attempt to reform the excessively harsh disciplinary systems, many features of which had been in use since the previous century.

Some attempts were made to provide a more professional service, notably in improved staff training. That improvement was limited by its sub-professional nature, and did not extend to institution staff, where the need was arguably greatest. The basic form of inmate training, however, did not change. Nor was there any investment of resources in diverting juveniles away from institutional care, even though developments of this kind had begun in Britain. In the 1950s, when inmate populations expanded rapidly, there were no imaginative attempts to reduce the numbers. The whole system once again came under pressure, and the failure to reform the treatment and disciplinary systems resulted in further serious disturbances.

### *Richard Henry Hicks*

Hicks was not chosen because he had any expertise in child welfare, in fact he had none. However, he did have an excellent record as an efficient administrator and trouble-shooter. His early experience was in the Department of Justice, where he had served as a Clerk of Petty Sessions in many country towns, and had qualified as a solicitor. In 1933, he was made a Public Service Board Inspector, a recognised stepping-stone to higher appointments. He became Chief Clerk at the Chief Secretary's Department, and during the war, was appointed Director of National Emergency Services, where his Minister was Robert Heffron. Heffron was impressed

with Hicks' ability, and when he succeeded Clive Evatt as Minister for Education appointed Hicks to head the Child Welfare Department.

Hicks had a rather dour personality and puritanical outlook, but a tremendous capacity to get things done. His success came from the connections he had at the Public Service Board, at the time a very powerful central agency of the Government, and the excellent working relationship he enjoyed with Heffron. In the first decade of his administration, from 1944 to 1954, the number of inmates of institutions rose only slightly, some seven per cent. Thus he was able to concentrate on the administrative reform of the Department. He was convinced that the programs it was meant to deliver could not be effective unless its administration and executive supervision over institutions improved. To this end, policy was determined at the executive level rather than locally, through a series of administrative instructions on a wide range of issues.

After 1954, however, tremendous pressure built up in the juvenile correctional system, by virtue of large increases in the numbers of juveniles in institutions, which rose by sixty per cent, to more than a thousand, by 1963.<sup>1</sup> Hicks' innate conservatism was then revealed, because instead of looking to alternatives to incarceration, aimed at preventing overcrowding, he simply built more institutions. Thus Hicks, while regarded by contemporaries as having been very successful, concentrated on trying to make the existing system work better, when clearly the need was for a fundamental reappraisal.

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<sup>1</sup> Inmate Numbers in Institutions: 1954 to 1963 were, according to figures given in Annual Reports of the Department, as follows:

Year	no of girls	no of boys	total
1954	94	563	657
1963	228	956	1054
percentage increase	142 %	72 %	60 %

### *Absconding*

The most significant problem focus was the high level of absconding. A 'sub-institution', known locally as 'the compound', had been completed in 1944 within the Gosford campus. Its purpose was to provide a more secure place of detention for those who absconded, as well as punishment for those who misbehaved. However, there were problems. The perimeter fence, consisting of a 2.7m paling fence topped with barbed wire, was not substantial enough to prevent escapes and there was also a design fault which made escape through a set of windows easy.<sup>2</sup> In fact, on the very day it was officially opened by Evatt, some boys demonstrated, to the chagrin of officials, that it was easily scaled.<sup>3</sup>

Another problem was that, with it being located so close to the main institution, it proved impossible to effect complete isolation. The movement of both staff and inmates between the two locations meant that there was a ready flow of information and gossip to the main institution about what was going on in the annexe, for example, which inmates were 'doing it hard'. Boys who emerged unbroken were welcomed as heroes on their return to the main institution, and this produced episodes of instability in the main population.

In 1944, consideration was once again given by the Government to the creation of a Borstal system, which would have provided 'intermediate' treatment for young offenders in the age range sixteen to twenty-one years. A committee was set up to look at this question. Officially, the task of the committee was to look at the broad question of whether New South Wales should follow the example of the United

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<sup>2</sup> For details of the fence, see R J Heffron, NSWPDLA 7 November, 1944, p. 750. For particulars of the design fault, see V A Heffernan, undated letter to author, circa 1989. Copy in possession of the author.

<sup>3</sup> An account of this is given in a letter dated 20 September, 1999 from Kenneth Ritchie of Beecroft. Ritchie was the nephew of Basil Topple, a senior instructor at Gosford. Copy of letter in possession of the author.



Kingdom in relation to the reforms contained in the Criminal Justice Bill (UK) 1938, which had been put to one side for the duration of the war. However, a critical feature of its agenda was to find a solution to the problems besetting the government in juvenile institutions. Their 1946 report covered prison reform, mental defectives and the ‘treatment of young offenders... between the ages of 16 and 23’.<sup>4</sup>

The Committee’s report favoured adoption of the British proposals, which were essentially aimed at diverting people from the prison system. In terms of alternatives to incarceration, they included extension of the probation system to adults, juvenile attendance centres and residential probation houses. On the other hand, reformatory sentences ranging from minimum of two years to maximum of four years for offenders aged twenty-one to thirty were recommended. There was also to be ‘preventive detention’ for up to ten years for serious offenders. Some of the Committee’s proposals are outside the scope of this work, but it did recommend that Borstals be established for offenders aged sixteen to twenty-three. This system was to be called the ‘Young Persons Rehabilitation Scheme’. It was proposed to use Berrima Gaol as the first such centre, the critical advantage of this prison being that it would be ‘large enough to accommodate those at present in child welfare institutions...’. Berrima was a grim old colonial prison. Its selection indicates clearly that the government saw coercion as the solution to the problem of what to do with rebellious juvenile offenders. If Berrima proved successful, it was foreshadowed that Emu Plains might be added.<sup>5</sup>

The main features of the scheme were that it was to be administered through a Directorate within the Justice Department, responsible to the Comptroller-General of

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<sup>4</sup> ‘Report of Prison Reform Committee’, 1945-46, SR 7/7133.2. See also W J McKell ‘The Borstal System (Great Britain) for the Rehabilitation of Young Offenders’ NSWPP 1945-46, vol. 1., p. 537 et seq., p. 1. The Committee was chaired by Alek Hicks, Member of the Public Service Board. The other members were Richard Hicks, Melville Nott, Public Trustee, and Roy Kelly, Under Secretary of Justice. Mc Kell to Downing, 19 October, 1944, SR 7/7241.1

<sup>5</sup> W C Wurth to Premier, 11 October, 1946, SR 7/7133.2.

Prisons, and assisted by a board headed by a District Court Judge. It would cater for those aged sixteen to eighteen who were not suitable for, or amenable to training in child welfare institutions. There were also to be ordinary prisoners aged eighteen to twenty-three. Committals would be for three years, but there was provision for release on parole at the discretion of the board. This form of sentencing followed the ‘child saving model’ first applied to reformatory schools and later to adults in the Borstal system. Parole supervision was to be provided, on an agency basis, by the Child Welfare Department. This was because, at the time, it had a decentralised field service, which the Justice Department did not.<sup>6</sup>

The Attorney General, Reginald Downing, who was responsible for prisons, was not enthusiastic. Earlier, although endorsing the concept of a Borstal, he expressed the view that ‘public confidence would be shaken’ if Borstals were constituted separately from the Prisons Department.<sup>7</sup> Later he advised the Premier that excellent results were being obtained with young prisoners at Emu Plains and he doubted whether the proposed system could do any better.<sup>8</sup> Downing and McKell were very close, and it would seem that the Attorney’s view, that the existing provisions within the prison system were sufficient, prevailed.

Despite the Committee’s recommendation, no Borstal was established. Of course, it would still have been possible to set up a Borstal administered by the Child Welfare Department, an option considered at the time. It was not followed, no doubt because it would have been a rather hazardous course, given the demonstrated inability of the Department to manage Gosford and Parramatta.<sup>9</sup> The Child Welfare Department was then obliged to seek yet another solution to the problem, particularly

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<sup>6</sup> The detailed proposals for the system are set out in the report of the Committee. SR 7/7133.2.

<sup>7</sup> R R Downing, Minute dated 26 February, 1945, SR 7/7241.1.

<sup>8</sup> R R Downing to Premier 28 May, 1946. SR 7/7133.2.

since the sub-institution at Gosford had proved ineffectual. However, the problem of absconding was not confined to Gosford. Abscondings at Mittagong were running at thirty-two per month, a very high figure, considering there were only about one hundred and ninety delinquents there in 1942.<sup>10</sup>

In fact the overall absconding situation was getting worse. In 1942, an inquiry by the Public Service Board found that there had been a very large increase in abscondings in that year.<sup>11</sup> In the absence of a Borstal system which would have provided for the age group sixteen to twenty-one, the Department moved in 1947 to establish a much more limited 'intermediate institution'. This was the separate, closed institution, at Tamworth, catering only for those dealt with in the juvenile system aged sixteen and above, the problem age group. Those over eighteen were left to be dealt with in the ordinary prison system.

The proclamation constituting Tamworth was unusual, since all other institutions since the passage of the 1939 Act had been designated as either 'schools' or 'shelters', as the legislation required. This was constituted as neither, seemingly in order to emphasise that its purpose was to deter the sort of behaviour that had been taking place at Gosford. Its very name, 'The Institution for Boys, Tamworth' was clearly meant to confirm the notion that its purpose was that of punishment and deterrence. Because the wording of the proclamation did not follow strictly the requirements of the Act, it is arguable that it was not properly constituted by law, and

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<sup>9</sup> W C Wurth, Chairman, Public Service Board, to Premier, 16 May, 1946. SR 7/7133.2.

<sup>10</sup> Evidence given by Horace Moxon, Research Officer, also exhibits B2 and JJ to Inquiry into the Child Welfare Department, conducted by Alek Hicks, Public Service Board Member, 1942. SR 8/1182.

<sup>11</sup> 'Report by the Public Service Board following investigation in terms of Section 9 of the Public Service Act, 1902, into the general workings of the (Child Welfare) Department with particular relevance to the prevalence of abscondings from child welfare institutions and to the effectiveness of the present organisation and control having regard to the aims of each institution' 2 December, 1942 SR 14/6346.

therefore all those who were transferred there between 1947 and 1981 were unlawfully detained.<sup>12</sup>

Tamworth had been built in 1881 as a colonial prison for adults. The newly proclaimed institution had accommodation for twenty boys, held in individual cells, and the institution was surrounded by a 5.5 m wall.<sup>13</sup> Absconding was virtually impossible.<sup>14</sup> Its purpose was stated as being to provide for persistent absconders, those who failed to conform in open institutions, those 'whose record and conduct warrant special precautions', and as a means of segregating sophisticated and incorrigible boys.<sup>15</sup> The routine was described as being 'similar to meticulous naval standards'. It was a very tough life, arguably more harsh than in an adult gaol. Inmates worked on making sennet mats and brushware. They were allowed only one hour per day recreation, during which talking was permitted. At other times silence was enforced. 'Punctilious observance' to rules was demanded, and all tasks were performed at the double, with boys quick-marching and not permitted to look to right or left. Instructions to staff as to the management of inmates described a system

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<sup>12</sup> Government Gazette 26 September, 1947, p. 2239. Section 49 of the Child Welfare Act, 1939, gave the Governor power to constitute as institutions-

(a) 'shelters';

(b) 'schools for the reception, detention, maintenance, discipline, education and training of children and young persons committed to such institutions'.

The wording of this proclamation followed clause (b), but substituted the word 'institution' for 'school', so it was constituted neither as a school or a shelter, contrary to the legislative requirement. There does not appear to be any legal precedent bearing directly on the issue, but in an English case, a prisoner who was wrongly classified so that he was held in a different part of the prison from that in which he could lawfully be confined was held to be entitled to damages for trespass to the person. See *Cobbett v. Grey* (1850) 4 Exchequer 729. See also *Osborne v. Milman* (1886) 17 Queen's Bench Division 514 and (1887) QBD 471 CA.

<sup>13</sup> R F Smith, 'Institution for Boys, Tamworth: History since 1876' roneo notes, undated, copy in the possession of the author. From 1881 to 1943, the prison was administered by the Prisons Department, and was then a military prison from 1943 to 1946.

<sup>14</sup> No inmate escaped from Tamworth until the 1970s, when the program changed, and boys were allowed recreation in an area outside the main walls, but enclosed by a high wire fence.

<sup>15</sup> Annual Report, Child Welfare Department, 1950, NSWPP 1950-51-52, vol. 1, p. 433 et seq., p. 21.

characterised by punishment of the slightest infringement of rules and ‘permanent observation’.<sup>16</sup>

There were more staff per inmate than at Gosford, approaching one for each inmate. Boys slept on palliasses in their cells, which were freezing in winter and very hot in summer. Although they couldn’t escape, some boys rebelled by climbing on the roof of the cell block. They were brought down by the use of hoses. Punishment consisted of solitary confinement and meal deprivation.<sup>17</sup> At the end of a term at Tamworth, usually several months, boys were taken back to Mt. Penang to complete their sentences.

According to Vincent Heffernan, Superintendent at Gosford from 1944, its purpose was ‘to stop them’ and it certainly did that.<sup>18</sup> However, the purpose went further than that. If the only reason for Tamworth was to deal with habitual absconders, then an institution with high walls, but a more humane routine within those walls would have sufficed. The harsh routine instituted at Tamworth makes it clear that those who rebelled at or absconded from Gosford were not simply to be confined, but in fact punished by transfer to Tamworth. After a stint there, most boys returned to Gosford, ‘turned into automatons and cowering in front of any staff member’.<sup>19</sup> They were thus paraded as models of conformity, demonstrating the effectiveness of the place, and acting as a deterrent to other inmates.

The decision to operate a place like Tamworth was brought about by the inability to control rebellious inmates at Gosford, but its harsh disciplinary features were very much against the spirit of the reforms advocated by McCulloch. He had

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<sup>16</sup> The instructions are reproduced at the end of this chapter, from evidence given at the Royal Commission into Black Deaths in Custody. See Report of the Inquiry into the Death of Malcolm Charles Smith.

<sup>17</sup> D J McLean Children in Need NSW Government Printer, Sydney, 1956, p. 145

<sup>18</sup> V A Heffernan, undated letter to author, circa 1989. Copy in possession of the author.

roundly condemned the system of ‘coercion, flat commands, rigid routine and unquestioning obedience’.<sup>20</sup> Once Tamworth began to operate effectively, there was no further mention of Borstals, since the absconding problem at Gosford seemed at last to be under control. Tamworth also had another advantage. Boys were transferred there by administrative action only, thus avoiding court proceedings.

The sub-institution at Gosford was then converted into a privilege cottage, where boys who had progressed well under the points system were rewarded with individual rooms, and a more relaxed discipline. The decision to set up a secure unit with a harsh punitive purpose was by no means out of step with developments in other countries. In 1948, secure detention centres, which were explicitly punitive, were established in Britain, within the prison administration. A few years later, a ‘penal borstal’ opened at Hull for recidivists, hardened offenders and persistent absconders. The rationale for such centres was much the same as in New South Wales, increased abscondings and violence. By the early 1960s, there was a general trend in Britain, Europe and some States of the USA to provide more secure units for children.<sup>21</sup> It was significant that, even though the committee which reported in 1946 had recommended the adoption of a number of diversionary measures, no action was taken by the Child Welfare Department to establish any of them.

### *Classification*

One of the main problems facing the new Hicks administration was the absence of any capacity to classify and segregate institution inmates. All the other institutions which

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<sup>19</sup> Royal Commission into Aboriginal Deaths in Custody: Report of the Inquiry into the Death of Malcolm Charles Smith, p. 29.

<sup>20</sup> J E McCulloch ‘Child Welfare Department. Report on the General Organisation, Control and Administration of, with Special Reference to State Institutions’ NSWPP 1934-35, p. 135 et seq., p. 123.

had provided some capacity to classify adolescent boys had closed: Raymond Terrace in the late 1920s, Narara in 1934, the truant school at Guildford in 1939 and Yanco in 1942. As a result, Gosford had become the only institution for this class of boy, with Mittagong taking the younger ones. The position was worse for girls. In 1939, La Perouse, which had a capacity for fifty girls and had provided a means of segregating the better behaved and less sophisticated girls, had closed largely because of falling numbers at Parramatta. The Department had no regard to the benefits of segregation. It was simply that operating two institutions was uneconomical when all the girls could be accommodated in one.<sup>22</sup>

Thus, the situation had reverted to that which obtained before the First World War, and which had been the subject of such concern to Mackellar at that time. Although boys at Gosford were divided into divisions, largely based on age, this system did not provide sufficient scope for segregating offenders who were regarded by the Department as 'less sophisticated'. This term was used to refer to a class of boys who were not experienced criminals, were often less intelligent, or even intellectually disabled. Apart from the need to keep such boys separated from others to avoid their being influenced by those with extensive criminal experience, it was difficult to manage these different types of boys in one work group, since the smarter ones tended to exploit the less intelligent ones.

This class of inmate posed a continual problem. One of the recommendations of the Public Service Board inquiry into the Child Welfare Department in 1942 was that

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<sup>21</sup> S Millham, R Bullock & K Hosie Locking Up Children Saxon House, Westmead UK, 1978, pages 1,21,26,57. For the establishment of the 'penal borstal' at Hull in 1950, see R Hood Borstal Re-assessed, Heinemann, London, 1965, p. 78.

<sup>22</sup> Numbers at Parramatta, which had been in excess of 150 for most of the 1920s, had declined during the 1930s, and by 1942, had reached 64, the lowest for many years. For reference to the falling numbers at La Perouse, see Annual Report, Child Welfare Department, 1938-39 NSWPP 1938-39-40 vol. 1., p. 1037 et seq., p. 19. For details of closure, see Annual Report, Child Welfare Department, 1961, NSWPP 1961-62 vol. 1, p. 233 et seq., p. 13.

there should be closer investigation of the question of young offenders who were 'mentally defective'. A Committee, chaired by Alek Hicks, who had conducted the original Public Service Board Inquiry, reported in 1946. It recommended that a new class of institution be established to cater for juvenile offenders who were 'mental or social' defects and who were not suitable for training in existing delinquent institutions. Those of this class over eighteen years of age would be cared for by the Department of Health.

It was also proposed that the definition of mental defect contained in Part IX of the Child Welfare Act be widened to include 'social defects'. The suggested definition was vaguely worded and very wide in its potential scope. A clear intention was to deal with the problem of 'sexual perverts' being released from Child Welfare institutions into the community at large.<sup>23</sup> Nothing at all seems to have come of these recommendations, so institutions continued to receive intellectually disabled children, many of whom were unable to cope with the demands of the exacting routines.

In 1945, steps were taken to segregate these 'less sophisticated' boys in a new institution. In the absence of any action on the recommendations of the Hicks Committee, it could only be constituted under the existing legislation. 'St. Heliers', a

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<sup>23</sup> Initially, a committee was established under the chairmanship of Edward Challoner, Assistant to the Director of the Child Welfare Department. It included Dr. G Phillips, Lecturer in Psychology at the Sydney Teachers College, Mr. C Denton, Stipendiary Magistrate and Dr. G Ewan, Deputy Inspector General of Mental Health. The report of this Committee was referred to the Child Welfare Advisory Council, which also produced a short report. Both of these reports were then considered by yet another Committee, chaired by Alek Hicks. Its members were Richard Hicks, Professor Tasman Lovell, chairman of the Child Welfare Advisory Council, Melville Nott, Public Trustee, Dr. G Ewan, a member of the earlier committee, and Dr. H North, Deputy Director of the School Medical Service. A person with a 'social defect' was defined as one who was:

- '(a) emotionally unstable; or
- (b) given to impulsive behaviour; or
- (c) lacked customary standards of good judgement; or
- (d) failed to appreciate the consequences of his actions'

together with 'strong, vicious and criminal propensities' rendering him 'dangerous to other persons and a menace to public safety'.

See 'Report of Committee Constituted to Consider the Question of Mental Deficiency in Relation to Offences against the Law by Juveniles and Young Persons, 5 June, 1946'. Unpublished Manuscript. Copy in Mitchell Library



grazing property near Muswellbrook was acquired, and four boys transferred from Gosford.<sup>24</sup> Its purpose was to relieve Gosford, but the initial impact on Gosford was minimal because of the small numbers, the planned expansion apparently prevented by materials and manpower shortages.<sup>25</sup> By 1950, the numbers had only risen to ten.

Three more cottages were opened in 1954, together with a hospital block, administration building, school, manual training room and kitchen. Boys received some rudimentary training in farm work. The farm consisted of 1300 acres, with cattle, sheep, fodder crops and vegetables.<sup>26</sup> Two of the cottages accommodated twenty boys each in six-bed dormitories. In the third, designed to operate as a pre-discharge privilege cottage, boys had individual rooms. St. Heliers was for 'unsophisticated' boys who were too old for Mittagong, that is, over fourteen years.<sup>27</sup>

This was a significant step for several reasons. In the first place, it went some way towards removing this class of boy from the Gosford population, and in turn provided some capacity for better classification and segregation of the Gosford population.<sup>28</sup> Secondly, it was the first time that an attempt had been made to operate a juvenile corrective institution for older boys on what was claimed to be the cottage system, using houseparents. In one sense, it gave effect to the proposals for 'family system' cottages that Sir Charles Mackellar had advocated without success nearly fifty years before, although the 'house' system may have been copied from that used extensively in approved schools in Britain.<sup>29</sup>

There were some aspects of St. Heliers which distinguished it from an ideal cottage system, one being that the cottages were located in very close proximity to each

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<sup>24</sup> Annual Report, Child Welfare Department, 1945, NSWPP 1945-46 vol. 1, p. 149 et seq., p. 8.

<sup>25</sup> Annual Report, Child Welfare Department, 1946, NSWPP 1947 vol. 1, p. 1 et seq., p. 10.

<sup>26</sup> Annual Report, Child Welfare Department, 1946, p. 10.

<sup>27</sup> Annual Report, Child Welfare Department, 1954, NSWPP 1954-55, vol. 1, p. 427 et seq., p. 17.

<sup>28</sup> Annual Report, Child Welfare Department, 1950, NSWPP 1950-51-52, vol. 1, p. 433 et seq., p. 21.

other, as well as to the Superintendent's office. Also, all cooking was done centrally. These factors tended to detract from the sort of 'homely' ideal which the cottage system was meant to inculcate. Nevertheless, it was a break away from the large dormitory scheme which operated at Gosford, and indeed all other institutions for adolescents since 1866. Despite these positive features, the continuing pressure of numbers meant that there was no lessening of the classification problem at Gosford. In 1970, boys of low intelligence, on their first committal were still being mixed at Gosford with 'hardened types'.<sup>30</sup>

A further expansion of segregation capacity occurred when a property was acquired for a boys truant school at Burradoo.<sup>31</sup> 'Anglewood' was an impressive residence, set among magnificent gardens in one of the best parts on the Southern Highlands. Truants had previously been accommodated in Turner Cottage at Mittagong, and had attended the local public school, as distinct from the delinquents there, who went to the Lower Mittagong School, reserved specifically for them.<sup>32</sup> After the construction of an additional dormitory block, Anglewood opened with a capacity of seventy-five, in 1946. All truants were then transferred from Mittagong. Anglewood was also described as consisting of two 'cottages', each supervised by a married couple, the inference being that it would operate on the 'cottage system'. However, they were located right alongside each other, and the numbers in each cottage were so large, thirty in one and forty-five in the other, that they could hardly be said to emulate family life.<sup>33</sup> Nevertheless, it was a step forward, since truants were removed from the association with both delinquents and wards which was inevitable at

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<sup>29</sup> Great Britain Home Office Report of the Care of Children Committee (Curtis Report), HMSO London, 1946, p. 92..

<sup>30</sup> Royal Commission on Aboriginal Deaths in Custody: Report of the Inquiry into the Death of Malcolm Charles Smith, p. 25

<sup>31</sup> Clive Evatt, Minister for Education, SMH 5 February, 1944.

<sup>32</sup> V A Heffernan 'Notes on the History of Mt. Penang' unpublished manuscript, 1989, p. 13.

Mittagong. Anglewood was also different in that it was constituted as a special school under the Public Instruction (Amendment) Act, 1916, and so only truants dealt with under that Act could be sent there.

In practice, this meant that Anglewood was used for those boys whose main problem was considered to be school-related. Other boys who, although committed for school default, were considered to have criminal tendencies, or to pose control problems, were sent to ordinary institutions. Prosecution of a child as neglected on the ground that he failed to attend school regularly, under Section 72(o) of the Child Welfare Act, 1939 was frequently used in preference to the other definitions of neglect in the Act, because school default was much easier to prove.<sup>34</sup>

Another advance came with the opening of 'Yasmar', a remand centre at Ashfield, in 1946.<sup>35</sup> Its establishment was controversial. Local residents mounted a campaign against the location of such a place in a residential area, and it was also opposed by the local council.<sup>36</sup> The Government went ahead despite this opposition. In part Yasmar was selected because it provided the opportunity to establish a second specialist Children's Court in a building which had none of the attributes of an ordinary court.

The old Ramsay family home, where the courtroom was located, was an elegant sandstone Colonial homestead, built in 1873, surrounded by flagged verandahs, reached by a sweeping drive, and set in a large and beautiful garden.<sup>37</sup> 'Yasmar' became something of a showpiece, and this was consistent with Hicks' view that the

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<sup>33</sup> Annual Report, Child Welfare Department, 1946, p. 1 et seq., p. 30.

<sup>34</sup> Under the Public Instruction (Amendment) Act, 1917, a certificate from the principal giving details of the child's attendance was *prima facie* evidence of the default alleged, and such evidence was also accepted in cases under the Child Welfare Act.

<sup>35</sup> Annual Report, Child Welfare Department, 1946, p.9.

<sup>36</sup> SMH 6 December, 1944. See also petition presented on behalf of local residents by the Mayor of Ashfield, 9 November, 1944. SR 9/6151.1.

<sup>37</sup> Annual Report, Child Welfare Department, 1962, NSWPP 1962-63-64, vol. 1, p. 539 et seq., p.21.

Department should be seen to be providing more humane treatment of children in its care. He sought to demonstrate this by promoting the use of bright colours and beauty in furnishing institutions, as well as flowers and gardens. The residential accommodation at Yasmar was divided into two sections, for older and younger boys, surrounded by high walls, but the walls were shielded by shrubs so that they were not so obvious to visitors.

A Child Guidance Clinic was set up adjacent to the Court, and this became the basis for the Department asserting that Yasmar represented a 'more scientific control of delinquency'.<sup>38</sup> The principal benefit of Yasmar was that it enabled segregation of matters coming before the specialist children's courts, as well as segregation of delinquent children held in shelters. It had been planned that, on the opening of Yasmar, the old, antiquated Metropolitan Boys Shelter would be closed.<sup>39</sup> Instead, due to growing numbers of boys on remand, it was retained. Boys under sixteen generally went to Yasmar, with those sixteen and over going to the Metropolitan Boys Shelter. After Yasmar opened, Brougham, a small place at Woollahra, which had for a time provided some remand accommodation, but was not secure, closed and was used as a residence for state wards.<sup>40</sup>

There was also some improvement in the accommodation of girl delinquents. Parramatta had been condemned in numerous reports, and had been the scene of terrible riots in the early 1940s. It was not until the publicity generated by criticism from the Child Welfare Advisory Council, the statutory body established under the 1939 Act, to advise the Minister, that any attempt was made to build a replacement.<sup>41</sup> This came

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<sup>38</sup> Annual Report, Child Welfare Department, 1946, p.10.

<sup>39</sup> R J Heffron, quoted in Daily Telegraph 8 November, 1944.

<sup>40</sup> SR 3/9069

<sup>41</sup> The following reports had stated that the Girls Industrial School, Parramatta was unsuitable: G M Allard 'Fifth Sectional Report of the Royal Commission to Enquire into the Public Service of New South Wales Concerning the Administration of Acts Relating to State Children' NSWPP 1920, vol. 4, p. 451 et

with the purchase of quite a large area of land, twenty hectares, at Thornleigh in 1944. At the time, Minister Clive Evatt stated that Thornleigh would replace the antiquated Parramatta.<sup>42</sup> Work started the next year on what was again described as a 'new Girls Training School', consisting of 'cottage homes' enabling better segregation.<sup>43</sup> The original plan envisaged eight cottages, each accommodating fifteen girls, and divided into senior and junior sections. It was to operate on the 'honour system'.<sup>44</sup> When the Thornleigh Girls Training School opened in 1948 it consisted of two cottages, each accommodating fourteen girls. It was for girls who had behaved well at Parramatta and were approaching the end of their detention. Training placed emphasis on deportment and appearance, as an aid to securing employment on discharge.<sup>45</sup>

As with St. Heliers, the 'cottage home' system was used, the first time it had been attempted with adolescent delinquent girls. Again, there were features which detracted from the traditional cottage home model. At Thornleigh, there were no married couples. The two cottages had been built right alongside each other, despite the large area of land available. Both under the control of a Matron, who was responsible to the Superintendent at Parramatta. The closeness of the two cottages detracted from the capacity to segregate. In reality, it operated as no more than a

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seq., p.16 and p. 26. J E McCulloch 'Child Welfare Department. Report on the General Organisation, Control and Administration of, with Special Reference to State Institutions', p.4 and p. 8. M. Tenison-Woods *Juvenile Delinquency: With Special Reference to Institutional Treatment* Melbourne University Press, Melbourne, 1937, p. 55. 'Report by the Public Service Board following investigation in terms of Section 9 of the Public Service Act, 1902, into the general workings of the (Child Welfare) Department with particular relevance to the prevalence of abscondings from child welfare institutions and to the effectiveness of the present organisation and control having regard to the aims of each institution' 2 December, 1942 SR 14/6346. M Tenison-Woods (chair) Delinquency Committee of the Child Welfare Advisory Council Report on the Girls Industrial School, Parramatta, Melbourne University Press, Melbourne, 1945, p. x.

<sup>42</sup> See comments by the Minister for Education, Clive Evatt, SMH 5 February, 1944, in response to criticism by Mary Tenison Woods and Professor Tasman Lovell, members of the Child Welfare Advisory Council, in articles in SMH, 2, 3 & 4 February, 1944. £ 20,000 was provided in the 1944-45 State Budget for the project.

<sup>43</sup> Annual Report, Child Welfare Department, 1945, NSWPP 1945-46 vol., 1, p. 149 et seq., p. 8 and p. 22.

<sup>44</sup> SMH 5 March, 1945.

‘privilege cottage’ annexe of Parramatta. Within a few years, it had become a showplace. A garden, with a fishpond, was constructed. Visitors were taken there, and it was being compared to a ‘well-conducted boarding school’.<sup>46</sup> In 1951, an innovative pre-discharge program commenced under which girls approaching the end of their term went out to work each day.<sup>47</sup>

Instead of those two cottages being the first of a number of others, spread over the large area of land available at Thornleigh, and thus providing the kind of segregation in separate small cottages that had always been envisaged for the institution to replace Parramatta, no further cottages were built. If one looks at the numbers in residence at Parramatta, one can see the reason for this. From a peak of one hundred and seven in 1943, the population, by 1955, had fallen to only seventy-five. There was simply no pressure to expand Thornleigh. Also, there had not been any recurrence of the kind of riots which had attracted public attention in the 1940s. So, even though the premises at Parramatta had been acknowledged by all, and over many years, to be quite unsuitable, nothing further was done to replace it.

### *Different Treatment of Girls*

By 1949, considerable scope for segregation existed in boys institutions, in the form of St. Heliers, Anglewood and Tamworth, which all, in one way or another created alternatives to Gosford. Despite the marginal improvement which followed the opening of two cottages at Thornleigh, the situation for girl delinquents was still poor, compared with that for boys. La Perouse, which had offered some capacity to accommodate younger and less sophisticated girls, closed in 1939. The truant school

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<sup>45</sup> Annual Report, Child Welfare Department, 1947, p. 24. For proclamation as an institution, see *Government Gazette* 8 October, 1948, p. 2662.

<sup>46</sup> Annual Report, Child Welfare Department, 1956, *NSWPP* 1956-57 vol. 1, p 437 et seq., p. 17.

for girls at Guildford, which was directly operated by the Education Department, closed in the same year, and later became a home for state wards.<sup>48</sup> After that, girl truants went to Parramatta. In 1943, an after care hostel, 'Corelli', which had been established at Marrickville in 1935 for girls who had been discharged from Parramatta but had no suitable home to go, also closed.<sup>49</sup> This meant that girls who had finished their time at Parramatta, but had nowhere to go, simply stayed on. Apart from Thornleigh, the only classification of any kind available was the transfer of pregnant girls in the last few months before confinement to 'Myee', a lying-in home at Arncliffe.

The reasons for the disparity between the reforms in the male system and the lack of them in the female can be attributed to a number of factors. Undoubtedly, a major problem was the reluctance of governments to spend money on juvenile corrections. From the late 1920s to the end of World War II in 1945, very little was spent. This of course affected services for both boys and girls. In 1938, when Drummond, then Minister, was under pressure, he produced a list of expenditure which showed that, between 1932 and 1938, only £ 126,185 had been spent on institutions.<sup>50</sup> Two-thirds of that came from the new buildings at Yanco, which the Government had been forced to construct after the McCulloch Inquiries, in response to press criticism.<sup>51</sup>

In addition to financial constraints, there was also the furore caused by public attacks on the Government, many of them focused on Gosford. In a 1944 editorial, the *Sydney Morning Herald* claimed that there had been two hundred and fifty

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<sup>47</sup> Annual Report, Child Welfare Department, 1951, NSWPP 1950-51-52, vol. 1, p 481 et seq., p. 23.

<sup>48</sup> Annual Report, Child Welfare Department, 1946, p. 17.

<sup>49</sup> Annual Report, Child Welfare Department, 1935-37, NSW Government Printer, Sydney, 1939, p. 4. 'Corelli' is sometimes referred to as a 'probation hostel'. See D H Drummond, NSWPDLA 23 April, 1936, p. 3257. For closure, see Annual Report Child Welfare Department 1944, NSWPP 1945-46, vol. 1, p. 121.

<sup>50</sup> NSWPDLA 17 November, 1938, p. 2707.

<sup>51</sup> 'Expenditure on Repairs etc. by Public Works Department 1/7/32 to 30/6/38' SR 9/6156.

abscondings from Gosford in the past year.<sup>52</sup> There were sustained attacks by the Child Welfare Advisory Council in which conditions at both Parramatta and Gosford were condemned as being 'deplorable'.<sup>53</sup> The Government made it clear that they regarded Gosford as the more serious problem. This may well have been because Gosford was located within the State seat of Hawkesbury, a marginal electoral district, having been won by the Labor Party in 1941, after being held for many years by the Liberal Party.<sup>54</sup> It was singled out for mention at the time of Hicks' appointment and later by the new Minister, Heffron.<sup>55</sup> In 1946, Gosford residents were reported as being enraged by the large number of boys running away, claimed to be seven hundred per annum, and the numerous local burglaries which resulted.<sup>56</sup> In the face of this public clamour about the situation at Gosford, it was small wonder that in the period immediately after the war, available resources were directed by the 'new management' towards boys institutions, simply because that area was causing the Government great embarrassment. However, this attitude persisted long after the situation in boys institutions had improved, and indeed into the early 1960s. It was then that the Department decided that plans to improve the situation at Parramatta had to be deferred until 'more urgently needed' facilities for boys could be provided.<sup>57</sup>

In 1956, the Department received support from a surprising quarter. The Child Welfare Advisory Council, under the chairmanship of Dr. Irene Sebire, a psychiatrist who headed the Child Guidance Clinic, had been asked to consider the question of whether there should be an inquiry into juvenile delinquency. This issue had arisen

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<sup>52</sup> SMH 25 January, 1944.

<sup>53</sup> ibid., 24 April, 1944.

<sup>54</sup> Frank Finnan, the member, had to depend on preferences for his win in 1941. See entry for 1941 elections in C A Hughes & B D Graham Voting for the New South Wales Legislative Assembly 1890-1964 Department of Political Science, Australian National University, Canberra, 1975.

<sup>55</sup> SMH 14 July, 1944, and 17 July, 1944.

<sup>56</sup> ibid., 1 August, 1946 and 9 August, 1946.

<sup>57</sup> Annual Report, Child Welfare Department, 1961, NSWPP 1961-62, vol. 1, p. 233 et seq., p.18.



following the publication of police statistics which showed that there had been a sharp increase in juvenile crime. The Council came to the view that, although figures for 1956-57 had shown an increase, it was not a large one, and there was no need for an inquiry. The Council made a number of recommendations, one of which was that there should be 'facilities for the further discriminatory segregation of male offenders and a wider choice of training programs for males fourteen to sixteen years'. There was no mention of the situation in girls institutions.<sup>58</sup>

With hindsight, it is difficult to justify such attitudes after the middle of the 1950s. By then, considerable capacity for segregation had been provided on the male side in the form of five major institutions (Gosford, Mittagong, Anglewood, St. Heliers and Tamworth), whereas there was hardly any for girls. Only two existed for girls, one of which (Thornleigh) was really a combination of privilege cottage and pre-discharge hostel. It is true that the number of boys being committed had risen substantially during the 1950s, but as shown earlier, the numbers of girls in institutions had increased to a much greater extent.<sup>59</sup> There was also the factor that, following the opening of Tamworth and the segregation which the variety of institutions for boys now permitted, there was no doubt that Parramatta was by far the worst of the institutions, having been repeatedly condemned down the years.<sup>60</sup>

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<sup>58</sup> Dr. I Sebire (chair) 'Report of the Child Welfare Advisory Council on the Desirability of appointing a committee to inquire into juvenile Delinquency' 1956, NSWPP 1956-57, vol. 1, p. 435.

<sup>59</sup> Inmate Numbers in Institutions: 1954 to 1963 were, according to figures given in Annual Reports of the Department, as follows:

Year	no of girls	no of boys
1954	94	563
1963	228	956
percentage increase	142 %	72 %

<sup>60</sup> See Annual Report, Child Welfare Department, 1962, NSWPP 1962-63-64, vol. 1, p. 539 et seq., p. 21.

There was, however, another aspect which was arguably much more important than any of the other factors mentioned above, and that was the distinctly different official attitude to girl delinquents compared with boys. In various official documents, it was stated that girls were not only more difficult to manage than boys, but that their rehabilitation was also more difficult.<sup>61</sup> For example, in the Department's Annual Report for 1950 claimed that 'the rehabilitation of the delinquent girl is a problem challenging the psychiatric, psychological and social work skills not only of this State, but of every country in the world'.<sup>62</sup> In part, this was attributed to the fact that girls in institutions were claimed to have a lower intelligence quotient than boys.<sup>63</sup> Reference was made to a survey a few years before which had revealed this difference. This was a reference to a statistical survey of children in institutions, undertaken by Enid Corkery, Research Officer, which showed that in the group surveyed, significantly more girls had intelligence quotients of less than eighty.<sup>64</sup>

Comments about how much more difficult girls were than boys were not new, they merely restated attitudes which had been expressed in New South Wales since at least the middle of the nineteenth century. Henry Parkes thought girls much more difficult to rescue than boys.<sup>65</sup> Alexander Thompson considered that the delinquency of boys was radically different from that of girls. Boy delinquency was 'of a temporary

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<sup>61</sup> See comments in Annual Reports, Child Welfare Department, 1950, NSWPP 1950-51-52, vol. 1, p. 433 et seq., p. 22, 1951, NSWPP 1950-51-52, p. 481 et seq., p. 32, 1954, NSWPP 1954-55, vol. 1, p. 427 et seq., p. 18.

<sup>62</sup> Annual Report, Child Welfare Department, 1950, NSWPP 1950-51-52, vol. 1, p. 433 et seq., p. 22.

<sup>63</sup> Annual Report, Child Welfare Department, 1954, NSWPP 1954-55, vol. 1, p. 427 et seq., p. 18.

<sup>64</sup> E M Corkery, Research Officer, Child Welfare Department, Statistical Survey of One Thousand Children Committed to Institutions in New South Wales, NSW Government Printer, Sydney, 1952, p. 11. The comments in the Annual Report failed to mention, however, Miss Corkery's cautionary note that 'the small number of girls in relation to boys precludes a reliable comparison'.

<sup>65</sup> H Parkes Fifty Years in the Making of Australian History (1892) Reprint by Books for Libraries Press, Freeport NY 1971, p. 194.

nature and incidental to adolescence'.<sup>66</sup> Girls, on the other hand, were 'predisposed to prostitution' and posed a more serious problem than boys, because of their sexual maturity.<sup>67</sup> Similar views were advanced by numerous officials over many years. For instance, in 1916, Alfred Green, Boarding out Officer of the State Children's Relief Board, claimed that girls were 'steeped in iniquity', and their bad conduct was of an aggravated kind because they were 'spreading venereal disease throughout the State', and so offences committed by girls were more serious, 'in the sense of ... social effect'.<sup>68</sup>

In 1920, the Royal Commissioner, Allard, considered that absconding by girls was much more serious than that of boys, presumably because of their capacity to corrupt large numbers of males.<sup>69</sup> A similarly negative assessment of girl delinquents was made by Walter Bethel, Secretary of the Department in 1925.<sup>70</sup> For much the same reasons, in 1939, closed institutions with walls were considered by Minister Drummond to be essential for the detention of girls, even though large, open institutions for boys had been operating for many years.<sup>71</sup> There was thus a general view, extending over so many years that had become entrenched in the attitudes of those who were involved in the treatment of girl delinquents. Girls were not only far more difficult to manage, but because so many of them had been involved in sexual misconduct, they were less amenable to reclamation.

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<sup>66</sup> A W Thompson to P. Board, Under Secretary, Department of Public Instruction, 'Submission on Neglected Children and Juvenile Offenders Act of 1905' manuscript, February, 1914, copy in the possession of the author.

<sup>67</sup> Annual Report of the Superintendent, Girls Industrial School, Parramatta, 1914, NSW Government Printer, Sydney, 1914.

<sup>68</sup> Evidence given 28 March, 1916. 'Further Progress Report from the Select Committee on the Whole Administration of the State Children Relief Act, 1901', NSWPP 1916 vol. 2, p. 1011 et seq., 11. For comments regarding venereal disease, see Annual Report, Child Welfare Department 1922-1925, NSW Government Printer, Sydney, 1927, p. 8 and Annual Report, Child Welfare Department, 1935-37, NSW Government Printer, Sydney, 1938, p. 49.

<sup>69</sup> G M Allard 'Fifth Sectional Report of the Royal Commission to inquire into the Public Service of New South Wales Concerning the Administration of the Acts Relating to State Children' 29 July, p. 467.

<sup>70</sup> Annual Report, Child Welfare Department, 1921, 1922, 1923, 1924, 1925, NSWPP 1926-27 p. 667.

Although such attitudes seem unreasonable, they had existed in society for at least a century before. In the Victorian era, in both Britain and America, the stereotypical view of women was that they were inherently weak and dependent.<sup>72</sup> The qualities which society valued in a woman were 'piety, purity, submissiveness and domesticity'. It was essential to preserve her virtue till marriage.<sup>73</sup> Women who engaged in prostitution were especially reprehensible because they 'struck at the purity of the home and family life'. They threatened the health of the community through the risk of venereal disease, especially to wives and children.<sup>74</sup> They were regarded with loathing and contempt, and condemned as 'outcasts, pariahs, lepers'. International authorities such as Cesare Lombroso believed that female criminality was 'more cynical, more depraved' than that of the male.<sup>75</sup>

Sexual delinquency in girls was regarded as far more serious than criminal behaviour by their male counterparts.<sup>76</sup> This was because delinquency in boys was regarded as merely a passing phase of adolescence, whereas, when a girl lost her virtue

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<sup>71</sup> NSWPDLA 23 February, 1939, p. 3773.

<sup>72</sup> There is an extensive literature on attitudes to women in the Victorian era. See for example B Caine English Feminism 1780-1900 Oxford University Press, London, 1997, M Poovey Uneven Development: The Ideological Work of Gender in Mid-Victorian England Virago, London, 1989, B Welter 'The Cult of True Womanhood 1820-1860' American Quarterly, (1996) vol. 18, J R Walkowitz Prostitution and Victorian Society Cambridge University Press, Melbourne, 1980, E Trudgill Madonnas and Magdalens: The Origin and Development of Victorian Sexual Attitudes Heinemann, London, 1976, F K Prochaska Women and Philanthropy in Nineteenth-Century England Clarendon Press, Oxford, 1980, P Bartley Prostitution, Prevention and Reform in England 1860-1914 Routledge, London, 2000, J Lewis (ed.) Labour and Love: Women's experience of home and family 1850-1940 Blackwell, New York, 1986, J Rendall The origins of modern feminism: women in Britain, France and the United States 1760-1860 Macmillan, London, 1985, S Schlossman & S Wallach 'The Crime of Precocious Sexuality: Female Delinquency in the Progressive Era' Harvard Educational Review vol. 48 no 1, February, 1978 p. 67.

<sup>73</sup> B Welter 'The Cult of True Womanhood 1820-1860' pp. 152-158.

<sup>74</sup> W Acton Prostitution Considered in its Moral, Social and Sanitary Aspects in London and other Large Cities and Garrison Towns John Churchill & Sons, London, 1870, pp. 73-74. See also J Godden 'Philanthropy and the Woman's Sphere: Sydney 1870-circa 1900' Ph D Thesis, Macquarie University, 1983, p. 113. P Bartley Prostitution: Prevention and Reform in England 1860-1914, p. 30.

<sup>75</sup> C Lombroso The Female Offender T Fisher Unwin London, 1895, p. 147.

<sup>76</sup> E Trudgill Madonnas and Magdalens: The Origin and Development of Victorian Sexual Attitudes, p. 105. See also M J Sedlack 'Youth Policy and Young Women 1870-1972' Social Service Review vol. 56 no 3 September, 1982, p. 449.

it was more likely to be a permanent descent into vice.<sup>77</sup> Even when boys were guilty of sexual offences, this was excused on the ground that males were inherently more sensual than females, having a much stronger sex drive.<sup>78</sup> In the words of Dr. William Acton, author of an early treatise on prostitution, 'What men are habitually, women are only exceptionally'.<sup>79</sup> If an adolescent lost her virtue, this was regarded as irredeemable, since having broken the cardinal rule of female conduct, she would thereafter be capable of any crime at all.<sup>80</sup> To some extent, this was associated with the prevailing view about the development of character. During adolescence, character was still being shaped and so was capable of change. An act of sexual intercourse, however, was the action of an adult which deprived a girl of any consideration based on lack of discernment as a function of immaturity.<sup>81</sup>

Such attitudes shaped the philosophy of the girls reformatories when they were established in the mid-nineteenth century, and continued into the early part of the twentieth. Reformatories operated in a similar way to the Magdalenes, Lock Hospitals for the treatment of those with venereal disease, and female penitentiaries which proliferated in Britain, America and New South Wales in the nineteenth century. Essentially, they were punitive in character. Most favoured a long period of treatment extending over a period of two years, because it was considered that any reform would necessarily be slow and gradual. Moreover, it ensured that there would be a severance

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<sup>77</sup> S Schlossman & S Wallach 'The Crime of Precocious Sexuality: Female Delinquency in the Progressive Era', pp. 82-85. R Rosen The Lost Sisterhood: Prostitution in America, 1900-1918 Johns Hopkins University Press, London, 1982, p. 20. M J Sedlak 'Youth Policy and Young Women 1870-1972' p. 449.

<sup>78</sup> B Welter 'The Cult of True Womanhood 1820-1860' p. 155.

<sup>79</sup> W Acton The Functions and Disorders of the Reproductive Organs, in Adult Age, and in Advanced Life: Considered in their Social and Psychological Relations Philadelphia, 1865, p. 133.

<sup>80</sup> R Rosen The Lost Sisterhood: Prostitution in America, 1900-1918, p. 6.

<sup>81</sup> S Schlossman & S Wallach 'The Crime of Precocious Sexuality: Female Delinquency in the Progressive Era', p. 84.

from the girl's previous pernicious influences, as well as protection of the community from the ravages of venereal disease.<sup>82</sup>

Other similarities included complete isolation from the outside world and a highly structured and monotonous routine. The use of corporal punishment, segregation for misbehaviour, deprivation of personal possessions, together with enforced silence for much of the time was favoured. This was accompanied by a system of rewards and deprivation of privileges, training in domestic work, employment of girls in on site laundries, and the use of penitential uniforms, and haircropping on admission..<sup>83</sup> All of this was aimed at the inmates becoming repentant as well as learning to be obedient, and acquiring habits of industry sufficient for them to be able to hold down a job as a domestic servant after discharge, and then hopefully to marry. Although Departmental officials claimed that girls were reformed as a result of their treatment at places like Parramatta Industrial School, the persistent refusal to improve conditions, despite all the evidence that the state of Parramatta was detrimental to reform, suggests that officials held little hope that girls would benefit from their time there.

### *Professionalisation of services*

In some ways, the new Hicks administration moved towards a more professional approach to the treatment of delinquents. The supervision of children on probation had, since Mackellar's day, been carried out partly by officers of the department and partly by honorary probation officers. Many of the honoraries were clergymen or associated with some religious organisation, such as the St. Vincent de Paul Society.

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<sup>82</sup> P Bartley Prostitution: Prevention and Reform in England 1860-1914 pp. 31, 39.

<sup>83</sup> J Godden 'Philanthropy and the Woman's Sphere: Sydney 1870-circa 1900' pp. 121-123. P Bartley Prostitution: Prevention and Reform in England 1860-1914 pp. 38, 50-53. S Schlossman & S Wallach 'The Crime of Precocious Sexuality: Female Delinquency in the Progressive Era', p. 76. J R Walkowitz Prostitution and Victorian Society, pp. 215-217.

This use of clergy was consistent with the practice in Britain, where until the 1930s probation officers were mainly members of religious societies.<sup>84</sup> In 1933, there were some five to six hundred honorary probation officers in New South Wales.<sup>85</sup> Thirty designated probation officers had been appointed after probation became a sentencing option in 1905.<sup>86</sup> Over time, however, probation work had simply become part of the general duties of departmental inspectors.<sup>87</sup> During the Depression of the 1930s, inspectors were heavily engaged in the provision of social welfare relief services, and probation work had been neglected.<sup>88</sup> In his 1934 Report, McCulloch drew attention to this and also criticised the Department's failure to organise the honorary probation officers. He recommended the appointment of a Principal Probation Officer and a staff of five, to rectify the situation.<sup>89</sup>

Nothing happened at the time, and there were allegations by a Children's Court Magistrate in 1935 of poor performance by officers supervising probationers, resulting in high rates of recidivism.<sup>90</sup> In the late 1920s and early 1930s, the Department claimed a success rate of ninety-six per cent for those dealt with by probation orders, but Children's Court Magistrate Duncan Parker compiled statistics which showed a recidivism rate of approximately forty-five per cent.<sup>91</sup> Parker's figure demonstrated that the Department had, during the administrations of Bethel and Thompson, been

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<sup>84</sup> R Harris & D Webb Welfare, Power and Juvenile Justice: The Social Control of Delinquent Youth, Tavistock, London, 1987, p.37.

<sup>85</sup> M. Tenison-Woods Juvenile Delinquency: With Special Reference to Institutional Treatment, p. 72

<sup>86</sup> Annual Report State Children Relief Board Year ending 5 April, 1914 NSWPP 1915-16 vol. 1, p. 851 et seq., p. 50.

<sup>87</sup> F W Weatherall 'The Changing Concepts of Child Welfare in N. S. W. in respect of the Child, the Law and the State. Period 1800-1950'. Unpublished typescript, undated, c. 1950. p. 41. Copy held in Mitchell Library.

<sup>88</sup> D H Drummond, minute, 9 December 1937. file B 4928. SR 9/6151.2.

<sup>89</sup> J E McCulloch 'Child Welfare Department. Report on the General Organisation, Control and Administration of, with Special Reference to State Institutions', p. 147. Schedule 13 to the Report also shows decline in contacts with honorary probation officers by departmental staff.

<sup>90</sup> Submission by D Parker, Special Magistrate at Children's Court, 1935, SR 3/3162.2.

claiming success rates which were not only implausible when compared with available rates from overseas, but could not have been based on any proper investigation.

When Hicks became Director, changes were made. Wood had proposed strengthening the honorary probation system.<sup>92</sup> Hicks, however, was very much averse to any reliance on the non-government sector for work which could be done by the government. He allowed the honorary system to fade away, with no new appointments being made. On the other hand, the system was strengthened in 1946 by a number of officers being designated to work only on probation work.<sup>93</sup> A Chief Probation Officer was also appointed.<sup>94</sup> As a result of these initiatives, there was an increased emphasis on both probation and after care work.

This was consistent with Hicks' policy of promoting preventive work, as a means of reducing the numbers of children coming into care in the first place, and in relation to delinquents, reducing recidivism. McCulloch had criticised the lack of supervision of offenders after they were released and recommended the establishment of an after-care association, using non-government resources, as was the case with ex-Borstal inmates in Britain.<sup>95</sup> Some supervision had, over many years, been carried out by the Superintendents of the institution concerned.<sup>96</sup> However, this could not possibly be an effective form of supervision, and a good deal of it seems to have been carried on by letter, and not personally. Hicks dealt with this issue by making probation officers responsible for after care visits, and this was supplemented by having them visit

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<sup>91</sup> D Parker, Special Magistrate to Secretary Child Welfare Department 5 March 1936. Copy in the possession of the author. Roneo copies of this letter were made, indicating that Parker may have distributed a number of copies at the time.

<sup>92</sup> C T Wood to Drummond 12 January, 1938 SR 7/4681.

<sup>93</sup> Annual Report, Child Welfare Department, 1946, p. 9.

<sup>94</sup> Annual Report, Child Welfare Department, 1947, p.20.

<sup>95</sup> J E McCulloch 'Child Welfare Department. Report on the General Organisation, Control and Administration of, with Special Reference to State Institutions', p.146.

<sup>96</sup> See 'Riverina Welfare Farm, Yanco: Approvals and Instructions Register', entry dated 24 October, 1933, SR 8/2138.



inmates once a month, while they were undergoing detention, so that by the time they were ready for discharge, some rapport would be established.<sup>97</sup>

In one important aspect there was a policy change. Before Hicks, the practice had been to revoke the discharge of a former inmate who misbehaved, or whose home conditions deteriorated. This practice had, during the Depression years, no doubt added to the pressure of numbers in institutions.<sup>98</sup> Under Hicks administration, officers did not take such action, even though the terms of conditional discharge, prescribed by Regulation, had been breached.<sup>99</sup> If former inmates were to be detained again, it was through a fresh committal.

Hicks also strongly supported the decentralisation of the Department's field officers. Previously, most field officers operated out of Sydney, with some making periodic visits to country areas. Over time, officers were stationed in the major country towns, and by the mid 1960s, nearly all the State was covered, with nine Metropolitan offices and twenty-five in the country.<sup>100</sup> This meant that there was much better supervision of both probationers and those subject to after care, by an officer resident in the area. Some nevertheless believed the system to be inadequate. Dudley Swanson, head of the Adult Probation Service, and a former senior officer of the Child Welfare Department, felt that in the 1950s, probation for juvenile offenders 'fell short of desirable supervision standards'.<sup>101</sup>

Staff training had been one aspect singled out by McCulloch for adverse criticism. Some efforts were made to address this problem. Deputy Superintendents appointed at Gosford and other places were supposed to be responsible for staff

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<sup>97</sup> D J McLean *Children In Need*, p. 128.

<sup>98</sup> See Annual Report, Minister for Public Instruction, 1920, *NSWPP* 1922, vol. 1, p. 365 et seq., p. 18. See also Annual Report, Child Welfare Department, 1930 & 1931. *NSWPP* 1932, p. 549.

<sup>99</sup> For terms and conditions, see Regulation 58 (1) of the Child Welfare Regulations, 1940.

<sup>100</sup> Annual Report, Child Welfare Department, 1964 *NSWPP* 1964-65 vol. 1, p. 155 et seq., p. 7.

training, and staff were apparently supplied with books and literature. According to Ramsland and Cartan, these initiatives were attributable to Drummond, who was committed to the professionalisation of staff.<sup>102</sup> Intermittent tutorial classes given by the Deputy Superintendents and the supply of literature were, however, no substitute for a proper staff training scheme. In any event, most of the instructional staff had only a rudimentary education. In 1937, it was claimed that plans for a cadet training scheme were well advanced, but nothing happened at the time.<sup>103</sup> Wood had proposed a very comprehensive scheme in 1938, only to have it rejected by Drummond.<sup>104</sup> Heffernan, on taking up duty as Superintendent at Gosford in 1944, found no trace of any staff training being conducted before the 1940s, when a correspondence course was started under the auspices of the Sydney Teachers College.<sup>105</sup>

A small advance came in 1940 when a grant was made to the University of Sydney to help finance a new two year Diploma of Social Studies. The Board set up to administer the course was composed almost entirely of people connected with child welfare.<sup>106</sup> Five Departmental cadets started the course, and a number of officers already employed were allowed to take segments of the course by way of in service training.<sup>107</sup> Much more substantial progress was made after the arrival of Hicks, who,

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<sup>101</sup> F D Hayes 'In Search of a Correctional Camelot' Welfare in Australia vol. 7, no 2, November, 1987 p. 20.

<sup>102</sup> J Ramsland & G A Cartan 'The Gosford Farm Home for Boys, Mt. Penang 1912-1940' JRAHS vol. 75, part 1, June, 1989, p. 78.

<sup>103</sup> Annual Report, Child Welfare Department, 1937 NSWPP 1938-39 vol. 1, p.959 et seq., p. 1.

<sup>104</sup> C T Wood to Drummond 23 December, 1936. Child Welfare Department file 36/12436, copy held by author.

<sup>105</sup> V A Heffernan 'Notes on the History of Mt. Penang' unpublished manuscript, 1989, p. 23.

<sup>106</sup> The grant was for £ 2,600 per annum, for the establishment of 'courses of training in Social Service Work'. The Board of Social Studies set up to administer the new course included George Martin, then Director of the Child Welfare Department and Dr. G Phillips, who worked for the Department for a time, as well as several members of the Child Welfare Advisory Council ( Mary Tenison Woods, Professors Tasman Lovell and Harvey Sutton). Professor A K Stout was chairman. See 'Report of the Senate for the year ended 30 June, 1940' University of Sydney Calendar 1941, NSW Government Printer, Sydney, 1941.

<sup>107</sup> Annual Report, Child Welfare Department, 1940, NSWPP 1940-41, vol. 1, p. 105 et seq., p. 6. The Board of Social Study and Training had operated since 1928, but it was not an official Board of the University, which only assumed official responsibility for training when the Diploma was established in

in his first annual report had indicated that staff training would be a priority.<sup>108</sup> In 1945, and again in 1946, a group of new field officers undertook a six months full time training course at the University.<sup>109</sup> Between 1945 and 1947 another group of officers undertook a three-year Diploma of Social Studies by evening study.<sup>110</sup> In 1947, however, the evening Diploma was discontinued and replaced by a two year sub-professional course at Sydney Teachers College. Forty students undertook these evening studies, with half the places reserved for Departmental staff. A pass in the course was accepted as a qualification for the Higher Grades Certificate in the public service.

At the same time, in service correspondence courses were started for institutional staff, run by Sydney Teachers College. Hicks also commenced monthly lectures by visiting experts at the Head Office of the Department.<sup>111</sup> Thus, after 1947, the principal source of training for prospective field officers was the two-year in service course run two nights a week at Sydney Teachers College. This was a retreat from the goal set in the late 1930s by Charles Wood, who wanted full professional social work training to become the norm, but this would have been costly.

Hicks took a number of initiatives to improve the Departmental image. These included the appointment of a Research Officer (a trained psychologist) who became responsible for a statistical collection system, as well as the preparation of a more extensive annual report, designed to emphasise positive aspects of the Department's work.<sup>112</sup> He also set up an Information and Extension Service in the mid 1950s. An officer was seconded from the Department of Education and he delivered lectures to

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1940. See C Turney et al, Australia's First: A History of the University of Sydney, vol. 1 1850-1939, Hale & Iremonger, Sydney, 1991, pp. 486-487.

<sup>108</sup> Annual Report, Child Welfare Department, 1945, NSWPP 1945-46 vol. 1, p.149 et seq., p. 8.

<sup>109</sup> Annual Report, Child Welfare Department, 1946, p. 9.

<sup>110</sup> R J Lawrence Professional Social Work in Australia ANU Press, Canberra, 1965, p. 146.

<sup>111</sup> Annual Report, Child Welfare Department, 1946, p. 9.

community groups, presenting Departmental activities favourably. He arranged for the production of a promotional film *Alleged Neglect*, describing the day to day work of a field officer. He also wrote a book, a piece of promotional literature, which again portrayed the Department in a glowing light.<sup>113</sup> Pamphlets outlining details of various services were also produced.

Hicks also arranged for the Department to become a member of the International Union of Child Welfare, and thereafter officials attended overseas meetings of the Union, as well as other international child welfare congresses.<sup>114</sup> In 1954, the NSW Government sponsored his travelling overseas to inspect child welfare organisations in Europe and America. On his return he reported in great detail to Minister Heffron. In general, he considered that services for delinquents in New South Wales were as good as, or better than anything he saw overseas.<sup>115</sup> His purpose in all of this was to present the Department's activities positively. This was in order to counter the negative public images which had been built in the 1940s when Parramatta and Gosford were in turmoil.

Another initiative aimed at professionalising services was the use of counsellors. In 1955, the first school counsellor for a child welfare institution was appointed. He was attached to the Department of Education and divided his time between Anglewood and Mittagong. In the same year, a psychiatrist from the Sydney Child Guidance Clinic began to visit Parramatta weekly.<sup>116</sup> In 1957, a Psychological Counselling

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<sup>112</sup> Annual Report, Child Welfare Department, 1945, p. 9.

<sup>113</sup> The Officer, Donald McLean, had been headmaster of a public school, and had been closely connected with the New Education Fellowship, an organisation critical of the Department of Education. The book was: D J McLean *Children in Need* NSW Government Printer, Sydney, 1956.

<sup>114</sup> Annual Report, Department of Child Welfare and Social Welfare, 1958 p. 7.

<sup>115</sup> R H Hicks 'Report on Visit Abroad July-November 1954', unpublished. Copy (incomplete) held by author.

<sup>116</sup> Annual Report, Child Welfare Department, 1955, *NSWPP* 1955-56 vol. 1, p. 327 et seq., p. 19 and p. 26

Service began, first as a pilot, but soon established on a permanent basis.<sup>117</sup> For quite a while, however, its resources were stretched, since it also dealt with cases of children in ward establishments as well as those in foster care. Psychologists were able to provide some advice on how particular children might be managed by untrained institutional staff, but children with psychiatric conditions still had to be referred to the Child Guidance Clinic.

Hicks also sought to provide proper executive supervision of institutions. This had long been a problem. In 1947, Heffernan, who had operated with great success at Gosford, was promoted to the new position of Superintendent of Institutions, although not long afterwards, he was obliged to return to the position of Superintendent at Gosford, because his replacement, James Small, proved unsatisfactory.<sup>118</sup> However, after a short period, he was able to return to Head Office and exercise supervision over all juvenile corrective institutions. In 1956 a deputy, Edward Moylan, was appointed.<sup>119</sup> This meant that much closer supervision could be given to the increasing number of institutions. Many of the decisions which had previously been taken either by Superintendents or on their advice, were now made by executives at Head Office, who were able to operate at arm's length from the day to day operational problems. They were also able to inform themselves directly, rather than being obliged to rely on the Superintendent.

Part of this enhanced executive supervision related to allegations of ill-treatment. Hicks followed a policy of dealing harshly with any staff shown to have assaulted inmates. Whenever an allegation of this kind surfaced, an inquiry under the

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<sup>117</sup> Annual Report, Department of Child Welfare and Social Welfare, 1958, NSW Government Printer, Sydney, 1959, p.7.

<sup>118</sup> Heffernan was apparently employed on secondment to the Child Welfare Department during the period after 1944, when he took up duty as Superintendent at Gosford. He was appointed Superintendent of Institutions on 13 October, 1947. See Public Service List.

Public Service Act would be conducted, often with one of the Departmental executive officers as delegate of the Board, and if proven, dismissal would usually follow.

Children in institutions were still ill-treated, but as staff became aware that assaults would not be tolerated, they naturally became more discreet in their behaviour. It is also clear from the sanction which Hicks gave to the practice of 'segregation' at Parramatta, that he was prepared to exercise a pragmatic bending of the rules in the face of severe management problems. That did not extend to any toleration of assaults, assuming that there was reasonable proof implicating an officer.

### *Overcrowding of institutions*

One significant development in the late 1950s and early 1960s was the rapid expansion in the numbers of children being committed to institutions. The numbers had more than doubled between the end of the war and the early 1960s. It does not appear that any great change in the incidence of juvenile delinquency brought about the explosion in committals. There had been some increase in the rate reported in 1957, but after that, it stabilised.<sup>120</sup> The increase stemmed rather from the surge in the birth rate immediately after the end of World War II, which, by the late 1950s, produced significant increases in the adolescent population.<sup>121</sup>

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<sup>119</sup> Moylan succeeded Heffernan as Superintendent at Gosford in 1951. Both had been teachers in the Department of Education.

<sup>120</sup> The delinquency rate was given as 11.8 per thousand of the juvenile population of NSW in 1957. See Annual Report, Child Welfare Department, 1956 NSWPP 1956-57 vol. 1, p. 437 et seq., p. 7. The rate for 1961 was 11.4, see Annual Report, Child Welfare Department, 1961, NSWPP 1961-62, vol. 1, p. 233 et seq., p. 5. In 1964 it was 11.8. See Annual Report, Child Welfare Department, 1964, NSWPP 1964-65 vol. 1, p. 155 et seq., p. 7. There were some fluctuations in other years, but overall the rate remained stable from 1957 to 1964.

<sup>121</sup> A R Hall 'Some Long Period Effects of the Kinked Age Distribution of the Population of Australia, 1861-1961' Economic Record vol. 39, 1963, pp. 50-52.

Although extra institutions had been opened, it nevertheless created severe problems. Gosford, which was supposed to accommodate two hundred boys, had a population of four hundred and forty-five in 1960. Finding work for such large numbers was also a challenge. However, there do not appear to have been insuperable management problems. In part this reflected the deterrent presence of Tamworth, but it also was a function of the more efficient and comparatively humane administration of Vincent Heffernan after he became Superintendent in 1944. At Parramatta, the numbers had grown from 87 in 1946 to an all-time high of 205 in March, 1961. In 1958 and again in 1960 the Superintendent complained that the institution was overcrowded to the extent that work stations could not cope.<sup>122</sup> There weren't enough beds and some girls slept on the floor.<sup>123</sup> In January 1961, the Superintendent described the effects of the overcrowding: little capacity to segregate, increased homosexual activity, greater turnover of inmates which led to them being unsettled, staff absenteeism and 'episodes of mass hysteria'.<sup>124</sup>

The problem was much worse for girls than for boys, because of the failure to replace the notoriously unsuitable Training School at Parramatta. In February, 1961, the first of a new spate of very serious riots took place at Parramatta, when twenty girls climbed on the roof of the hospital block, screaming obscenities and hurling roof tiles at police. They were removed after midnight by the use of fire hoses.<sup>125</sup> The next day an even bigger riot took place, with a hundred girls climbing on the roof, and hundreds of people gathering in the street outside to watch. The girls stripped naked and tore tiles from the roof, smashing windows, destroying furniture and causing thousands of

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<sup>122</sup> Annual Reports of the Superintendent to the Under Secretary, local files of the Girls Training School, Parramatta.

<sup>123</sup> Richard Healey, Minister for Child Welfare and Social Welfare, quoted in SMH 26 September, 1974

<sup>124</sup> W A Gordon to Under Secretary 31 January, 1961, local file 'Staff Establishment' records of the Training School for Girls, Parramatta.

<sup>125</sup> SMH 25 February, 1961.

pounds worth of damage.<sup>126</sup> A particularly wild riot occurred ten days later, during which nineteen girls escaped over the wall, using building materials being used to repair the earlier damage.<sup>127</sup> A whole series of riots then took place over the next few months.<sup>128</sup> The response of the Department was coercive. Initially, a special squad of male officers was sent there to keep order.<sup>129</sup> Girls who were inmates at the time later alleged they had been beaten with rubber hoses during the riots.<sup>130</sup>

As had been the case in the riots of the 1940s, the ringleaders were taken before the Children's Court and sentenced to prison terms ranging from a month to three months. In the period from March to the end of 1961, thirty-six girls were so dealt with. Some went to prison twice, one girl three times.<sup>131</sup> They were not separately represented at the court hearings, since the Department, which was presenting the evidence for the prosecution, also claimed that right by virtue of the fact that institution inmates were subject to the guardianship of the Minister.<sup>132</sup> Further trouble occurred when the initial group of some fourteen girls sentenced in March completed their prison sentences and came back to Parramatta to complete their periods of detention. There were calls in and out of Parliament for an open inquiry into Parramatta, but the Government resisted this, on the grounds that it 'could only disadvantage the girls and their parents'.<sup>133</sup>

The Minister, Harold Hawkins, attempted to downplay their significance, arguing that the initial riot started when some horseplay with a hose got out of hand.<sup>134</sup> This was simply not the case. In fact, trouble had been brewing for some time. In

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<sup>126</sup> *ibid.*, 26 February, 1961. See also Harold Hawkins, *NSWPDLA* 3 May, 1962, p. 273

<sup>127</sup> *SMH* 8 March, 1961

<sup>128</sup> *ibid.*, 1, 7, 8, 12, 18 March and 3 June, 1961.

<sup>129</sup> *ibid.*, 1 March, 1961

<sup>130</sup> ABC 'Stateline', 30 May, 2003.

<sup>131</sup> 'Return of Prisoners under Eighteen', Departmental file 71/72/7497, *SR* 4/4631

<sup>132</sup> *SMH* 22 June, 1962

<sup>133</sup> Harold Hawkins, *NSWPDLA* 9 March, 1961, p. 3067.



January, the Assistant Under Secretary, Alan Thomas, received an anonymous letter which said that the place was in turmoil and asking that the Deputy Superintendent be removed.<sup>135</sup> Thomas disregarded it. A month later, things came to a head when the Deputy Superintendent was suspended for misconduct (he was later dismissed). Within a matter of hours of this event, the first of the riots started. Hawkins claimed that the two events were not connected, but this seems implausible. Part of the misconduct was in relation to an inmate, and given the overcrowded nature of the place and the volatile disposition of the girls, it is likely to have been the incident which instigated the riot.<sup>136</sup> Hawkins later said that enquiries of the girls had failed to produce any complaint about food or the way the place was run. He claimed that girls simply wanted to get out, and objected to their not being able to smoke.<sup>137</sup> There was, incredibly, an attempt to portray Parramatta as a quality institution, based on the comments of a distinguished English Children's Magistrate, Sir Basil Henriques, who, according to Premier Heffron, said that New South Wales had the best institutions in the world.<sup>138</sup>

As a result of these events, the Government expedited the construction of additional accommodation at Thornleigh, in order to relieve the pressure of numbers at Parramatta. At the same time, Hawkins announced that a special institution for troublesome girls would be established at Hay.<sup>139</sup> Hay was, like Tamworth, a disused former gaol, and it was deliberately established on the Tamworth model.<sup>140</sup> Official

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<sup>134</sup> SMH 27 February, 1961. See also SMH 10 March, 1961.

<sup>135</sup> Undated anonymous letter, posted 23 January, 1961. Copy in the possession of the author.

<sup>136</sup> SMH 28 February, 1961. See also SMH 20 April, 1961

<sup>137</sup> ibid., 1 March, 1961.

<sup>138</sup> NSWPDLA 1 March 1961, 2773. See also remarks by Minister Hawkins NSWPDLA 9 March, 1961, p. 3071

<sup>139</sup> SMH 22 July, 1961

<sup>140</sup> Harold Hawkins NSWPDLA 8 November, 1961, p. 2297. Hay was a standard country prison, surrounded by high walls. See Annual Report Child Welfare Department 1961 NSWPP 1961-62 vol. 1,

rhetoric was that its purpose was not punitive, but that the girls went there for 'supervision, guidance and individual attention'.<sup>141</sup> In reality, it was a place of punishment for misbehaviour at Parramatta. Girls were transferred there, without warning, at night, although this was officially denied.<sup>142</sup> In the early months of its existence, girls were taken there by police 'Black Maria' wagons, later by train. The only possessions they were allowed to take were a coat, blanket, sandwiches and 'toilet requisites'.<sup>143</sup>

Girls were allowed no visitors at Hay and marched everywhere, most tasks having to be performed 'at the double'. All activities were required to be performed in silence, including meals, with talking being allowed for just one hour per day. Smoking was not allowed.<sup>144</sup> The routine of the inmates was controlled, down to the smallest detail. For example, when they retired for the night, they were not allowed to get up except to go to the toilet (in a bucket kept in the cell for that purpose). They had to lie between the sheets, be visible from the cell door peephole, and were not allowed to put their head under the blankets. Cells were checked every thirty minutes. During the day, a girl could not approach within two metres of an officer without first seeking permission. The general instruction to staff was that 'control, supervision and observation ... must take precedence over every other consideration'.<sup>145</sup> Punishment consisted of cellular confinement, usually for twenty-four hours, on bread and milk diet.

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p. 233 et seq., p. 19. See also Annual Report, Child Welfare Department 1962 NSWPP 1962-63-64 vol. 1, p. 535 et seq., p. 7.

<sup>141</sup> Reginald Downing, Attorney General, quoted in The Riverine Grazier 11 May, 1962.

<sup>142</sup> Reginald Downing, Attorney General, NSWPDLC 2 May, 1962 p. 173. However, a suggestion from the Manager of the Metropolitan Boys Shelter, who co-ordinated travel movements, showed that in 1974, girls were still being transferred by the night train to Narranderra, which left Sydney at 10.30 pm, the girls being put on the train at Campbelltown, because that station was normally deserted late in the evening. See A Overton, Manager of the Shelter to Assistant Chief of Residential Care Division 10 January, 1974 SR A3347.

<sup>143</sup> Local file: 'Transfer of Girls to Hay' Records of the Training School for Girls, Parramatta.

<sup>144</sup> Neville Wran NSWPDLA 11 December, 1973, p.296.

<sup>145</sup> 'Standing Orders for Hay', produced during a Public Service Board Inquiry into the conduct of Percival Green, Manager, Institution for Girls, Hay, in September, 1963. SR 12/1742.

The standard term was three months, followed by return to Parramatta. Some girls returned to Parramatta cowed and compliant, but others returned defiant after a stint at Hay. They were greeted as heroes by the other girls, and often formed the nucleus for rebellious behaviour.

The principal advantage of Hay, apart from removing troublesome girls from Parramatta, where they could incite others to rebellion, was that misbehaving girls could be subjected to what amounted to imprisonment in all but name, without court appearance or disciplinary proceedings. In fact, the regime at Hay was more austere and depersonalising than in adult prisons for women. The drastic measures adopted by the Department are in one sense understandable, given the violent outbreaks at Parramatta. Nevertheless, it is reasonable to ask why it was that the whole program for treatment of girls was not subjected to some fundamental re-assessment. The Tenison Woods Report of the Child Welfare Advisory Council after the riots of the early 1940s, which was so critical of the system at Parramatta, had laid the groundwork but little had been done at the time in response to it.

Why was there so little effort to improve the treatment of girls? Many officials had remarked down the years on the marked differences between boy and girl delinquents undergoing detention. The Minister, Harold Hawkins, had remarked in Parliament on the fact that a number of the girls at Parramatta were 'emotionally disturbed, unusually violent ...or inclined to be hysterical' and that most of the incidents were 'instigated by mentally disturbed girls'.<sup>146</sup> The transfer of such girls to Hay, with its very harsh regime, would seem to be likely to accentuate any mental condition they were suffering from, rather than being to their benefit. The problem of intellectually disabled and mentally ill inmates being detained in juvenile corrective institutions had

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<sup>146</sup> Annual Report Child Welfare Department 1961 NSWPP, p. 19.

been mentioned over and over again by those who administered, or had inquired into this kind of institution, for at least sixty years.<sup>147</sup> Part of the debate in Parliament at the time of the riots of 1961 centred on an allegation that psychiatric treatment had been inordinately delayed for a fifteen year old girl, who subsequently became involved in a riot and was punished accordingly.<sup>148</sup>

Apart from the problems caused by ‘mentally defective’ inmates, there were other issues which related specifically to institutions for girls. The first of these was the use of isolated detention. There had been cells at Parramatta since 1887, and more were added in 1897. In 1934, in the aftermath of the revelations of ill-treatment at Yanco, Minister Drummond ordered that isolated detention blocks be built at all institutions. His purpose no doubt was to reduce the incidence of corporal punishment, and substitute isolated detention as the preferred punishment.<sup>149</sup> From 1936,

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<sup>147</sup> In 1905, T E Dryhurst, Superintendent, Parramatta, 13 February, 1905 arranged the transfer of two intellectually disabled girls to Newington Asylum SR 5/3434. In 1913, Mackellar had estimated that a fifth of the population at Mittagong was mentally defective: C K Mackellar The Treatment of Neglected and Delinquent Children in Great Britain, Europe and America NSW Government Printer, Sydney, 1914. In the 1920s and 1930s, a high proportion of institution inmates were regarded as ‘mental defectives’. See S Garton ‘The Rise of the Therapeutic State: Psychiatry and the System of Criminal Jurisdiction in New South Wales 1890-1940’ Australian Journal of Politics and History vol. 32 no 3, 1986. In 1920 the Royal Commissioner into the Public Service had drawn attention to the problem: G M Allard ‘Fifth Sectional Report of the Royal Commission to Enquire into the Public Service of New South Wales Concerning the Administration of Acts Relating to State Children’, p. 14. In 1923, the Secretary of the Department commissioned Dr. Lorna Hodgkinson to survey institution inmates because of concerns about the incidence of intellectual disability and mental illness. SR 8/669. In 1934, McCulloch reported that there were many instances of intellectually handicapped children in institutions and had drawn attention to the need to segregate mental defectives from delinquents: J E McCulloch ‘Child Welfare Department. Report on the General Organisation, Control and Administration of, with Special Reference to State Institutions’, pp. 145 and 179. In 1939, Part IX of the Child Welfare Act had made specific provision for the care of mentally retarded children, but these provision had never been implemented. In 1942, the Child Welfare Advisory Council’s Report on Parramatta had condemned the mixture of mental defectives and juvenile delinquents there, and had referred to two girls there with intelligence quotients of 52. They also referred to the sentencing of mentally defective girls to prison after the 1940s riots: M Tenison Woods (chair) Delinquency Committee of the Child Welfare Advisory Council, Report on the Girls Industrial School, Parramatta, p.74. There were also proposals in 1945 to remove a wide range of convicted ‘social defectives’ from prison to mental hospitals, but these seemed to be aimed at adult criminals rather than juveniles. See Report of Interdepartmental Committee on Prison Reform SR 7/7133.2.

<sup>148</sup> See question by the Hon. Anne Press NSWPDLC 1 March, 1961, p. 2751 and also NSWPDLA 2 March, 1961 pp. 2858-2860.

<sup>149</sup> Edward Challoner, Minute dated 28 June, 1934, exhibit 155 in evidence to the McCulloch Inquiry, SR 7/7586.

Superintendents of all institutions were instructed not to award more than twenty-four hours isolated detention with the approval of the Secretary of the Department.<sup>150</sup>

Similar restrictions were included in the Child Welfare Act, 1939, which also required that isolated detention be awarded only in 'exceptional cases'.<sup>151</sup> In 1939, about one girl per week was in isolated detention.<sup>152</sup> However, by the 1950s, it was being used very extensively. Between 1959 and 1966, some 2,160 girls were charged before the Superintendent, an average of twenty-three per month. In nearly all cases, twenty-four hours isolated detention was awarded, with occasional awards of forty-eight hours. During periods of particular turbulence, for example the month of November, 1959, fifty-three cases were recorded.<sup>153</sup> Such use of isolated detention went well beyond the bounds of 'exceptional cases'. A number of punishments were probably illegal, for example the punishment of absconders, which the Act reserved to the Court.<sup>154</sup> It was standard practice to place all absconders in isolated detention after recapture and return to an institution.<sup>155</sup> Nor was it confined to the older girls. Ormond School which opened in 1962, had isolation cells and the incidence of this punishment was much the same there as it had been at Parramatta.<sup>156</sup> Also, girls over sixteen accused of 'serious misconduct' were required, under the Act, to be brought before the court, but this was avoided by charging them with the lesser offence of 'conduct to the prejudice of good order and discipline', with the actual offence often mentioned in parenthesis. The hearing of these matters before the Superintendent was usually brief and fairly perfunctory. Nearly all girls pleaded guilty, there was no representation, and the

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<sup>150</sup> Charles Wood, Instruction dated 28 April, 1936 SR 7/7584.

<sup>151</sup> Child Welfare Act, 1939, Section 56(5).

<sup>152</sup> T R Sloane, Report of Official Visitor 22 February, 1939 SR 8/1754.

<sup>153</sup> Punishment Books, Parramatta Girls Training School, 1959-66.

<sup>154</sup> Child Welfare Act, 1939, section 139.

<sup>155</sup> Daphne Davies, Deputy Superintendent, Parramatta Girls Training School: Instruction to Staff 13 December, 1945 SR 3/3193.

<sup>156</sup> Punishment Registers, Ormond School, 1962 et seq., Ormond School Records.

proceedings were of course not judicial, but a kind of summary justice derived from military law.<sup>157</sup> Occasionally, there were overt breaches of the law for example, when two girls under the age of fourteen years were placed in isolated detention, despite this being proscribed by the Act.<sup>158</sup>

While the use of isolated detention at Parramatta was, in terms of the legislative restrictions on its use, excessive, of much greater concern was the use of informal punishment. The term used for this was 'segregation'. This was actually a distinction without a difference, because the treatment of those segregated was exactly the same as those subjected to the formal punishment of isolated detention.<sup>159</sup> The periods of segregation far exceeded those for which isolated detention could legally be awarded, the standard period being three weeks.<sup>160</sup> It was not recorded in the punishment books, as the Act required, although a monthly 'segregation' return was sent to the Director. Returns for 1959-60 show some quite lengthy periods. For example, one girl was segregated for two periods of nineteen and seventeen days in early 1959 for indecent behaviour and attempted absconding. Some former inmates have claimed that girls were 'segregated' for much longer periods, up to three months.<sup>161</sup> There were numerous examples of a segregation of more than a week.<sup>162</sup> Comparison with the official punishment returns shows that segregation was also used as a supplement to the formal, recorded, punishment, following a period of isolated

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<sup>157</sup> This kind of hearing is, at law, considered a practical necessity to make day to day administration workable. See *R v. Hull Prison Board of Visitors* (1971) All England Reports (CA) p. 711 and *ex parte Fry* (1954) 2 All England Reports p. 119.

<sup>158</sup> Entry in Punishment Register for 24 June, 1959. Section 56 (5) (a) of the Child Welfare Act, 1939 limited isolated detention to those fourteen years and above.

<sup>159</sup> A Fury, Chief of Establishments Division, to Under Secretary 19 June, 1973, file Misc 74/11409 'Allegations of Ill-treatment at Parramatta Girls Training School' SR 12/3784.

<sup>160</sup> A girl was segregated from 24 March 1958 to 25 April, 1958, and in her case the Director, Richard Hicks approved of her being segregated for five days longer than three weeks. She had, incidentally, spent 48 hours in isolated detention before beginning the period of segregation. See 'Returns for the Segregation of Difficult Girls' SR 3/9065.5.

<sup>161</sup> A former inmate made this claim, admittedly some forty years later, on the ABC television program Stateline on 30 May, 2003.

detention<sup>163</sup>. Release from segregation was often dependent upon the girl showing signs of contrition or a promise to behave. Cells were used for both isolated detention and segregation. They were about 3.5 metres square, with one window high up on the wall. They had steel doors with an inspection hatch kept securely bolted when not in use. There were no furnishings except a mattress.<sup>164</sup> Girls went barefoot and wore special clothing from which had been removed all buttons, hooks or metal. A restricted diet of bread and milk for the first day and thereafter one normal meal per day, applied, and the food was served on enamel plates and mugs.<sup>165</sup>

Occasionally, special arrangements were made for particularly difficult girls. In one such instance, the Superintendent directed that she take all her meals alone, that no other girl speak to her and that she be placed in segregation at the first sign of trouble, even the 'tossing of the head'.<sup>166</sup> The persistence of these form of excessive and sometimes illegal punishments demonstrated that, even though there was progress in some areas, such as the establishment of psychological counselling services, when it came to the management of difficult inmates, the dominant reaction was one of coercion. Not only local staff, but also executives at Head Office were prepared to tolerate illegal punishment..<sup>167</sup>

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<sup>162</sup> 'Returns of the Segregation of Difficult Girls 1957-60' SR 3/9065.5.

<sup>163</sup> 'Returns of the Segregation of Difficult Girls 1957-60' SR 3/9065.5. One girl was segregated from 30 October to 10 November, 1958 because she was 'unrepentant' after spending 24 hours in isolated detention for pushing a needle into her thigh.

<sup>164</sup> Several cells were located in 'Bethel House', an old building, constructed in 1864, which stood apart from the main institution.

<sup>165</sup> See Administrative Instruction by Director, no 68 dated 17 February, 1949 SR 3/9069 and Instructions to Staff, Parramatta from Superintendent, 9 March, 1949 SR 3/9193.

<sup>166</sup> William Simms, Superintendent, Instruction to Staff 12 November, 1947 SR 3/9193.

<sup>167</sup> In a minute dated 19 June, 1973, the Chief of Establishments Division, Alick Fury, reported to the Under Secretary that in 1971 the Superintendent at Parramatta had been instructed that 'segregation' was to be used 'only in special circumstances and with Head Office approval', because it was a contravention of the strict rules provided in the Act. File Misc 74/11409 'Allegations of Ill-treatment at Parramatta Girls Training School' SR 12/3784.

After Hay opened in 1961, girls designated for transfer there were habitually segregated between a period of official isolated detention and their departure for Hay.<sup>168</sup> Transfers were supposed to be personally authorised by the Minister, but in fact, officials transferred the girls, and the approvals were given afterwards. Even so, there could be a delay of a week before transfer, spent in the isolation cells. Isolation and segregation continued to be used at Parramatta after Hay opened. Clearly, segregation was used as a punishment, but it was illegal, given the strict requirements of the Act, requirements which had been deliberately inserted in order to protect inmates from ill-treatment.<sup>169</sup>

These repressive measures were reinforced by the employment of Superintendents who were male, and selected because they were tough disciplinarians. William Gordon, who was in charge at the time of the first 1961 riot, was a former Manager of the Institution for Boys at Tamworth, and before that had been in charge of the sub-institution at Gosford.<sup>170</sup> Eric Johnston, his deputy, and Gordon Gilford, later deputy at Parramatta, had similarly been Managers at Tamworth. None of them had any formal training. This was a complete contrast to the superintendents selected to run Gosford. Heffernan was a former teacher, as was every one of his successors for many years.<sup>171</sup> Women who were capable of doing the job existed, and several acted as Superintendent at Parramatta for short periods, but they were not appointed.<sup>172</sup> It is

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<sup>168</sup> Local file: 'Weekly Segregation Return to Under Secretary' 1967-71.

<sup>169</sup> In 1984, the Ombudsman investigated an instance of 'segregation' at Endeavour House (formerly the Institution for Boys) Tamworth, in which two sixteen year old boys had been in solitary confinement for three months, this practice being referred to as segregation. The Ombudsman found that this was a serious breach of the Child Welfare Act, done without the approval of the head of the Department. SMH 20 October, 1984

<sup>170</sup> See Public Service Lists.

<sup>171</sup> Heffernan and his immediate successors, Norman Polden, Edward Moylan, and David Fowler were all trained teachers. A number of his predecessors in the job were also experienced teachers. These included Stayner, Parsonage, Cookson and Hingston. See teacher rolls held in the State Records.

<sup>172</sup> Two women acted for short periods of time as Superintendent, after the 1942 riots. Mary Lamond commenced duty in an acting capacity on 2 February, 1942, but declined appointment when her probationary period expired in August, 1942. For a short while a Miss Marion then acted, but she was



difficult to escape the impression that the Department considered that reserve physical force was essential, and this could only be supplied by a male Superintendent. Indeed the female staff at Parramatta in the early 1940s wanted a male appointed.<sup>173</sup>

Many punishments were awarded for acts of self-mutilation, such as sticking pins in their bodies, most commonly the thighs and arms, but also ankles, breasts and even gums.<sup>174</sup> A typical example was for a girl to scratch, with a pin, on her arm the initials ILWA, followed by the initials of another inmate (I love and worship always ... A.B.). This practice, which at times reached epidemic proportions, was invariably punished. Often the pins would be inserted and the head then bitten off, so nothing would be apparent until the pin started to fester. Sometimes girls swallowed pins, and this necessitated examination at Parramatta Hospital. However, the practice became so prevalent that staff often treated the girls themselves, by giving them a cotton wool sandwich. When eaten, the cotton wool wrapped around the pin, which would then be passed in a stool.<sup>175</sup> Sometimes girls were punished with isolated detention for ripping out stitches which had been inserted during an operation to remove a pin.<sup>176</sup>

These acts of self-mutilation must be considered in association with a particular phenomenon which operated at Parramatta, known to staff as the 'lover system'. This was closely connected with instances of 'hysterical' behaviour during riots.

Participating inmates established among themselves a 'highly developed interweaving

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not appointed. The Minister, Clive Evatt, wanted a woman appointed, but the Public Service Board appointed William Simms, previously at Gosford, instead. The Board sought instead to find a woman to be Deputy Superintendent. See Report by the Public Service Board under Section 9 of the Public Service Act, 2 December, 1942 SR, 14/6346. Kathleen Hughes was a successful Deputy Superintendent in the 1950s, as was Daphne Davies, a former policewoman who was later promoted to the position of Principal of Lynwood Hall, a home for adolescent female wards at Guildford.

<sup>173</sup> M Tenison-Woods (chair) Delinquency Committee of the Child Welfare Advisory Council Report on the Girls Industrial School, Parramatta, p. 36.

<sup>174</sup> Local file, Parramatta Training School for Girls: "Transfer of Girls to Hay".

<sup>175</sup> The practice continued at Parramatta and its successor, Kamballa. See Logbook entry 25 October, 1977, Kamballa, Local records of Parramatta Girls Training School.

<sup>176</sup> One girl received four days segregation for this between 22 and 26 September, 1958. See 'Returns of the Segregation of Difficult Girls 1957-60' SR 3/9065.5.

web of relationships' under which certain girls held 'special power' over others, sometimes because of physical appearance, sometimes because of reputation on the 'outside' or notable deeds 'inside'. One girl became the 'Queen Bee' because of her pre-eminent status. Each participant had a 'paramount lover' although the identity of this person might change in different work situations.<sup>177</sup> Aspects of the system such as the exchange of gifts and physical intimacies (kissing, holding hands) led to punishment.<sup>178</sup> Sentimental notes, the use of code or pet names, petty jealousies, distinctive jargon and indulgence in attention-seeking behaviour were all typical of the system. From a disciplinary aspect, problems occurred when new girls arrived, former inmates were re-admitted or girls were discharged, because these necessitated the re-arrangement of allegiances. Behaviour which was normal to those in the 'lover' group was unacceptable to the institutional authorities. This was because some of it had lesbian overtones, although officials who became familiar with the system say that this was by no means always the case.<sup>179</sup>

Few staff seem to have had much understanding of its complexities, although it had existed at least since 1947 and probably long before that.<sup>180</sup> Lack of familiarity could be disastrous for those trying to supervise girls at times when the system was in a state of re-alignment. Some of the riots and lesser disturbances were precipitated by significant events in the 'lover' sub-culture, such as the discharge of a 'Queen Bee' or the punishment of a girl with some status, especially if it was considered to be unfair. The riots which started at Parramatta in February 1961 may well have had an explanation based on the 'lover' system, since they occurred so soon after the

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<sup>177</sup> M Fitzpatrick 'A Girls' Institution-The 'Lover' System' Unpublished typewritten manuscript, c. 1970. Copy held by the author.

<sup>178</sup> See Behaviour Record Cards, Parramatta Girls Training School, 1967, SR 3/9058.

<sup>179</sup> M Fitzpatrick, 'A Girls' Institution-The 'Lover' System', p 1.

<sup>180</sup> See The Sun 22 March, 1947. See also 'Transcript of Evidence before the Public Service Board Inquiry: Industrial School for Girls, Parramatta, 1898', pages 268 and 315. SR 8/300.1.

suspension of the Deputy Superintendent, who was perceived as having behaved improperly towards inmates. In a television program which went to air in 2003, girls who were inmates during the 1961 riots claimed that a male member of staff was having sex with inmates.<sup>181</sup>

Similar practices have been observed in other institutions for women, for example in a New Zealand Borstal, where a 'Darls' system operated.<sup>182</sup> Some writers have described similar systems in terms of the women concerned constructing a 'pseudo family' within the institution, as a substitute for the deprivation of normal relationships occasioned by incarceration. In 1931, a study found that forty per cent of inmates of an institution surveyed indulged in kissing, fondling, embracing, although very little of this behaviour was regarded as overtly homosexual. They constructed artificial 'husband/wife', 'mother/daughter', even 'grandparent/grandchild' pseudo-relationships. This study concluded that it was simply a 'natural substitute for the family group which no institutional mechanism is able to give', and was not necessarily lesbian in nature.<sup>183</sup>

The official reaction to the severe problems experienced at Gosford and Parramatta was twofold: coercion and increased classification. The substantial increase in numbers being committed, which began in the mid 1950s offered an opportunity to expand classification. This was, up until the 1961 riots, carried out only in respect of male institutions. As more and more children were committed, there seems to have been little thought given to any other course of action except building more institutions.

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<sup>181</sup> ABC Stateline program, 30 May, 2003.

<sup>182</sup> A J W Taylor 'The Significance of 'Darls' or Special Relationships for Borstal Girls' British Journal of Criminology vol. 6, October, 1965, pp. 406-418. See also M Otis 'A Perversion Not Commonly Noted' Journal of Abstract Psychology vol. 8 June/ July 1913 pp. 113-116, A Bowler & R Bloodgood Institutional treatment of delinquent boys, Children's Bureau Instruction no 228, part 2: 'A Study of 75 boys' Washington, 1935, p. 44, and S Millham, R Bullock & K Hosie Locking Up Children, p. 63.

<sup>183</sup> L S Selling 'The Pseudo Family' American Journal of Sociology vol. 37 September 1931, pp. 247-253.

Institutionalisation remained the response, despite the evidence that it failed to combat recidivism. In fact, the Public Service Board, during an extensive inquiry into the operations of institutions in 1942, had come to the conclusion that Gosford and Parramatta were neither rehabilitative or retributive. The Board concluded that they were simply places where inmates 'spent a period of their lives straining at the leash until the time (came) for their release'. It also asked for the results of research which the Department had supposedly conducted on recidivism, but the Department was unable to produce it.<sup>184</sup>

In 1947, however, the Department was claiming that recidivism had fallen because of the effectiveness of after-care work, but no statistical proof accompanied this statement.<sup>185</sup> In 1956, it was claimed that in excess of eighty per cent of girls from Parramatta did not re-offend, although no supporting evidence was given.<sup>186</sup> Nor is there any evidence that any proper research was undertaken. Again, it was stated in 1957 that thirteen per cent of institution inmates were recidivists, compared with thirty-three per cent in Britain. Given the hazards of inter-country comparisons of this kind, and the lack of any detailed supporting evidence, one can only conclude that statements of this kind were made for public relations purposes. In fact, studies of recidivism overseas were much more soundly based, methodologically, than any thing undertaken in respect of juvenile delinquents in New South Wales.

McCulloch, in his Report had drawn attention to a well-known and reputable study by Sheldon and Eleanor Glueck of a thousand juvenile delinquents, which had found that eighty-eight per cent had re-offended within five years.<sup>187</sup> Such a figure

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<sup>184</sup> Report by the Public Service Board under Section 9 of the Public Service Act, 2 December, 1942 SR. 14/6346.

<sup>185</sup> Annual Report Child Welfare Department 1947, NSWPP 1947-48 vol. 1, p. 125 et seq., p.7.

<sup>186</sup> D J McLean, Children In Need, p. 161.

<sup>187</sup> J E McCulloch 'Child Welfare Department. Report on the General Organisation, Control and Administration of, with Special Reference to State Institutions', p. 109. See S & E T Glueck One

certainly cast doubt on the rather expansive claims made by New South Wales officials. Had officials paid more heed to the advice of McCulloch that a more scientific assessment of the effectiveness of treatment needed to be undertaken, the claims of success would have been rather more muted, and perhaps some examination of alternatives to institutions been undertaken.

Putting the question of recidivism to one side, the fact of mass abscondings at Gosford and the wild riots at Parramatta should have alerted the Government and those at the head of the Department to the possibility that there were fundamental flaws in the programs themselves. Research in Britain has shown that high rates of absconding are characteristic of ineffective institutions but absconding is moderated by a good pastoral care system.<sup>188</sup> The high absconding rates should at least have raised the question of whether the way in which girls and boys were treated may have been the cause of the problem.

In relation to girls, routines were certainly harsh and oppressive. At Parramatta, up until the mid 1960s, all doors were normally locked so that the passage of girls from one activity to another was habitually interrupted by the routine of unlocking and then locking doors. Staff also were obliged to carry large bunches of keys.<sup>189</sup> Most activities were controlled by bells, and no talking was allowed for much of the day.<sup>190</sup> There were frequent musters at which girls were counted. Detailed written records were kept of their menstrual activity, they were not allowed to have posters on the walls like girls outside, they could not smoke, even though many had

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Thousand Juvenile Delinquents: Their Treatment by Court and Clinic (Cambridge, 1934) Kraus Reprint, New York, 1965, p. 151.

<sup>188</sup> S Millham et al Locking Up Children, p. 71, quoting a study by R V G Clarke & D N Martin ' A Study of absconding and its implications for residential treatment of delinquents' in J Tizard, I Sinclair and R V G Clarke (eds.) Varieties of Residential Experience Routledge and Kegan Paul, London, 1975, pp. 249-274 .

<sup>189</sup> Instruction by W B Simms, Superintendent, 18 September, 1947 SR 3/9194.

smoked heavily on the outside.<sup>191</sup> There was no provision for privacy, they didn't even have a locker to put their personal belongings in.<sup>192</sup> They wore an unattractive brown and blue overall, uncomfortable underwear made of unbleached calico which was not changed daily, and they were not issued with brassieres or sanitary pads.<sup>193</sup> Girls were searched after visitor access, and could only write one letter per week, censored.<sup>194</sup> This was at the same time that official publicity was, (in a quite ludicrous way, to those who were aware of the true situation) attempting to portray places like Parramatta as equivalent to private 'finishing schools'.<sup>195</sup> Little seemed to have changed in the coercive treatment of girls since the nineteenth century.

The situation in institutions for boys had, by contrast, improved. There is little indication that there was excessive use of isolated detention, or of 'segregation'. Heffernan reported that on taking up duty there in 1944, there was no sign of any vocational training at all, despite this having been mentioned in Annual Reports down the years. However, he was able to ensure that this activity was resumed. With the advent of Tamworth, absconding had been greatly reduced. Some improvements were made to living conditions, for example boys now ate their meals indoors, whereas previously they had eaten most meals in the open. However, there were still many

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<sup>190</sup> See 'Detailed Routines for the Girls' Training School, Parramatta', typed manuscript, undated but circa 1963, original in possession of the author.

<sup>191</sup> For details of the recording of menstrual activity, see Instruction dated 1 May, 1945, Instructions to Staff Book, p. 28 SR 3/3194. For removal of posters from walls, see instruction by E R G Troy, Superintendent, 9 August, 1951, SR 3/3194. For reference to the prohibition on smoking, see SMH 1 March, 1961

<sup>192</sup> Report by the Public Service Board under Section 9 of the Public Service Act, 2 December, 1942 SR. 14/6346.

<sup>193</sup> The overall had been used for many years, and was not discarded until 1964. In that year, sanitary belts and brassieres were used for the first time, daily changes of underclothes was introduced, and the use of unbleached calico ceased. See Annual Report of Superintendent to Under Secretary for 1964, local records, Girls' Training School, Parramatta. Copy in the possession of Percival Mayhew, former Superintendent.

<sup>194</sup> For searching of girls, see Instruction of 11 October, 1964, which changed the searching procedure from all girls to random searches. 'Amendments to Set Rules 1964-66' MS in the local records of the Girls Training School, Parramatta. For rules regarding the writing and censure of letters, see Instruction of 4 December, 1942, Book of Instructions to Staff SR 3/9193.

<sup>195</sup> D J McLean Children in Need, p. 161.

aspects of life at Gosford which persisted. For example, many boys were engaged in heavy manual work around the property, but their work clothes were changed only once a week. As they were not given any underwear, the clothes became quite smelly after a few days. After showering each evening, they put on different clothing, but this was only changed once a fortnight. All boots had to be removed on entering the dormitory (as they could be used as weapons) so at night boys went barefoot.

The main problem seems to have been that there was great reluctance to changing routines which had been in place for very long periods of time. Things tended to be done the way they had always been done, and it was very hard to effect change, particularly in institutions. In fact, when the routine was changed, it was almost invariably to make it tighter to cover some loophole which had been discovered. To a large extent this was because there was little effective training of staff. They continued to use 'traditional methods' for managing inmates, those methods being essentially rigid and oppressive, and passed down from 'old hands'.

Despite the wild and impulsive behaviour and the high incidence of self-mutilation, there was no substantial effort to tackle the problem girl delinquents. A Psychological Counselling Service had been operating for several years before the Parramatta riots, but its resources were thinly spread and it seems to have played little part in the response to the riots. As the Delinquency Committee of the Child Welfare Advisory Council had reported twenty years before, there were multiple problems at Parramatta. It was therefore simplistic to blame the riots on the behaviour of a small group of disturbed girls. Self-mutilation was an indicator of either a very unsatisfactory institutional environment or of possible psychiatric illness. Yet it seems

to have been treated very much as just another behavioural breach to be punished.<sup>196</sup>

McCulloch had, nearly thirty years before, drawn attention to the need for children who misbehaved in institutions to be medically examined.<sup>197</sup>

### *Conclusion*

The year 1961, in one sense, marked the end of an era, as well as the year when Hicks reached the statutory retirement age. In broad terms, the administration of the Department had improved greatly from the 1940s, when it was really in a disorganised state. That Hicks' term as Director had been highly valued by the Government was shown by the fact that he had been made a Commander of the British Empire.<sup>198</sup> In practical terms it was marked by a much tighter and more efficient administration, as well as significant expansion of services. This was designed to put the Department in the position of being the main co-ordinating authority for child welfare in the State. There was a deliberate attempt to provide a system which would be free from the overlapping responsibilities revealed in the Curtis Report on the British child welfare system in 1946.<sup>199</sup>

There had been a large increase in the number of field officers engaged in probation and after care, and these services had been decentralised throughout the State. A lot of effort had been devoted to 'preventive' work aimed at reducing both initial court appearances and recidivism. Although it was claimed that this had been

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<sup>196</sup> See J Wilkins & J Coid 'Self mutilation of female remanded prisoners: an indicator of severe psychopathology' Journal of Criminal Behaviour and Mental Health 1991 vol. 1, (3) p. 264.

<sup>197</sup> J E McCulloch 'Child Welfare Department. Report on the General Organisation, Control and Administration of, with Special Reference to State Institutions', p. 114. McCulloch considered such children should be seen by Dr. Bruce, who was then responsible for the physical and mental surveys conducted at the Metropolitan Boys Shelter.

<sup>198</sup> Hicks was made an officer in the Order of the British Empire (OBE) in 1956 and Commander (CBE) in 1961. See M Maton The Order of the British Empire to Australians 1917-1989 M Maton, St. Ives, 1998 p. 131 and p. 91.

<sup>199</sup> Great Britain Home Office Report of the Care of Children Committee (Curtis Report), pp. 140-144.



effective, there was no convincing evidence to support this contention. There was much greater executive supervision of institutions. Some services had been professionalised, for example the establishment of a psychological counselling service. Training of field staff had improved greatly, although the initial trend towards professional University trained social workers was generally replaced with in-service training at a sub-professional level. The public relations image of the Department had been enhanced by the establishment of an Information and Extension service although some of the material produced painted such a rosy picture as to stretch credulity. With few financial restraints, it had been possible, as part of the considerable expansion of institutional facilities, to provide much better classification of male inmates.

On the deficit side, Hicks failed to direct resources towards improving facilities for female inmates, at the expense of those for males, when there were compelling reasons why females should have received preference. Improvement in the training of field staff had not been matched by any better training of institutional staff. The treatment of girls at Parramatta breached, with the acquiescence of Hicks himself and other senior executives, the stringent restrictions on punishment laid down in the Child Welfare Act, put there to prevent that kind of thing happening. That treatment arguably was responsible, in part for the severe rioting in the early 1960s. The classification of inmates also had a negative aspect in that troublesome inmates were incarcerated in gaol-like institutions which were excessively coercive in nature.

Dormitory at Parramatta-*courtesy State Library*

Dormitory at Ormond, Thornleigh-*courtesy State Library*

**Tamworth Boys Home , General Order 10**

Early Morning Routine

General Order No. 10  
as amended Dec.74

6am           The night officer, accompanied by one of the relieving officers, will go on a tour of each occupied cabin and the relieving officer is to satisfy himself that he sights the correct number of boys. Upon entering the block, the "wake up" alarm bell will be sounded for ten seconds, at which time the boys will rise and make their beds in the required manner.

6.20am       The 2 morning officers will re enter the cabin block and open all doors, greeting each lad with "Good Morning" and addressing him by name. The remainder will answer but remain facing the bed. When cabin doors are open, the following orders will be given.

Cans and Gear ... UP (Boys will pick up cans, books, letters and handkerchief).

Cabin Doorways    MOVE (Boys will move to the door of the cabin and face out).

One pace forwards March

About turn           Cans Down

Lights Off           (Boys will switch cabin lights off.)

Downstairs party About turn

Three paces forward   MARCH (To march in front of own locker).

The upstairs officer will then send the lads in his section down one at a time and they will automatically take up position in front of their locker. When all is steady the company officer will continue.

Books               In. (Library books to centre of top shelf)

Cans               Down (Cans to the floor next to daywear) , sheets and pillow slips (if necessary).

Daywear up

One step back               March

Gear down

Change               (Boys will change into blue gym shorts and sandshoes (except Sundays).

Left knee down

Fold clothing               (Allow sufficient time to fold pyjamas).

Stand               Gear up

One pace forward   MARCH

Adjust gear           (boys with false teeth replace same).

Steady

One pace back       March

Right or Left       Turn

Quick march       (When outside, boys are to be halted in 2 ranks then given the instructions...)

The night can emptying and cleaning will then take place after all lads have participated in P.T. Ablution parade will commence on the completion of P.T. Breakfast will be at 7 am.

Adjustments to this routine will have to be made on days when washing has to be brought out from the cabin block.

(R. SMITH)  
On behalf of,

L Franklin  
Acting Manager

Source: Royal Commission into Aboriginal Deaths in Custody Report of the Inquiry into the Death of Malcolm Charles Smith Australian Government Publishing Service, Canberra 1989, Appendix A

Richard Henry Hicks - *courtesy State Library*

**CHAPTER 7**  
**1961 to 1976**  
**BEGINNINGS OF DIVERSION**

At the beginning of the 1960s, there was a crisis in institutional treatment, caused by a significant increase in the numbers of delinquents being committed. The initial response to this was simply to provide more institutions. In the late 1960s and early 1970s, however, the Department began to move from its traditional emphasis towards diverting juveniles away from both the criminal justice system and incarceration. This was a change of some magnitude, influenced by trends in other States and overseas, and driven by William Langshaw, who became head of the Department in 1969. Rather than a mere adjustment of programs, it represented a fundamental re-assessment of the purpose of programs for the treatment of juvenile delinquents.

In one sense, diversionary programs might be regarded as a return to the reforms advocated at the beginning of the century by Mackellar. The major impetus for change, however, came from developments overseas, especially America, and the subsequent evaluation of local programs. There were a number of features to this development. First, programs for the treatment of juvenile offenders, were critically re-assessed by a newly appointed research officer, to determine their effectiveness. Secondly, the input of the non-government sector and the community generally was sought through a major review of legislation, the first for more than forty years.

In this respect, New South Wales was not alone. In the 1970s reviews of child welfare legislation were undertaken in all States.<sup>1</sup> The review was in two parts, the first a series of committees involving many people from outside the Department, and including a number who had been critical of its performance. The second was conducted by Judge Muir of the District Court, quite independently of the first. Thirdly, efforts were made to move away from the harshest aspects of institutional treatment, through the closure of the Institution for Girls at Hay, and the opening of Tallimba, an experimental therapeutic community. Non-residential alternatives to incarceration were also established.

All these changes were influenced by developments overseas. British research argued that there was a connection between maternal deprivation and delinquency, bringing about a fundamental change in the way delinquency in adolescents was perceived. In the United States, the diversion movement was beginning to have an impact on traditional forms of institutional training. Also, as a result of social movements in America, there was considerable activity in the field of children's rights, especially emphasis on 'due process', and the principle that children should not be deprived of rights commonly accorded to adults. The normalisation principle, which was revolutionising programs for people with intellectual disabilities, began to impact on other programs, including those for delinquents. In summary, there was a growing reluctance to continue with programs simply because they had been in place for many years.

### *Institutional Crisis*

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<sup>1</sup> M D Kirby 'Reforming Child Welfare Law in Australia' Family Law Review 1979, vol. 2, p. 116.

At the beginning of the 1960s, the Department faced a crisis, brought about by a very large increase in the numbers of delinquents being committed to institutions. In 1952, there were 601 juveniles in institutions, in 1962, this had risen to 1090, and by 1973 the number was 1358.<sup>2</sup> Most of the increase was associated with the post-war 'baby boom', as well as the large-scale immigration program of the 1940s and 1950s. The reaction of the Department under both Hicks and Thomas, was unimaginative. They simply built more institutions to cope with increasing numbers, even though Hicks had, back in the 1940s, supported the creation of alternatives to incarceration.<sup>3</sup>

Overseas research, however, was beginning to show that institutional training was not effective in reforming delinquents. In particular it demonstrated that with first offenders, it was much better to rely on alternatives to incarceration. Hicks' emphasis on prevention was also not working very well. The basis of his scheme was that first offenders received either a police caution or, if brought before the court, probation. Either way, supervision by probation officers could attempt reform.

Courts, however, persistently sent large numbers of first offenders directly to institutions. In 1966, thirty per cent of those at Parramatta and fifty per cent of those at Gosford had been committed at their first court appearance.<sup>4</sup> For boys these figures were actually worse than those of the late nineteenth century, when only about thirty-six per cent of committals to *Sobraon* had no previous court appearances.<sup>5</sup> Despite these figures, there was apparently little effort to change the attitudes and sentencing practices of Magistrates. Section 84(2) of the Child Welfare Act, 1939, permitted orders of committal to be reviewed by the Sydney Children's Court. This was a

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<sup>2</sup> Source: Annual Reports of the Child Welfare Department and, from 1956 the Department of Child Welfare and Social Welfare.

<sup>3</sup> See Report of Committee set up to consider implementation of the UK Criminal Justice Act, 1938. SR 7/7241.1.

<sup>4</sup> Annual Report Child Welfare Department 1966, NSWPP 1966-67 vol. 1, p. 239 et seq., p. 17.

<sup>5</sup> Annual Report *Sobraon* for year ended 30 April, 1898, JLC 1898 part 1, vol. 58, p. 17.



mechanism suggested by McCulloch to allow review by of inappropriate committals from country magistrates, but It was hardly ever used, since Magistrates were very reluctant to review the orders made by other Magistrates.<sup>6</sup> Little consideration seems to have been given to ways by which inmate populations might be reduced, for example, by shortening the period of training, reviewing the cases of children committed at their first court appearance, establishment of non-institutional alternatives. Hicks was still very much of the opinion that institutional training was effective in reforming young offenders. As a consequence many children who would have been quite adequately dealt with by receiving a non-custodial sentence, were incarcerated, to their detriment.

The demand for more beds increased. In 1960, Daruk, an institution for two hundred boys had been opened, but within a year it was full. Designated for those aged fourteen to sixteen, its accommodation was said to be of a style between the dormitories of Gosford and the cottages at Mittagong. In practice what this meant was that the institution was organised in four 'houses' of fifty boys each. They still slept in dormitories, but these were divided by low half-walls, which had the effect of arranging beds into small groups, but allowing instructors visual supervision over the whole area. Strangely, it didn't have a privilege cottage, a feature of both Gosford and St. Heliers. Its opening was meant to relieve the pressure on Gosford, where numbers had risen to 445 in 1960, even though it was meant to hold a maximum of two hundred. Even after Daruk opened, the newly completed Gosford gymnasium had to be used as a dormitory.<sup>7</sup>

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<sup>6</sup> See J E McCulloch 'Child Welfare Department. Report on the General Organisation, Control and Administration of, with Special Reference to State Institutions', NSW Government Printer, Sydney, 1934, p. 107.

<sup>7</sup> Annual Report, Department of Child Welfare and Social Welfare, 1961 NSWPP 1961-1962, vol. 1, p. 233 et seq., p.18 and p. 20.

By 1964, both Gosford, with 375 inmates, and Daruk, with 220, were overcrowded again. So, in 1969, Yawarra, providing another two hundred beds, opened at Kurri. It was for boys aged sixteen to eighteen, and was also claimed to be a break away from the large congregate institutions. It was organised into four houses, each with forty-four boys, plus a privilege cottage accommodating twenty-four, each with a housemaster and assistant matron. This was certainly an improvement on the large dormitory regime of Gosford, but, with more than forty boys in each house, it could not properly be said to consist of 'cottage homes' either.<sup>8</sup>

There were also new institutions for girls. In 1962, after many years in which resources had been directed towards the provision of new institutions for boys, the Department at last opened a new training school for girls, Ormond, next to the two cottages opened at Thornleigh in 1947.<sup>9</sup> In its first year of operation, it accommodated sixty-five girls, but numbers soon rose to more than one hundred. It consisted of four cottages, each divided into five sections. It was again claimed that it was set up on the 'cottage system'. As the cottages held only twenty-five girls, they were smaller than the comparable ones at boys' institutions, although the girls slept in dormitories and any notion of a cottage home was in reality negated by the fact that the area in which they were located was surrounded by a high wall.

Ormond contrasted with all the large institutions for boys built in the twentieth century (except the high security Institution for Boys at Tamworth) which were open institutions. The failure to establish an 'open' institution for girls was a reflection of

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<sup>8</sup> Annual Report, Department of Child Welfare and Social Welfare, 1969, NSWPP 1969-70-71, vol. 1, p. 711 et seq., p.14.

<sup>9</sup> Ormond was built on the same site as the two cottages built in the 1940s, and used subsequently as a pre-discharge institution for girls from Parramatta. Those cottages were outside the new perimeter wall. After Ormond opened, they were incorporated into the new institution and became the 'privilege cottage' for Ormond.

the fact that Departmental attitudes to the treatment of girls had not changed. It was also necessitated by political considerations. The new complex was located in an area which was only sparsely settled when bought in the 1940s, but by the 1960s, the complex was surrounded by residential development. Absconders from an open institution would stir up opposition from people living in the neighbourhood. Initially it was supposed to have the same age range as Parramatta, the intention being to provide for the 'less sophisticated' girls, although it soon became the practice for older girls to be kept at Parramatta and younger ones at Ormond.<sup>10</sup>

The opening of Ormond brought some relief to Parramatta, where the numbers fell from 162 in 1962 to 131 in 1964, but the relief was short-lived. By 1966, there were 171 girls at Parramatta and 108 at Ormond. The pressure of numbers in girls institutions also led to a change of policy in relation to Hay. Since its inception, Hay had been used exclusively to accommodate those guilty of overt acts of misbehaviour or abscondings from Parramatta. From 1966, however, it began to be used for those who 'failed to attain the minimum standard' as well as those who seriously misbehaved.<sup>11</sup> Failure to attain the minimum standard was a reference to the points system used in all institutions at the time. An inmate was expected to progress steadily, by good behaviour, from the lowest rated dormitory, where one was placed on admission, to the highest, prior to discharge. Under this new arrangement, girls who continued to languish in the lower level dormitories were transferred to Hay. This was an additional mechanism for removing those who had a potential for being troublesome from the overcrowded Parramatta.

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<sup>10</sup> Annual Report Department of Youth and Community Services 1962 NSWPP 1962-63 p. 595 et seq., pp. 5, 14-15 and 25.

<sup>11</sup> Annual Report of Superintendent, Training School for Girls, Parramatta to Under Secretary, 13 April, 1967. Copy in possession of the author.

In 1966, further relief for the pressure on Parramatta and Ormond was provided by the opening of a large remand centre for both boys and girls, Minda, at Lidcombe. Although designed to provide additional remand beds, Minda also had a specialist facility for the diagnosis and treatment of venereal disease in girls. Once Minda opened, all medical examinations of girls were done there, and the girls were treated there until free from infection. It also meant that girls on remand, who were often a very unsettling influence, were no longer held at Parramatta.

The numbers of girls in institutions continued to rise, however, reaching a peak of 306 in 1970. Further relief came in 1973 when Reiby opened at Campbelltown. This institution provided accommodation for about ninety girls aged fourteen to sixteen.<sup>12</sup> It followed the prevailing model of four houses of twenty inmates each, as well as a privilege cottage. As had always been the practice with girls' institutions, it was surrounded by a wall. The principal benefit that Reiby brought was that its opening enabled, finally, the closure of the Parramatta Girls Training School, after almost a century of operations as an industrial school. Nevertheless, part of the Parramatta campus was retained for use as a small unit for recalcitrant girls.<sup>13</sup> 'Kamballa' normally accommodated about twelve girls and operated with a high ratio of staff to inmates. It was, in effect a successor to Hay, and represented yet another attempt to deal with girls who had become serious behaviour problems in the larger institutions.

The main concern of the Department, however, remained the control of boys. The opening of Tallimba at Camden in 1973 introduced a new type of institution,

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<sup>12</sup> Annual Report, Department of Child Welfare and Social Welfare 1973, NSWPP 1973-74 vol. 1, p. 265 et seq., p 7. See also Annual Report of Superintendent, Parramatta Girls Training School for year ended 30 June, 1972, dated 5 June, 1972. SR A 3347.

<sup>13</sup> Government Gazette 7 March, 1975.

reflecting a change of direction under Langshaw. It was an experiment in a different type of short term, intensive, institutional training. Tallimba was described as a 'therapeutic community' for 24 boys aged fourteen to sixteen. The idea of the therapeutic community was pioneered by Maxwell Jones, a British psychiatrist at Henderson Hospital near London.<sup>14</sup> The emphasis was on a 'democratic' structure, where the traditional power imbalance between staff and inmates was minimised. It functioned with a 'higher degree of democracy, communalism and confrontation' and to encourage parental participation, and to have 'produced some very encouraging results'.<sup>15</sup> Jones was convinced that such a community also had immense possibility in a corrective setting.<sup>16</sup>

The Tallimba program, based on 'Highfields' in Britain, was initially claimed by the Department to have achieved 'significant attitudinal change' compared with the conventional training program operating at Daruk Training School.<sup>17</sup> Even with a much shorter training period, the use of such a program, with small inmate numbers, more highly qualified staff, a higher proportion of staff to inmates, and a much less rigid authority system, could only be justified if it produced results that were significantly better than conventional training programs, since it was clearly more expensive. Unfortunately, the staff employed at Tallimba did not have qualifications to match the overseas model. A research study in 1980 showed that it had achieved no better results than conventional, but less expensive, institutions, even though inmates were

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<sup>14</sup> M Jones 'The Concept of a Therapeutic Community' American Journal of Psychiatry 1956 vol. 113, p. 746.

<sup>15</sup> Annual Report Department of Youth and Community Services, 1974 NSWPP 1974-75 vol. 5, p. 653 et seq., pp. 8 and 52.

<sup>16</sup> M Jones Social Psychiatry in Practice: The Idea of the Therapeutic Community Penguin, Ringwood, Victoria, 1968, pp. 23-25.

<sup>17</sup> Annual Report Department of Youth and Community Services, 1975 NSWPP 1976 vol. 12, p. 1131 et seq., p. 51

carefully selected..<sup>18</sup> It closed in 1982. To the extent that it failed to produce any better results than conventional institutions, Tallimba was a disappointment. More substantial improvements to the system were, however, achieved in the early 1970s.

The inmate population peaked at 1,113 in 1971.<sup>19</sup> Thereafter, it declined, for a number of reasons. The demographic factors which had produced the large increase in the number of institution inmates were no longer so significant. There was also evidence of some attitudinal change in the sentencing practices of courts, resulting in more extensive use of non-custodial sentences. However, probably the most significant factor was a decision in November, 1973, to 'introduce further flexibility into training and rehabilitative programs'. This was official jargon for a reduction in the length of the standard period of detention.<sup>20</sup> This followed developments in America, where there was a growing disenchantment with the effectiveness of institutional treatment. For example, the normal period of detention in institutions in a number of American States had been reduced to between three and five months, effectively about half the previous standard, without any apparent increase in recidivism.<sup>21</sup>

In 1971, the vast majority of inmates in NSW institutions spent between seven and twelve months in detention.<sup>22</sup> The standard period of detention for a 'general committal' was in the vicinity of nine months. By 1975, that had been reduced to five

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<sup>18</sup> See A Habgood 'An evaluation of Tallimba and Daruk Training Schools', 1980, unpublished. Copy in possession of the author.

<sup>19</sup> Annual Report, Department of Child Welfare and Social Welfare, 1971, NSWPP 1971-72 vol. 1, appendix.

<sup>20</sup> Annual Report, Department of Youth and Community Services 1974 NSWPP 1974-75 no 165 p. 653 et seq., p. 48. For comments on the changes to the training program, see p. 50.

<sup>21</sup> See N Morris & G Hawkins The Honest Politician's Guide to Crime Control, pages 158 and 168.

<sup>22</sup> Annual Report Department of Child Welfare and Social Welfare, 1971 NSWPP, 1971-72, vol. 1, p. 35.

months.<sup>23</sup> The combined effect of these factors was a sustained reduction in institution inmate populations. Between the peak year of 1971, and 1978, the population fell by more than half, to 515.<sup>24</sup> The reaction of the Department to the fall in numbers was cautious. In the early 1960s it had been largely unprepared for the explosion in the inmate population, and it wanted to avoid a repetition. As the numbers continued to fall, however, it proceeded to close several large institutions, St. Heliers in 1973, Mittagong in 1976. It also enabled Yawarra to be used exclusively for the accommodation of young offenders aged eighteen to twenty-one, transferred from prison to the care of the Department.

#### *Influence of William Langshaw*

William Langshaw attempted to change the juvenile correction system when he became head of the Department in 1969, by reducing the incarceration rate and experimenting with forms of treatment which had reputedly been successful in other jurisdictions. This was a distinct contrast to the administrations of his two predecessors, Thomas and Hicks, who had been reluctant to initiate fundamental change, no doubt because of the turbulent history of the system. When Richard Hicks retired in 1961, he was succeeded by his deputy, Alan Thomas, whose background, like that of his predecessor, was in administration, not child welfare. He had served in the RAAF during the war, and afterwards completed a Diploma of Commerce. Thomas held a number of

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<sup>23</sup> M Cain & G Luke Sentencing Juvenile Offenders and the Sentencing Act 1989 (NSW): The Impact of Legislative and Administrative Change in the Children's Court 1982-1990 Judicial Commission of NSW, Sydney, 1991, p. 35. Roger Pryke, Program Manager in charge of policy relating to institutions, refers to a figure of 'three to four months', but this is almost certainly a reference to the standard period of detention for 'general committals' as distinct from all committals, which of course, include those where the court specified a definite, and sometimes longer, period. R Pryke (chair) Report to the Minister for Youth and Community Services on Restructuring Services for Young Offenders Department of Youth and Community Services, Sydney, 1983.

<sup>24</sup> Annual Report Department of Youth and Community Services 1978 NSWPP 1978-79 vol. 5, p. 1291 et seq. Comparisons after that date became difficult because of the adoption of an Australia wide

positions in accounting and personnel areas, until appointed Assistant Under Secretary in 1956.<sup>25</sup> He continued the policies set by Hicks. Before Hicks retired, however, he arranged for William Langshaw to be promoted and groomed him to be the next head of the Department after Thomas.

When appointed in 1969, Langshaw was the first professionally trained social worker to head the Department. A rather shy man, he had joined the Department at the age of fifteen, and studied at night to matriculate to university, winning a scholarship which enabled him to study for a degree in Arts and Social Studies. After graduation, he acquired field experience in Sydney as well as Cooma and Canberra. He brought to the position a professionalism that had not been evident before.

Unlike Hicks and Thomas, Langshaw favoured the provision of services, where appropriate, by the non-government sector. He also encouraged the scientific evaluation of programs, in contrast to prevailing Departmental practice, under which programs like institutional training had changed very little over the years and had never been properly evaluated. This led him to reduce the standard period of detention, with consequent halving of inmate populations. Langshaw also set in motion a long overdue review of legislation. Overall, his administration was characterised by a much broader outlook than that of his predecessors. He actively promoted research and was much more open to the external influences impacting on policy development, both from elsewhere in Australia as well as overseas, and much more willing to consult with experts from outside the Department.

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statistical collection system, which, in some States, included both delinquent and dependent children in the same category.

<sup>25</sup> Public Service List NSW Government Printer, Sydney, 1960, p211



### *The Search for Alternative Treatments*

Under Langshaw's direction, serious efforts at evaluation of treatment programs for delinquents were made for the first time. Earlier efforts had been sporadic and poorly supported. In 1934, McCulloch had recommended that a statistics section be established to evaluate results.<sup>26</sup> Some useful work resulted, although not in the evaluation of results. In the 1930s, Horace Moxon, Research Officer, designed a training course for officers. In 1951, Enid Corkery, Research Officer, completed a useful survey of a thousand children committed to institutions, although it was not concerned with the efficacy of programs or with rates of recidivism.

Those appointed as Research Officers had experience as field officers, but no professional expertise in criminological research or statistical interpretation, so it was small wonder that no proper evaluation of programs was conducted. With the lack of professional expertise in this area in the Department, a possible solution would have been to commission research from a University, but in such a sensitive area, Hicks' usual policy of keeping problems in house as much as possible, and his distrust of academics meant that no substantial research of this kind took place.

The Department had, to some extent, kept up with research developments overseas, but it was quite selective, drawing attention to those aspects which supported its own locally developed policies. One of the first pieces of research in the post-war period which had a considerable effect on Departmental operations was John Bowlby's work on the relationship between severe maternal deprivation in infancy and later juvenile delinquency and mental illness.<sup>27</sup> His findings were used to support the

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<sup>26</sup> J E McCulloch 'Child Welfare Department: Report on the General Organisation, Control and Administration of , with Special Reference to State Welfare Institutions', p. 150.

<sup>27</sup> J Bowlby *Child Care and the Growth of Love* Penguin, London, 1955 (1974 edition) , pp. 14-15

policies followed by the Department in relation to the care of dependent children.<sup>28</sup>

These emphasised the importance of long-term stable foster care for children who became wards, as well as emphasising the early identification of dysfunctional families, followed by what was known as 'preventive work' by field officers, and court action for their removal from inadequate parental care, where appropriate. In other words, if children were not receiving proper care, they would be removed and placed with foster parents, to minimise maternal deprivation.

However, only a proportion of dysfunctional families came under 'preventive supervision' while the children were still infants. Frequently, the Department had no contact at all until a child of the family committed an offence, usually as a teenager. It followed, as a corollary of Bowlby's research, that if maternal deprivation in infancy was a significant cause of delinquency, then in most cases, the damage had already been done, and it was far too late to attempt character reformation in institutions. This was a reversal of the prevailing view, which saw institutional training as 'character building'.<sup>29</sup> Bowlby's work was in fact 'an indictment of residential care'.<sup>30</sup> Corkery's work had shown that at least half of the one thousand delinquents she examined came from 'broken homes'.<sup>31</sup> Research of this kind really emphasised a basic fault in the conventional wisdom of institutional training. Whether the delinquency of an individual child had been brought about by maternal deprivation or by other environmental factors, it was, as Asher has observed, 'ludicrous to expect correctional

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<sup>28</sup> Annual Report Department of Child Welfare and Social Welfare, 1952, NSWPP 1952-53 vol. 1, p. 199 et seq., p. 8. More recently, Bowlby's research has been challenged, especially his work on the harmful effects of institutionalisation. See detailed criticism in M Mowbray & J Mason 'Substitute care policy: the context for recent developments in New South Wales' in Mason J (ed.) Child Welfare Policy: Critical Australian Perspectives Hale & Iremonger, Sydney, 1993, p. 116. At the time, Bowlby's views were very influential.

<sup>29</sup> D K Fowler, Superintendent, Mt. Penang Training School, Gosford, Untitled paper Proceedings of the Institute of Criminology as seminar: 'Treat or Punish' 13 June, 1968.

<sup>30</sup> M Rutter Maternal Deprivation Reassessed Penguin, Melbourne, 1972, p. 120.

personnel to in some way counter single-handedly the massive effects of peer-group values, social location, situational location, material deprivations and the like'.<sup>32</sup>

The nature of research activities began to change in 1968, with the appointment of Jon Kraus as Senior Research Officer.<sup>33</sup> Before that, there had been, in New South Wales, a dearth of social scientists actively engaged in research into juvenile crime.<sup>34</sup> Kraus had a background in clinical psychology, and a growing reputation as a criminologist. From 1968 and throughout the 1970s, he undertook and published the results of significant research into young offenders.<sup>35</sup> He was also able to bring to the notice of policy-makers the substantial available research in Britain and the United States supporting diversion programs. Specifically, Kraus demonstrated that non-institutional alternatives, when measured by recidivism rates, were just as effective as institutional ones and that the more invasive the intervention in the life of a young offender, the worse would be the outcome. Thus, the least form of intervention, a police caution, was the most effective. He also showed that longer periods of training did not produce better rehabilitation, in fact, the reverse. Such findings struck at the heart of Government policy towards young offenders, which had changed little in a hundred years. It provided the intellectual platform for the movement to create alternatives to institutional treatment, especially since it co-incided with

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<sup>31</sup> E M Corkery, Research Officer, Child Welfare Department Statistical Survey of One Thousand Children Committed to Institutions in New South Wales, NSW Government Printer, Sydney, 1952

<sup>32</sup> G Asher Custody and Control: The Social World of Imprisoned Youth Allen & Unwin, Sydney, 1986, p. 170

<sup>33</sup> Annual Report, Department of Child Welfare and Social Welfare, 1968 NSWPP 1968-69 vol. 1, p. 357 et seq., p. 39

<sup>34</sup> D Maddison 'Juvenile Crime' Social Service March/April 1967, p. 12. Maddison was at the time professor of psychiatry at Sydney University.

<sup>35</sup> Details of journal articles reporting the results of his research are given in the bibliography.

diversion initiatives which had been emerging in many countries, as well as in America.<sup>36</sup>

The Normalisation movement also began to have a significant impact on policies in New South Wales. It had its origins in Denmark in the 1950s, with innovative programs for people with intellectual disabilities, promulgated by N E Bank-Mikkelsen and Wolf Wolfensberger.<sup>37</sup> Normalisation was a direct challenge to the eugenic policies of separation followed in Britain, the United States and other countries in the first half of the twentieth century. By contrast, normalisation was strongly based on human rights principles, and insisted that every intellectually disabled person was entitled to the same rights as other members of society, and should therefore be allowed to 'obtain an existence as close to normal as possible'.<sup>38</sup> Moreover, the evidence suggested that disabled people made much better progress when normalisation principles were applied.

The Department had a substantial involvement in the care of intellectually disabled people, both those committed to institutions, and also wards. Several establishments, Brush Farm, Werrington Park and May Villa were used exclusively for their accommodation, but a number of other establishments also had intellectually disabled wards. The Department had tried to co-ordinate government services to the intellectually disabled, through the establishment of an inter-departmental committee, but this was not very successful. There was considerable overlap, duplication, and buck-passing, since the Health Department was responsible for extensive residential and other services for the severely and profoundly disabled, and the Education

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<sup>36</sup> The Young Offender: A Review of Current Practices and Programmes in Prevention and Treatment, United Nations, New York, 1965, p. 72.

<sup>37</sup> N E Bank-Mikkelsen 'A Metropolitan area in Denmark: Copenhagen' in R Kugel and W Wolfensberger (eds.) Changing Patterns in Residential Care for the Mentally Retarded President's Commission on Mental Retardation, Washington, 1969 pp. 227-254

Department services for mildly and moderately disabled. The administrative boundaries between such classifications were not precise, and were compounded by the fact that many intellectually disabled people had multiple handicaps.

The voluntary sector was also a significant service provider, through special schools and residential care. These schools campaigned for more government funds, and they developed efficient and powerful lobby groups. They supported the normalisation principle, putting pressure on the Department to do likewise, principally in the care of wards. These ideas flowed on to the juvenile correction system. In 1972 John Blow, Deputy Director of the Department, a psychiatrist, presented a lengthy critique of the existing training program, arguing that virtually all those committed received the same training, regardless of their classification. He urged that juveniles be kept out of that system as far as possible, and that the training period be shortened and made 'more relevant to the young offender's normal environment'.<sup>39</sup> People also began to ask why there should be such a difference in sentencing between juvenile offenders and adults. Once it became clear that longer sentences, regarded in the past as justified on the ground of the time needed to reform the young offender, were not having that effect, why should a juvenile aged seventeen receive a longer sentence than an eighteen year old would for the same crime?<sup>40</sup>

Although normalisation was essentially a policy issue for the treatment of the disabled, there was substantial community support in the 1960s and 1970s for a number of human rights initiatives. In the United States, this extended to equality of access

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<sup>38</sup> W Wolfensberger The Principles of Normalisation in Human Services National Institute on Mental Retardation, Toronto, 1972, p. 27

<sup>39</sup> Dr. J S Blow to Under Secretary 1 December, 1972, file 73/18/8556 SR K 39223

<sup>40</sup> Department of Youth and Community Services Report of Children's Courts Project Team: Child Welfare Legislation Review, (W J Holt, Chair)1974; Department of Youth, Ethnic and Community Affairs, Report of Child Welfare Legislation Review Committee (Rev. E P Phibbs, chair)August 1975. See also E Byrne (ed.) 'Report of the Role and Working of the Green Paper Secretariat 1972. 78 to 31. 3. 79'. Copy in Mitchell Library.

issues for the disabled, not just those who were intellectually disabled, racial equality, the women's rights movement, questions of 'due process' in relation to the arrest, interrogation and trial of offenders, the right to access information held by the Government, and the right of children to receive effective treatment if taken from their parents.<sup>41</sup> In Britain, there was also a growing recognition that the old legal concept of infancy, as the state which persisted unchanged up until the moment when adulthood was achieved, was outmoded. It was replaced by a concept which viewed childhood as a more flexible entity, starting with complete dependency on parents at birth, but developing over time, so that as the child became sufficiently mature, it could properly take decisions affecting its future, well before attaining full age.<sup>42</sup>

In America, the Supreme Court decided in several landmark cases that juveniles were entitled to the same protection under the law as adults.<sup>43</sup> These cases had a considerable impact in Australia.<sup>44</sup> Again and again, committees involved in the legislative review of juvenile corrections, as well as those who made submissions as part of the public consultation, based their arguments on broad principles of human rights. This was evident, for example, in growing criticism of practices such as the vaginal examination of girls, interrogation of juveniles without an adult presence and indeterminate sentences. The inequitable sentencing of juveniles, which often resulted in their serving a longer sentence than would be the case if the crime were committed by an adult, was also a concern. There was also criticism of the unwarranted power

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<sup>41</sup> P Parsloe Juvenile Justice in Britain and the United States: The balance of rights and needs Routledge & Kegan Paul, London, 1978, p. 80.

<sup>42</sup> See comments of Lord Denning, Master of the Rolls, in *Hewer v. Bryant* (1969) 3 All England Reports, p. 578

<sup>43</sup> See *Kent v. United States* (1966) 383 US 541; *re Gault* (1967) 387 US 1; *re Winship* 397 US 358. See also J A Scutt, 'Justice in a Juvenile Court: What price due process' Australian and New Zealand Journal of Criminology vol. 10, September, 1977, p. 175

<sup>44</sup> See R F Mohr Report of the Royal Commission into the Administration of the Juvenile Courts Act 1971-74 and other Associated Matters South Australian Parliamentary Papers no 112, 1977, pp. 7-10.

exercisable by social welfare workers in a system which it was claimed violated 'due process'.<sup>45</sup> Children in New South Wales were, prior to 1975, only rarely represented in court by lawyers, and so were at a distinct disadvantage, since the prosecution was invariably conducted in the specialist Children's Courts by experienced officials or police, many of whom were legally qualified. In that year, the Law Society began to represent children in Children's courts, free of charge.<sup>46</sup> Interrogation procedures were plainly unfair in many cases, and had been the subject of adverse criticism in the press.<sup>47</sup>

### *Vaginal Examinations*

It was against this increasing emphasis on human rights that the treatment of delinquent girls became a major public issue. In 1973 there were allegations on the television program *This Day Tonight* that all girls held in institutions were routinely given internal vaginal examinations. The Minister, John Waddy, denied this, pointing out that all the girls referred to were in custody on complaints of exposure to moral danger.<sup>48</sup> However, a statistical analysis of medical examinations of girls at Minda during 1974, shows that more than ninety per cent included vaginal examination.<sup>49</sup>

In fact, this kind of examination had also been carried out routinely for many years at Parramatta. Committal registers for Parramatta in the period before the first

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<sup>45</sup> M D Kirby 'Reforming Child Welfare Law in Australia', p. 118

<sup>46</sup> P E Powell and H K Kershaw 'Children's Court Legal Aid Scheme' Law Society Journal vol. 15 no 1 February, 1977, p. 29. See also Report by A Hailstones : 'Legal Services to Young People', Department of Youth and Community Services, 1986, p. 64. Copy in Mitchell Library.

<sup>47</sup> SMH 3 July, 1973.

<sup>48</sup> NSWPDLA 21 August, 1973 p. 337.

<sup>49</sup> Medical Officer, Minda Clinic to Under Secretary 'Return of the Number of Medical Examinations and Cases of Venereal Disease Detected at Minda 1969-74'. Department of Youth and Community Services File 69/44/5172 SR YCS 3L 339205.

World War refer to girls as 'NVI', an abbreviation for *non virgo intacta*.<sup>50</sup> In 1914, Walter Bethel referred to the fact that reports submitted after remands in custody 'would disclose whether or not (girls) had been sexually immoral'.<sup>51</sup> The issue arose again in 1935 when the Secretary of the Department questioned the practice of 'intimate physical examination of girls by a male doctor'. At the same time Dr. Bruce of the Health Department complained about the adverse effect on innocent girls.<sup>52</sup>

The official justification for these examinations was that it was necessary to determine whether venereal disease was present and also whether the girl was pregnant.<sup>53</sup> Historically this was true. It was normal during the 1960s for an average of ten girls at Parramatta to be pregnant at any time.<sup>54</sup> When the Delinquency Committee of the Child Welfare Advisory Council inquired into Parramatta in 1942, nearly half the girls had some vaginal discharge on admission and almost a third had venereal disease.<sup>55</sup> However, with the use of penicillin after the War, the incidence had fallen considerably, and in the 1960s, it affected about ten per cent of new admissions. Section 144 of the Child Welfare Act authorised the medical examination of wards and those in custody, but it is doubtful whether it covered this kind of examination. The trend of legal precedent was that courts should make decisions of this kind.<sup>56</sup>

There was, however, another purpose. It had been the practice over many years for Magistrates to order a medical examination during remand in custody. The medical

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<sup>50</sup> Registers of Committal 7 May 1906 to 28 December, 1916, records of Parramatta Girls Industrial School

<sup>51</sup> Walter Bethel and Henry Maxted, 'Report of Conference re Industrial School Matters 1 April, 1914', p. 5. Manuscript copy in the possession of the author.

<sup>52</sup> Charles Wood, file minute dated 15 February, 1935. Department of Youth and Community Services File 69/44/5172 SR YCS 3L 339205

<sup>53</sup> SMH 10 December, 1973.

<sup>54</sup> Dr. L A Solomons to Director General of Public Health 23 November, 1966. Local file 'Pregnant Girls' Parramatta Girls Industrial School Records.

<sup>55</sup> M C Tenison-Woods (chair of the Delinquency Committee of the Child Welfare Advisory Council) A Report on the Girls' Industrial School Parramatta, NSW: A Study in the Principles and Practices of Child Welfare Administration, Melbourne University Press, Melbourne, 1945, p. 41



report to the court was in a standard format and concluded with the words ‘she is *non virgo intacta* and the appearances suggest frequent penetration’.<sup>57</sup> Such medical evidence was accepted by courts as evidence of the extent of sexual misbehaviour. Very few examinations were carried out at the request of the girls themselves, in fact occasionally they were carried out over their strong objections. In 1964, a visiting medical officer complained about the low level of remuneration for examining girls at Parramatta. In passing he referred to the fact that when girls resisted vaginal examination, the practice was to bring them to his surgery, where the examination was conducted under general anaesthetic.<sup>58</sup> This aspect did not become public at the time, but it clearly shows that examinations of doubtful legality were carried out and the results used in evidence. The television revelations produced a public outcry, with demonstrations being held outside the walls of Parramatta, and a call for the abolition of ‘virginity tests’.<sup>59</sup>

In the face of this pressure, the new Minister, Richard Healey, ordered that vaginal examinations only be carried out where there was some medical indication of pregnancy or vaginal discharge. The fact that these practices could be abandoned without any obvious detriment shows how unreasonable they were. The disregard of the need for consent shows that, as in so many other instances, the inmates were regarded as having a lesser status than others in the community. Like so many other practices at places like Parramatta, they persisted simply because that was the way things had always been done.

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<sup>56</sup> *Hewer v. Bryant*, (1969) 3 All England Reports at page 578.

<sup>57</sup> Taken from certificate issued 24 February, 1956 local file 56/445 SR 3/9066.

<sup>58</sup> Dr. A R Woolnough to Under Secretary 20 November, 1964, Department of Youth and Community Services File 69/44/5172 SR YCS 3L 339205

<sup>59</sup> SMH 10 December, 1973

*Alternative treatment: the impact of the Diversion movement*

In the wake of the institutional crisis, and the growing criticism of conventional incarceration practices, attention turned to the Diversion movement which was very much in favour in Britain and the United States. There is some confusion in the current sociological and criminological literature between notions of 'diversion' and 'decarceration'. Some writers, such as Chan, regard diversion as part of a larger decarceration movement.<sup>60</sup> Others, such as Michael Zander, have seen decarceration as simply one type of diversion.

Broadly, the diversion movement favoured strategies to keep juvenile delinquents out of the juvenile justice system. They included private decision making, screening by police, pre-trial diversion and alternatives to imprisonment<sup>61</sup>. By contrast, decarceration was more focused on removing juveniles from detention. The situation was further complicated by the fact that in New South Wales, the more cumbersome term 'deinstitutionalisation' was commonly used.<sup>62</sup> Here, the term diversion is used to include decarceration within its broader scope.

The idea of diversion stemmed from a growing awareness that institutional treatment was fundamentally flawed.<sup>63</sup> The influential American sociologist Erving Goffman in his seminal work *Asylums*, had asserted that institutions were in fact places

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<sup>60</sup> J B L Chan 'Decarceration and Imprisonment in New South Wales: A Historical Analysis of Early Release' *University of New South Wales Law Journal* vol. 13, no 2, (1991) p. 395.

<sup>61</sup> M Zander et al, *Diversion From Criminal Justice in an English Context: Report of a Working Party of the National Association for the Care and Resettlement of Offenders* Barry Rose, London, 1975, pp. 4-5

<sup>62</sup> See, for example, M Mowbray 'Restructuring Child Welfare: Deinstitutionalisation and Austerity in the NSW Department of Youth and Community Services' *Australian Social Work* September, 1983, vol. 36 no 3, p. 2. In this work, the term 'diversion' is used to include decarceration.

<sup>63</sup> J A Seymour, Australian Law Reform Commission *Child Welfare* Australian Government Publishing Service, Canberra, 1981, , p. xxxvi. Seymour quoted D B Cornish and R V G Clark *Residential Treatment and its Effects on Delinquency* HMSO, London, 1975, D Lipton, R Martinson and J Wilks *The Effectiveness of Correctional Treatment*, Praeger, New York, 1975, and also to a publication by the New Zealand Department of Social Welfare, *Juvenile Crime in New Zealand*, 1973. See also R Sanson-Fisher, 'The Case against Juvenile Corrective Institutions' *Australian Social Work* vol. 31 no 4, December 1978, p7.

where the inmates became disconnected from society and rendered incapable of managing their lives after release, a process described as 'systematic mortification'.<sup>64</sup> By the 1970s, diversion programs had become a 'national fad'.<sup>65</sup>

Nonetheless, the condemnation of institutional treatment was hardly new. In the nineteenth century those who favoured the boarding out system continually drew attention to the inadequacies of institutions.<sup>66</sup> Although institutionalisation had pride of place well into the twentieth century, in practice there were many procedures habitually used in various criminal justice systems which were early forms of diversion. One of the best known is the police caution. There are references to police in London using cautions in lieu of prosecution as early as 1833, and a more formal scheme, afterwards copied by a number of regional police forces, began in Liverpool in 1949.<sup>67</sup> Cautions in Scotland go back at least to the beginning of the twentieth century, and had been regular practice in some cities since 1936.<sup>68</sup> They were formalised after an inquiry in 1945.<sup>69</sup>

In Victoria an informal police caution systems operated for many years before the diversion movement began to gather impetus in America in the 1960s.<sup>70</sup> It was not limited to first offenders, and covering a wide range of offences. By 1972, some twenty-two per cent of all juvenile offenders in Victoria were dealt with by caution, rising to two-thirds by 1978. In fact, from 1976, the authority of a commissioned

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<sup>64</sup> E Goffman *Asylums* Penguin, Ringwood, Victoria, 1970 pp. 23-24.

<sup>65</sup> L T Empey *American Delinquency: Its meaning and construction* Dorsey Press, Homewood, Illinois, 1978, p. 355.

<sup>66</sup> F Davenport-Hill *Children of the State* (ed. F Fowke) Macmillan and Co., London, 1889, p. 141

<sup>67</sup> M Ritchie and J A Mack *Police Warnings*, University of Glasgow, 1974, p. 4. D Steer *Police Cautions: A Study in the Exercise of Police Discretion* Basil Blackwell, Oxford, 1970, p. 54

<sup>68</sup> Scottish Home and Health Department *Children and Young Persons, Scotland* (Chair Lord Kilbrandon), p. 63

<sup>69</sup> M Ritchie and J A Mack *Police Warnings*, p. 1. For details of the inquiry, see Scottish Advisory Council on the Treatment and Rehabilitation of Offenders *Police Warnings* HMSO, Edinburgh, 1945. See also E W Pettifer *Punishment in Former Days* E P Publishing, Wakefield, England, 1964, p. xi

<sup>70</sup> D Challenger 'Comparison of Official Warnings and Court Appearances for Young Offenders' *Australian and New Zealand Journal of Criminology* vol. 14 September, 1981, p. 165.

officer was required before a child could be taken before a court. Queensland (1961) and Western Australia (1963) both introduced cautioning systems, administered jointly by police and welfare officials, in the early 1960s.<sup>71</sup> These schemes recognised that a police caution was at least as effective as a court appearance. Importantly, they were also much more cost effective.<sup>72</sup>

By contrast, New South Wales was tardy in its use of diversion strategies.

From about 1932, a warning system was used by police as an alternative to formal charges.<sup>73</sup> In 1950-51, some 324 children were cautioned in New South Wales, a fairly small proportion of those charged.<sup>74</sup> Although the use of police cautions increased somewhat in the early 1960s, thereafter it declined so that by the mid 1970s, only a token number of children were being dealt with by caution.<sup>75</sup> New South Wales police thus didn't follow the expansion of the use of cautions which occurred overseas and in other States, despite the fact that there was mounting evidence of their efficacy. In England, the recidivism rate was between a third and a half of those dealt with by courts.<sup>76</sup> Consistently, their rate of cautions was extremely low. For example, in the

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<sup>71</sup> In relation to Queensland, see J A Seymour, Dealing with Young Offenders, Law Book Coy, Sydney, 1988, p. 274. See also SMH 2 September, 1987. For Western Australian scheme, see Annual Report, Child Welfare Department (W.A.) 1963-64 Minutes and Votes and Proceedings of the Western Australian Parliament 1964, vol. 2, pp. 4-5.

<sup>72</sup> D Challenger 'Comparison of official warnings and court appearances for Young Offenders' pp. 165-168. Similar trends had also developed in Britain and America. See J A Ditchfield, Great Britain Home Office Research Unit Police Cautioning in England and Wales HMSO, London, 1976, p. 9. See also Great Britain Home Office A Review of Criminal Justice Policy 1976 HMSO London, 1977, p. 5. This document, at page 25, shows that the number of people cautioned in the UK between 1966 and 1975 trebled. Of these, 72 % were juveniles. In relation to America, see M Gold & J R Williams 'National Study of the Aftermath of Apprehension' Prospectus vol. 3, 1969, p. 10.

<sup>73</sup> For reference to the change in police policy in New South Wales, see Minute by Horace Moxon 24 May, 1939 SR 9/6151.1

<sup>74</sup> E M Corkery, Research Officer, Child Welfare Department Statistical Survey of One Thousand Children Committed to Institutions in New South Wales, p3.

<sup>75</sup> The peak year was reported to be 1961-62, when 1,549 cautions were issued. Thereafter, the numbers slowly declined. In 1971, there were 1,237 and in 1974, 909. See Annual Report, Department of Child Welfare and Social Welfare, 1971, NSWPP, p. 35. Annual Report, Department of Youth and Community Services 1974, NSWPP 1974-75, vol. 5, p. 653 et seq., p. 48.

<sup>76</sup> M Taylor Study of the Juvenile Liaison Scheme in West Ham 1961-65 HMSO London, 1971. See also M Zander et al Diversion from Criminal Justice in an English context: Report of the Working Party

period 1971-76, less than seven per cent of offenders were dealt with by caution.<sup>77</sup>

This was well below the rate in other States and in Britain.<sup>78</sup> One reason was that its use was almost exclusively limited to first offenders accused of minor crimes.<sup>79</sup> In addition, up until 1977, cautioning meant considerably more clerical work and report writing, a practical incentive to the use of prosecution rather than cautioning.<sup>80</sup>

The main reason for this low incidence was strong opposition by the police to the cautioning system. In May, 1965, the Police Association asked the Commissioner to abolish the system, claiming that offenders were encouraged by the knowledge that they would be 'let off with a caution'. Police also argued, wrongly, that the practice was illegal, since under the Child Welfare Act, there was a statutory power for the court to administer a caution. Their stance was supported in an editorial in the *Sydney Morning Herald*. The timing of the motion of the Police Association was significant. It co-incided with the election of a non-Labor government, the first in twenty-four years, and may well have been an attempt to influence the new Government to take a harder line with offenders.<sup>81</sup>

The other form of pre-court diversion was known as the 'panel system', introduced in South Australia in 1971, based on a Scottish model. The Kilbrandon Committee, which recommended the Scottish 'panel system' in 1964 was influenced by research showing that, in an estimated ninety-five per cent of cases being dealt with by

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of the National Association for the Care and Resettlement of Offenders, p. 7. For Scotland, see M Ritchie and J A Mack *Police Warnings*, p. 21.

<sup>77</sup> J Kraus 'Police Caution of Juvenile Offenders: A Research Note' *Australian and New Zealand Journal of Criminology* June 1981, vol. 14, p. 92

<sup>78</sup> C Cunneen 'An Evaluation of the Juvenile Cautioning System in NSW' in *Proceedings of the Institute of Criminology*: Vol. 75: Seminar on Changes in the Direction of Juvenile Justice 9 March, 1988, University Law School, p. 21. For Scotland, see M Ritchie and J A Mack *Police Warnings*, p. 21. For England and Wales, see D Steer *Police Cautions: A Study in the Exercise of Police Discretion*, p.6.

<sup>79</sup> J A Seymour *Dealing with Young Offenders*, pages 147 and 237.

<sup>80</sup> J Kraus 'Police Caution of Juvenile Offenders: A Research Note', p. 92

<sup>81</sup> *SMH* 8 May, 1965. The claim of illegality was mischievous, since police have always been entitled to exercise discretion not to prosecute an offence, derived from the ancient common law powers of

the existing juvenile courts, the problems requiring decisions were social, not judicial.<sup>82</sup> In essence, the panel system sought to remove decision-making about children in trouble with the law from the judicial system to a social work one. Thus, the cases of children accused of crime, those who were neglected or uncontrollable, or refused to go to school were first considered administratively by an official known as the Reporter. In practice, that part of the new system which sought to refer a sizeable proportion of cases to be dealt with informally by Social Work Departments in local government authorities broke down because resources were not available.<sup>83</sup> This official decided whether the child should be brought before a lay 'panel' which, in consultation with parents and the child, worked out an agreed course of action.<sup>84</sup> Where the crime was serious or the facts in dispute, the case went to a court, as before. Although regarded as novel for Scotland, a similar system had existed in Norway since 1896, under which offenders under fourteen were not dealt with as criminals.<sup>85</sup> There had also been some attempts at similar pre-court diversion in other Australian States (South Australia, unsuccessfully, 1939, Tasmania, 1941, Western Australia, 1964), although the scheme

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constables. See the decision of the High Court of Australia in *Enever v. The King* (1906) 3 Commonwealth Law Reports 969 at p. 977.

<sup>82</sup> Scottish Home and Health Department Children and Young Persons, Scotland (Chair Lord Kilbrandon), p. 37. The Kilbrandon Report was followed by a white paper Social Work and the Community HMSO, Edinburgh, 1966, and legislation, the Social Work (Scotland) Act, 1968, the provisions of which commenced on 15 April, 1971.

<sup>83</sup> See M Ritchie and J A Mack Police Warnings, p. 2. See also J A Ditchfield, Great Britain Home Office Research Unit Police Cautioning in England and Wales, p. 24

<sup>84</sup> The Reporter, child, parents, social worker were present, together with the press (although there was a prohibition on reporting names). The panel had power to make a supervision order, to decide where the child would live, or to send the case to court. Although there was no legal representation allowed before the panel hearing, legal advice was available. For the background to the establishment of the new Scottish system, see R Harris and D Webb Welfare, Power and Juvenile Justice Tavistock Publications, London, 1987, p. 20 et seq. An official description of the mechanics of the system appears in a booklet issued by the Scottish Education Department Children's Hearings HMSO Edinburgh 1970, pp. 14-35.

<sup>85</sup> T S Dahl 'The Scandinavian System of Juvenile Justice: A Comparative Approach' in M K Rosenheim (ed.) Pursuing Justice for the Child University of Chicago Press, Chicago, 1976, pp. 328-331.

in South Australia was arguably much more comprehensive and certainly became much better known.<sup>86</sup>

The South Australian panel system, enacted in 1971, was a response to the growing realisation that not only were delinquent institutions not an effective form of treatment, but that it was in the interests of juvenile offenders that they be diverted away from the judicial process as much as possible. The Juvenile Courts Act, 1971(SA), followed the Scottish precedent fairly closely, even though the Scottish legislation only came into force in 1971, and there had been no opportunity to assess how it worked in practice. This legislation was based on a Report by the South Australian Social Welfare Advisory Council in 1968. The report drew on various models, including the Scottish system, the English proposals, as well as those already operating in Queensland, Western Australia and New Zealand. Apart from the developments in Scotland and England, there was a movement in America aimed at diverting young offenders away from the judicial system.<sup>87</sup> Those who worked in local institutions were also advocating diversionary programs. For example, an interstate conference of institution workers held in 1970 called for proper evaluation to determine whether institutions were effective, and for the development of alternatives.<sup>88</sup> The South Australian panels had jurisdiction for offenders aged ten to sixteen years, who admitted guilt and were not subject to an existing court order. They were composed of a Departmental social worker and a police officer. The child and parents were

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<sup>86</sup> For South Australia, see 'Report of a Committee appointed to inquire into child welfare' Proceedings of the Parliament of South Australia, 1939, vol. 11, no 75, South Australian Government Printer, Adelaide, 1940, p. 19. For Tasmania, Tasmanian Government Gazette 5 February, 1941, pp. 376-378, and 26 February, 1941, p. 545. For Western Australia, see J A Seymour, Dealing with Young Offenders, p. 154 and 158

<sup>87</sup> See recommendations of the President's Commission on Law Enforcement and Administration of Justice : Task Force Report: Juvenile Delinquency and Youth Crime US Government Printing Office, Washington, 1967, p. 40

<sup>88</sup> 'Report of Officers' Conference on Institutional Care 29 November-4 December, 1970' file no 70/16/6627 SR K 39214

required to attend a hearing and the panel had power to warn the child and parents, to adjourn, to seek undertakings, to arrange counselling, treatment or training, for up to six months. There was also power to refer to a court, but only by way of care proceedings.<sup>89</sup>

Another major influence on policy makers was the American President's Commission on Law Enforcement, which condemned institutionalisation and strongly favoured diversionary programs.<sup>90</sup> The Report transformed thinking about the treatment of young offenders, and led to many diversionary programs across the country.<sup>91</sup>

A more dramatic event was the abrupt closure of all juvenile institutions in Massachusetts. Up to the end of the 1960s, this American State had operated isolated rural training schools of a conventional kind, similar in most respects to the industrial schools operating in New South Wales. However, a reforming Commissioner of Youth Services, Jerome Miller, became convinced that they were ineffectual. At first, he tried a variety of programmatic changes, including reduction of numbers, group therapy, better quality of care, vigorous suppression of any ill-treatment, reduction of the period of committal. These changes were sabotaged by staff, and he became convinced that incremental change would not work in a situation where institutional culture was so resistant to change.

Beginning in 1970, all existing institutions were closed within a couple of years, and replaced by alternatives. Some secure units were retained for dangerous

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<sup>89</sup> South Australia: Official Reports of the Parliamentary Debates, House of Assembly, 1 September, 1971, pp. 1301-1304. See also H Nicholls 'Children's Aid Panels in South Australia' in A Borowski and J M Murray (eds.) Juvenile Delinquency in Australia, Methuen, North Ryde, NSW, 1985, p. 223.

<sup>90</sup> President's Commission on Law Enforcement and the Administration of Justice: Task Force Report: Juvenile Delinquency and Youth Crime, 1967.

<sup>91</sup> A W Pisciotta 'A retrospect Look at the Task Force Report on Juvenile Delinquency and Youth Crime' in J A Conley (ed.) The 1967 President's Crime Commission Report: Its Impact 25 Years Later, Anderson Publishing Coy, Cincinnati, 1994, p. 81.



offenders, but the rest of the former inmates were placed in a variety of situations, group homes in the community, foster care, mental hospitals, boarding schools. It was claimed that these changes benefited the young offenders by not subjecting them to the harmful effects of incarceration, and that there was also a monetary saving to the State, consequent upon the closure of large institutions which were costly to maintain.<sup>92</sup>

At the time, these developments were treated with some scepticism in New South Wales, particularly when it emerged that there had been heavy reliance on services purchased from the non-government sector, and a suspicion that many of the placements appeared inappropriate. Some children even spent a month in temporary accommodation on the campus of a University.<sup>93</sup> In New South Wales, although there were some services for juvenile delinquents provided by non-government organisations, these consisted mainly of congregate care institutions for girls, run by churches. There was therefore little scope for any replication in New South Wales of the radical Massachusetts plan. Nevertheless, the American initiative did have a significant intellectual impact. It was in tune with the research findings of people like Jon Kraus, and it also offered the prospect of reduced costs.

An early example of a diversionary initiative based on an overseas model was the introduction of an attendance centre. In 1974, the first centre operated on weekends at Ashfield Boys' High School, and catered for boys aged thirteen to fifteen who had not been previously committed.<sup>94</sup> Others opened later at Granville and Dee Why.<sup>95</sup> They were based on a 1948 British scheme, and a similar one which began in Victoria

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<sup>92</sup> P Jay (chair) Report of the National Association for the Care and Resettlement of Offenders Barry Rose Publications, London, 1977 Appendix 6,

<sup>93</sup> Y Bakal & H W Polsky Reforming Corrections for Juvenile Offenders Lexington Books, Lexington, Mass. 1979, pages 34 and 60.

<sup>94</sup> Annual Report Department of Youth and Community Services 1974, NSWPP, p. 49. See also Government Gazette 18 January, 1974, p.130.

in 1970.<sup>96</sup> Although modelled on the English precedent, there were some major differences. It was not introduced as a direct sentencing option available to a court, and was run by the Department of Youth and Community Services, not the police. The enabling legislation gave the Minister power to establish Youth Project Centres, for the 'training and treatment' of children and young persons, with or without residence and with or without committal to an institution. Such a broad definition was deliberately used to cover a wide range of alternatives which might be established in the future. The Minister, John Waddy, indicated that the legislation followed a 'world wide trend towards providing the young offender with a greater range of treatment facilities'.<sup>97</sup> A significant departure from previous practice was that admission was controlled by the Department, not through sentencing.<sup>98</sup>

### *Legislative Reform*

In November 1973, mounting media criticism of conditions in institutions forced the Minister, John Waddy, to announce a review of child welfare legislation.<sup>99</sup> There had been no substantial review since the 1930s, and this was largely due to the fact that Hicks was opposed to any exercise of this kind, because of the difficulties associated with the passage of the 1939 Act. The Waddy review began as a very limited exercise,

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<sup>95</sup> For Granville, see Annual Report, Department of Youth and Community Services 1976 NSWPP 1975-76 vol. 12, p. 1255 et seq., p. 45. For Dee Why, see Annual Report Department of Youth and Community Services 1978 NSWPP 1978-79 vol. 5 p. 1291 et seq., p. 47

<sup>96</sup> For the British scheme, see Scottish Home and Health Department Children and Young Persons, Scotland (Chair Lord Kilbrandon) , p. 67; F H McClintock et al Attendance Centres, Macmillan, London, 1961, pp. 6 and 26-30. For Victoria, see J A Seymour Dealing with Young Offenders p. 170.

<sup>97</sup> NSWPDLA 17 October, 1973, p. 2203

<sup>98</sup> See section 53(1)(d) of the Child Welfare Act, 1939.

<sup>99</sup> Annual Report Department of Youth and Community Services, 1974, NSWPP 1974-75 vol. 5, p. 653 et seq., p. 12.

with a legal officer of the Department simply collating a number of amendments which had accumulated from administrative experience.

Waddy's hand was forced by the damaging reports in the media on conditions at Parramatta, and also the questionable methods used by police when interrogating juveniles.<sup>100</sup> In June, the Superintendent and Deputy at Parramatta had been suspended from duty pending an inquiry by the Public Service Board. The allegations sprang initially from a complaint by a relieving Deputy Superintendent, confirmed by statements from inmates and other staff. A preliminary investigation by a senior executive indicated that a large number of girls had been systematically assaulted in a variety of ways, that unlawful segregation had been taking place, that a girl's jaw had been broken, and that there had also been sexual assaults. One officer claimed that these practices had been going on for some years.<sup>101</sup> Waddy gave a lengthy explanation, during which he attacked the ABC. The projected Public Service Board inquiry lapsed when both officers were allowed to resign before it could be held.<sup>102</sup>

The Manager of the Institution for Girls at Hay had also been suspended in May, following allegations by five girls of unlawful assaults. He too was allowed to resign rather than face a Public Service Board inquiry.<sup>103</sup> In December, 1973, there was a public protest meeting held outside the walls of the training school, attended by civil libertarian organisations, and addressed by the President of the Council for Civil Liberties, Ken Buckley. They protested about assaults on girls, virginity tests, general committals and demanded to know what action was being taken against those who had

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<sup>100</sup> SMH 3 July, 1973. Parramatta Girls Training School also featured in *This Day To-night*, an ABC Television production. See also comments by the Hon John Waddy, Minister, NSWPDLA 21 August, 1973.

<sup>101</sup> Report by A Fury, Chief of Establishments Division, to Under Secretary, 15 June, 1973, file 74/11409 SR 12/3784

<sup>102</sup> NSWPDLA 21 August, 1973, p. 335

ill-treated girls.<sup>104</sup> The government did not respond, preferring administrative action rather than criminal prosecution. Several years before, a Public Service Board inquiry had been held into allegations that the Deputy Superintendent had assaulted a boy. The officer, Alan Murdoch, was removed in May 1958 from the position of Deputy and became Senior District Officer at Liverpool.<sup>105</sup>

The nature of the legislative review changed however, on the appointment of a new Minister, Richard Healey, in December 1973.<sup>106</sup> Healey, who had himself been a broadcaster for the ABC, was less concerned at defending the conditions at Hay and Parramatta, than achieving real changes in the Department. The review was transformed from an essentially administrative exercise into one which attempted a general re-assessment of the whole spectrum of child welfare, with special emphasis on the treatment of juvenile delinquents. The issue which persuaded Healey was the revelation that girls coming before the court as 'exposed to moral danger' were being routinely subjected to vaginal examination. He later said that he had been horrified at the way children were treated in institutions.<sup>107</sup> He also had very different views on the way the legislative review should be conducted. As a back-bencher he had chaired a Select Committee on the building industry which had featured wide community participation, and so he was convinced that this method would be more likely to defuse public criticism of the government than the narrow review envisaged by

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<sup>103</sup> Report by A Fury, Chief of Establishments Division, to Under Secretary, 15 June, 1973, SR 12/3784

<sup>104</sup> SMH 10 December, 1973.

<sup>105</sup> Public Service List 1958.

<sup>106</sup> See entry for Healey in H Radi, P Spearritt and E Hinton, Biographical Register of the New South Wales Parliament 1901-1970, Australian National University Press, Canberra, 1979.

<sup>107</sup> SMH 26 September, 1974

Waddy.<sup>108</sup> A series of project teams were appointed, to look at various aspects of the legislation.

Healey was anxious that the review be seen as bipartisan. Some Liberal back-benchers participated, but at least one Labor member of Parliament, Eric Bedford, was also a member. There were also people who had been critical of the Department, together with academics and leaders of non-government child welfare organisations. Their work was co-ordinated by a Legislation Review Committee, formally constituted under the Child Welfare Act, and headed by Peter Phibbs, a Catholic priest who was Director of the Catholic Welfare Bureau. A number of members of the Child Welfare Advisory Council participated in the project teams or on the Review Committee. Public submissions were invited, and one hundred and eighty-nine were received. A senior officer serviced each of the teams and the committee.

A second strand to the review consisted in the appointment of Alastair Muir, a Judge of the District Court, to review those aspects of the legislation that related to the prosecution of offenders, court proceedings and the punishment of institution inmates.<sup>109</sup> Muir essentially conducted his review quite independently of that part of the exercise co-ordinated by Phibbs, although towards the end, he did consult with the co-ordinating committee.<sup>110</sup> It was envisaged that the whole exercise would be quickly completed, with legislation ready for Parliament in 1975.

Muir's main jurisdictional recommendations were that the maximum age for the juvenile jurisdiction be lowered from eighteen to seventeen years and that the lower age

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<sup>108</sup> 'Report of the Select Committee of the Legislative Assembly upon the Building Industry' 20 October 1970 NSWPP 1969-70-71 vol. 8 p1 et seq.

<sup>109</sup> A G Muir Report to the Minister for Youth and Community Services on Certain Parts of the Child Welfare Act and Related Matters 1974, (roneo copy in the possession of the author) p. 1.

<sup>110</sup> ibid., p. 112

of criminal responsibility be raised from eight to ten. He also recommended that instead of children under fourteen being prosecuted for offences, they be dealt with instead as being in need of care. He also suggested that aid panels be established to deal with young offenders instead of their being prosecuted in court. In relation to the upper jurisdictional age, Muir simply followed the views of the 1960 Ingleby Committee, which had come to the conclusion that the age for England should be seventeen. The consideration of this issue by the Ingleby Committee was in a quite different context. They had received a number of proposals that the age be raised from seventeen to eighteen, and for the most part those proposals did not relate to criminal proceedings, but were motivated by the desire to afford to girl prostitutes aged seventeen the benefit of being dealt with as in need of care or protection. The Committee rejected this proposal, and was also influenced by opposition from the Home Office, which considered that Approved Schools were unsuitable for young people aged seventeen.<sup>111</sup> His reliance on Ingleby was strange, since there were important differences between New South Wales and England. For example, Borstals, Youth Treatment Centres and Detention Centres were available in England, but not in New South Wales. Also, four reports of official inquiries had been published since Ingleby.<sup>112</sup> Most significant of all was the fact that a number of sections in the Children and Young Persons Act, 1969 (UK) containing key reforms, were not proclaimed when the rest of the Act commenced in 1971, partly because of strong opposition by police. These included the prohibition on court prosecution of children under fourteen,

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<sup>111</sup> Great Britain Home Office Report of the Committee on Children and Young Persons 1960 (Ingleby Report) cmnd paper 1191 HMSO London, 1960, pp. 37-38.

<sup>112</sup> Great Britain Home Office The Child, The Family and the Young Offender Cmnd Paper 2742, HMSO, London, 1965. Great Britain Home Office Children in Trouble Cmnd Paper 3601 HMSO, London, 1968. Great Britain Home Office Detention of Girls in a Detention Centre: Interim Report of the Advisory Council on the Penal System HMSO London, 1968; Great Britain Home Office Detention Centres: Report of the Advisory Council on the Penal System HMSO, London, 1970. See also M

restrictions on court prosecutions for young offenders aged fourteen to seventeen, and the raising of the minimum age for a Borstal sentence from fifteen to seventeen.<sup>113</sup>

None of this was canvassed by Muir, even though he was aware of the reports in question.<sup>114</sup> He also referred to the fact that in Queensland, Tasmania and Victoria the age had been set at seventeen, although a recent review in South Australia had retained eighteen.<sup>115</sup> Yet another factor was that, in the late 1960s, the number of years of secondary schooling in New South Wales had been increased from five to six, which meant that, in an educational sense, childhood had been extended.<sup>116</sup>

The proposed reduction in the upper age from eighteen to seventeen was controversial. It would have meant that juvenile offenders would have gone to prison at a younger age. One factor of significance to Muir was his view that if the age were lowered, it would be possible to get rid of the closed Institution for Boys, Tamworth, since the majority of inmates there were seventeen or older. The Department was not disposed to do away with Tamworth, because of the bitter experiences it had had in the 1940s with rebellious boys at Gosford. It still needed somewhere for that kind of inmate, even if they were under seventeen. Such a change would also have had an adverse effect on the adult court system, since many of the offenders aged seventeen would then have had to be dealt with in the District Court, a much more expensive

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Hoghugh 'Democracy and Delinquency: A note on increasing demand for secure accommodation for persistent delinquents' British Journal of Criminology vol. 18 (4) 1978, p. 391.

<sup>113</sup> L Taylor, A Morris & D Downes Signs of Trouble, British Broadcasting Corporation, London, 1976, p. 24

<sup>114</sup> A G Muir Report to the Minister for Youth and Community Services on Certain Parts of the Child Welfare Act and Related Matters, p. 41.

<sup>115</sup> A G Muir Report to the Minister for Youth and Community Services on Certain Parts of the Child Welfare Act and Related Matters, p. 8

<sup>116</sup> A M Hellyer 'The Wyndham Plan' M Ed Thesis, University of Sydney, 1968, p. 300.

process than the Children's courts. Adult courts were already under stress, as Muir himself had observed.<sup>117</sup>

Raising the age of criminal responsibility to ten was not controversial, because very small numbers of cases were involved. Paradoxically, raising the age would be an advantage to police in dealing with very young offenders. If a child aged nine committed an offence, the standard of proof was high, 'beyond reasonable doubt', and there was a presumption of law, the *doli incapax* rule, that any child under fourteen did not appreciate the criminal nature of an act. This presumption could be rebutted, by evidence from the police. On the other hand, if a child were simply dealt with as uncontrollable, the standard of proof was much lower, and *doli incapax* not an issue.

The proposal to abolish prosecution of offenders under fourteen (except those accused of very serious offences such as murder) and deal with them by way of 'care proceedings' followed a provision in the English legislation which, however, had not been implemented. Muir suggested an alternative, that the proceedings be in two parts. In the first, there would be a hearing of the criminal charges, and if proved beyond reasonable doubt, the court would then determine, on the balance of probabilities only, whether the child was in need of care. In practice it would also have meant that children under fourteen could not be committed for trial, but this virtually never happened any way. Although it would have provided a greater degree of protection to a child than the English provision, it could also be argued that it was a distinction without a difference, since the child would still be before a court, and in Muir's proposals, could still be committed to an institution.

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<sup>117</sup> A G Muir Report to the Minister for Youth and Community Services on Certain Parts of the Child Welfare Act and Related Matters, p. 23



Muir acknowledged that there had been widespread opposition to ‘general committals’. General committals were those where no period of detention was fixed by the court. In such cases, the juvenile could be detained until eighteen years of age, although in the mid 1970s, the average period of detention was four to five months.<sup>118</sup> This form of ‘indeterminate’ committal had been central to the philosophy upon which the industrial and reformatory schools had been founded in the nineteenth century. The idea then was that young offenders were not to be punished, but reformed. According to this philosophy, reform required time, and so discharge depended upon the response of the offender to training. However, by the 1960s, this view had become unpopular. Critics complained that indeterminate sentences were no longer imposed in adult courts. They also pointed out how unfair it was for children to receive longer sentences than adults for identical crimes. Muir reluctantly accepted the prevailing community view against ‘general committals’. He proposed that all committals, both general and definite, be replaced by a standard committal for twelve months, with a discretionary extension of a further twelve months.

This proposal was unacceptable to the Government. It would, in effect, have retained indeterminate sentencing, as well as having the potential to increase the numbers detained in institutions. There were practical objections too. The use by the Children’s courts of committals for definite periods had signalled that magistrates considered a general committal for the average of about five months inadequate for some serious crimes. In 1957, about two thirds of committals were in ‘general’ terms. The remaining one third ‘definite’ committals were seemingly imposed to ensure longer periods of detention, and was stated to have been increasing. Some were for as long as three years. This trend continued, and by 1984, fifty-three per cent of committals

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<sup>118</sup> Child Welfare Act, 1939, section 52. .

were for fixed periods.<sup>119</sup> Depriving the Children's courts of the power to fix a definite period in such cases would simply have led to more juveniles being committed for trial in adult courts. At the other end of the scale, the courts were imposing very short committals for less serious offences where a custodial sentence was indicated.

In one sense, his proposal for aid panels was not unexpected, since they had already been introduced in Scotland and South Australia. Muir proposed that panels deal with first offenders pleading guilty to offences. He added a proviso, however, that, if one of the panel members was not a lawyer, there would be a mandatory requirement that the child had received legal advice that he or she was properly admitting the offence. This was because, during a visit to South Australia, Muir had sat in on several panel hearings, and came to the conclusion that some young offenders were pleading guilty to offences of which they were not guilty, as a matter of law.

This was certainly an important issue, since similar concerns, as well violation of children's rights (through the deliberate informality of the panels, which produced procedural laxity) had emerged in relation to the Scottish system.<sup>120</sup> His panel was to consist of two people, an officer of the Department and another person, drawn from a list of names which would include barristers, solicitors, all Magistrates, as well as other community members.<sup>121</sup> In his report, he made it clear that his preference was for a legally qualified person to sit on panels, to safeguard the rights of the child, hence his rather strange suggestion that Magistrates sit on panels. His idea was that Magistrates should 'step down from the bench' and sit on a panel with a Departmental officer,

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<sup>119</sup> . Annual Report Department of Child Welfare and Social Welfare 1957 NSWPP 1957-58 vol. 1, no 59, p. 321 et seq. , p. 16. See also M Cain & G Luke Sentencing Juvenile Offenders and the Sentencing Act 1989 (NSW): The Impact of Legislative and Administrative Change in the Children's Court 1982-1990 , p. 36.

<sup>120</sup> F M Martin & K Murray Children's Hearings , p.213-217

provided it was not in the same area in which the Magistrate normally exercised jurisdiction. He claimed to have support for this from the Chairman of Stipendiary Magistrates.<sup>122</sup>

Apart from the sheer impracticability of such a system in country areas, the use of Magistrates in this way would certainly have compromised the constitutional separation of judicial and executive powers, and so was never likely to be adopted by the government. The powers envisaged for the aid panels were similar to the South Australian and Scottish models: they included warning, counselling, supervision for six months, and reference to a court.<sup>123</sup> On the question of who should determine whether offenders should go to court or panel, Muir opted for a committee of police and Departmental officers. This was a departure from the Scottish system, which was much more impartial in that such decisions were taken by the Reporter, an official who was not part of the police force. Whatever may have been the reasons for South Australia to use a panel similar to the one proposed by Muir, there was a strong argument in relation to New South Wales for decisions about who should go before a court to be made by a body independent of the police, simply because of the very low rate of police cautions at the time. It was also desirable that police should be allowed to continue cautioning, since the retention of that power would tend to increase the numbers diverted from the courts.

Muir made no mention of the much higher rates of cautioning in other States, but was content with what was, in the circumstances, only a very mild criticism of the incidence of police cautioning, saying that it had 'operated successfully, but had not

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<sup>121</sup> A G Muir Report to the Minister for Youth and Community Services on Certain Parts of the Child Welfare Act and Related Matters, p. 37

<sup>122</sup> ibid., p. 26. The Chairman of Stipendiary Magistrates at the time was Murray Farquhar, who was later disgraced.

been developed'.<sup>124</sup> In referring to England, he mis-stated the situation, by claiming that 'the choice was between Court proceedings on the one hand and on the other provision, help and guidance on an entirely voluntary basis'.<sup>125</sup> In fact, in many parts of England, there had been well-developed cautioning systems operating for more than twenty years. The inclusion of police in the screening apparatus was therefore incongruous, since it was likely to produce a low rate of referrals to panels, if similar attitudes to those followed for cautioning were adopted by police.

Muir's Report was available to the Project teams before they completed their tasks. Their reports were generally much less detailed and many of their recommendations lacked supporting argument. An exception was that of the Children's Court Project Team, which consisted entirely of lawyers.<sup>126</sup> This team disagreed with Muir on a number of important issues. They favoured retention of the age of criminal responsibility at eight, arguing that this would provide better protection for such children.<sup>127</sup> They also wanted the upper jurisdictional age kept at eighteen, arguing that the number of seventeen year-olds who were unsuitable for juvenile training programs was small, and in any event, Children's courts had power to commit them for trial in the adult courts. To lower the age would disadvantage those aged seventeen who should be spared the harshness of the adult system.<sup>128</sup> In supporting aid panels, they recommended a three person panel, with both genders represented, and excluding police, and with jurisdiction over 'care' proceeding as well. They also

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<sup>123</sup> *ibid.*, recommendation 9, pp. ii-iii.

<sup>124</sup> Muir was a policeman before being called to the bar.

<sup>125</sup> A G Muir Report to the Minister for Youth and Community Services on Certain Parts of the Child Welfare Act and Related Matters, p. 23.

<sup>126</sup> The team was chaired by the Hon. William Holt MLC, and included Clifford Papayanni, then a Public Defender, but previously an officer of the Department, as well as Geoffrey McLennan, who had sat on the Children's Court bench. A key member was Richard Chisholm, then lecturer in law at the University of New South Wales, and later a Judge of the Family Court of Australia.

favoured the appointment of a Reporter, as in Scotland, to make the critical decision as to which cases would go to the panels and which to court.<sup>129</sup>

A significant Minority Report was also submitted by Richard Chisholm, of the Law School at the University of New South Wales, who, apart from agreeing with Muir that the minimum age should rise to ten, made two other proposals. The first was that the sentence for a juvenile should not be greater than an adult would receive for the same offence. In support of this, Chisholm quoted the Younger Report (UK) which had advocated this principle.<sup>130</sup> There was a good deal to be said for such a proposal, especially in the context of heightened concerns with human rights issues, including the rights of children. It did, however challenge long-standing practice, based on the principle that sentences should be determined on the basis of what was best for the juvenile, and the timing of discharge should be left to the executive arm, that is, those observing the child's behaviour during training. Chisholm, contrary to Muir, would thus have eliminated 'general' committals completely.

The second proposal was more radical still. Chisholm argued that the jurisdiction of Children's Courts over non-criminal conduct should, for the most part, be abolished. This would mean that children would cease to be dealt with for so-called 'status offences', such as truancy, uncontrollability, being exposed to moral danger. He suggested the retention of 'care proceedings' for children under fourteen, so that it would still be possible to protect those children from incompetent parents. Chisholm claimed that there was near consensus on this in the United States and quoted

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<sup>127</sup> Child Welfare Legislation Review: Report of the Children's Court Project Team, Department of Youth and Community Services, Sydney, 1974, p. 5.

<sup>128</sup> ibid., p. 4.

<sup>129</sup> ibid., pages 6 & 10.

<sup>130</sup> Great Britain Home Office Young Adult Offenders: Report of the Advisory Council on the Penal System (K Younger, Chair) HMSO, London, 1974, p. 21

numerous eminent authorities in support of this proposal, although he did point out that opinion in England was divided on this issue.<sup>131</sup> Chisholm's views on the abolition of 'status offences' were accepted by the government, since many people, including officials, held similar views.<sup>132</sup> However, children fourteen and above were still kept within the scope of non-criminal proceedings, because it was considered that there were classes of children, for example those who were homeless or intellectually disabled, who should not be excluded. His view that the sentence imposed on a child should not be greater than an adult was also accepted by the government.

The final Report of the Review Committee was submitted in August 1975. It favoured retention of the upper jurisdictional age at eighteen, and recommended that 'general committals' be replaced with a standard committal of twelve months, with a right to seek review after six months of training.<sup>133</sup> It agreed with the need to establish aid panels, but rejected any notion of an official like the Scottish Reporter deciding which cases went to panels and which to court, as 'impractical in New South Wales'. Its version of the panel was one with three members, with police excluded, and mandatory independent legal advice to the accused.

Strangely, the Report recommended the phasing out of police cautions, this work to be taken over by panels. This recommendation followed Muir, and may well have been coloured by distrust of the police because of their failure to match the

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<sup>131</sup> Child Welfare Legislation Review: Report of the Children's Court Project Team, (Minority Report by Richard Chisholm), p 54. Chisholm referred to J Mc Nulty 'The Right to be Left Alone' 11 American Criminal Law Review 132, (1972), N Morris & G Hawkins The Honest Politician's Guide to Crime Control, Judge E Rubin's address to the Conference on Criminal Justice, Washington DC, 1973 and E Schur Radical Non-intervention, Spectrum, New York, 1973.

<sup>132</sup> The Community Welfare Act, 1982, no longer made specific provisions covering truancy, uncontrollability and exposure to moral danger, but instead used a much broader definition for children 'in need of care'. See Community Welfare Act, 1982, section 44(4).

<sup>133</sup> Report of Child Welfare Legislation Review Committee Department of Youth, Ethnic and Community Affairs, Sydney, 1975, pp. 3, 53, 68

cautioning rates of other States. It also went against the practice in Scotland, where police cautions were deliberately retained, and even after the introduction of the panel system in 1971, a quarter of all offenders were still dealt with by police caution.<sup>134</sup> All children under fifteen years were to go before panels, but the Department would have discretion to authorise prosecution for more serious offences (those carrying a penalty of fourteen years imprisonment for an adult).<sup>135</sup> In summary, this Report was an insubstantial document. It was not well-reasoned, with many of the recommendations unsupported by argument. Its contribution to the reform debate was insignificant, compared with the contribution by Chisholm, and to a lesser extent, Muir's separate exercise.

The exercise had, of course, taken longer than publicly forecast by Minister Healey, but given that it involved a large measure of community participation, that was to be expected. Preparation of proposals to Cabinet had begun in 1975, but was suspended when the Minister of the day, Stephen Mauger, wanted some quick legislation to boost flagging support for the Government. Some key proposals, including raising the age of criminal responsibility, as well as others outside the scope of this work, were extracted and brought forward. However, an election was called for May 1976, before the measure could be introduced. The Coalition government's defeat in the election brought an end to such plans.

### *Conclusion*

During the period from 1961 to 1976, the increase in the numbers in institutions stretched the Department's capacity to accommodate and manage inmates. However,

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<sup>134</sup> F M Martin & K Murray *Children's Hearings*, p. 14

<sup>135</sup> *Report of Child Welfare Legislation Review Committee*, pp. 76-79.

one benefit was that, as more institutions were opened, the scope for classification improved, although this really only applied to institutions for boys, to which was devoted the bulk of available capital resources. In the main, this was because of long held attitudes, which saw women in general as second class citizens, and delinquent girls in particular as much less likely to be susceptible to reform than boys.

At the beginning of the period, the reaction to increasing numbers was simply to build more and more facilities, when arguably the situation could have been improved by trialling a reduction in the standard period of detention or attempting to get the police to make more use of the cautioning system. That began to change in the early 1970s, after the appointment of William Langshaw, who initiated a reduction in the period of training. The most important development during the period was the impact of movements which had gathered force overseas during the 1960s, normalisation, diversion, community based treatment and children's rights. Changes such as the opening of Tallimba and attendance centres were tentative steps in the direction of different types of training, as well as diversion, but they were slow in coming, considering that similar initiatives had begun overseas much earlier. The approach to innovation was therefore cautious, not only in relation to forms of treatment, but in respect of the legislative reform program, which was long overdue.



Hay Institution for Girls, view of cellblock-*courtesy State Library*

Interior view of cell at Hay-*courtesy State Library*



**CHAPTER 8**  
**A MIXED BAG OF REFORMS**  
**1976 to 1988**

In the late 1970s and early 1980s, the process of reform initiated by Langshaw stalled. Although he remained head of the Department until 1983, the latter part of his term was marked by political in-fighting and bureaucratic turbulence. Although preparations for the commencement of the Community Welfare Act, passed in 1982, were well advanced, they were shelved when Langshaw was replaced, and a fresh review ordered by the incoming Minister, Frank Walker. A period of chaotic administration ensued, with frequent changes of both Ministers and Directors-General, and policy initiatives swinging from moderate incremental reform to radical change and back to modest revisions of policy and procedures. As a result, a number of new schemes ended in disaster and promising reforms were abandoned either because of mismanagement or political pressure. In a number of instances, failure followed a 'crash through or crash' approach, in contrast to the quiet incrementalism of Langshaw.

*Langshaw's re-organisation of juvenile corrections*

The effort to re-organise the juvenile correction system in the early 1970s was not entirely new. It built upon the diversion movement and community treatment systems. It was given additional impetus by the desire of the government for greater regionalisation of

services. In 1972, Langshaw had begun planning major changes to the juvenile correction system. He hoped to reduce the high rate of incarceration in New South Wales by gradually replacing much of the traditional institutional training school system with community based programs. The outline of such a re-organisation had been prepared by Dr. John Blow, a psychiatrist and Deputy Director of the Department. Blow proposed extensive use of diversion programs, better classification, a shorter training period, more community involvement. For those incarcerated, he recommended a change of program to make it more relevant to the environment encountered by a juvenile after discharge.<sup>1</sup>

When the Coalition Government lost office in the 1976 elections, the new Wran Labor Government appointed Rex Jackson Minister for Youth and Community Services. Initially, this had little effect upon the juvenile correctional system. Jackson, a former boxer, had a pugnacious temperament, but little formal education, and limited capacity to comprehend the problems of the system. There were hopes that the new government, elected on a reform agenda, might be prepared to invest in alternatives to incarceration, but this was not the case. The Department's budget expanded enormously, but not for juvenile corrections. The new money went mostly into grants to community based organisations.

At first Jackson relied on the long experience of Langshaw, but increasingly he came under the influence of a group of recently arrived senior executives who, in the opinion of the author, favoured a more radical reform program than Langshaw. These people, led by Ian McAulay, Deputy Director-General, Anne Gorman, Director of Planning

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<sup>1</sup> J S Blow to Under Secretary 1 December, 1972 file Misc 73 / 18/ 8556, SR K 39223.

and Sue Vardon, Director of Policy Development, had become more powerful after the election of the Labor government.

Initially, under the influence of Langshaw, the Wran government reforms were modest. Some had been planned before the election. One early initiative, a Community Youth Centre at Stanmore, was an attempt at an alternative to incarceration, for less serious offenders.<sup>2</sup> Although this program technically fell within the legislative definition of ‘youth project centre’ Stanmore was quite different from the attendance centres begun earlier, which were more analogous to probation. The Stanmore program was much more intensive, requiring fourteen hours attendance per week, spread over two nights, and all day Saturday for the first three months.

The aim was to effect attitudinal change in boys aged fourteen to seventeen, without the ‘pernicious effects of the delinquent sub-culture’ which would operate in a residential institution. Each evening, the program began with a meal, followed by group sessions dealing with practical issues like the ‘legal’ use of leisure time, supplemented by individual counselling, community involvement and adventure camps. It was used for less sophisticated boys who had been committed to an institution, in lieu of detention in a conventional training school. There were some exclusions: State wards, those considered to be ‘disturbed’ or intellectually disabled, and those guilty of major crimes such as murder. Its main attraction was that the Californian model upon which it was

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<sup>2</sup> Annual Report, Department of Youth and Community Services 1978, NSWPP 1978 - 79 vol. 5, p. 1291 et seq., p. 47.

based was claimed by its Australian proponents be twice as effective as conventional institutions, and about half as expensive.<sup>3</sup>

The establishment of such a program at Stanmore was accomplished without any adverse publicity. It was supported by Magistrates of the Children's Courts, even though the decision to admit juveniles to the program was an administrative, not a judicial decision. A survey completed in 1981 indicated a recidivism rate of 'around the forty per cent level after twelve months, marginally better than contemporary rates for those serving sentences at institutions, although a better rate should have been achieved, since the juveniles were specially selected for Stanmore.'<sup>4</sup>

In the late 1970s, however, further efforts were made to implement more significant changes, as part of preparations for delivering a regionalised service. The momentum for reform under Labor was building. The Department produced a discussion paper containing ideas for the development of local and regionally based alternatives to custodial treatment, aimed at reducing the numbers in custody, and, by inference, reducing custodial facilities.<sup>5</sup> Langshaw established an implementation Task Group in 1981, headed by Max Houston, a regional director, and including Rod Blackmore, Senior Children's Court Magistrate as well as other people from outside the Department.<sup>6</sup>

The Task Group reported in June, 1983. It recommended the establishment of regional Young Offender Support Teams which would provide practical assistance to

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<sup>3</sup> Department of Youth and Community Services 'Submission by Planning Committee: Proposal for the Establishment of a Community Youth Centre' undated, but c. 1973. The plan envisaged other centres at Blacktown and Cabramatta. SR 14/3155

<sup>4</sup> C Cunliffe - Jones 'New Initiatives in the Treatment of Delinquents' Proceedings of the Institute of Criminology no 49, seminar: 'Child Welfare in the 80s' 1 July, 1981, p 96.

<sup>5</sup> C Cunliffe - Jones 'New Initiatives in the Treatment of Delinquents', p 77.

juvenile offenders and an expansion of the Community Youth Centre program. It also recommended abandonment of the existing capital works program for construction of another five multi-purpose centres, to be followed by *eventual* closure of three large institutions, Gosford, Daruk and Minda. In relation to high security units, it suggested that Endeavour House at Tamworth close and be replaced by a converted unit at Taldree, in the grounds of the old Parramatta Girls Training School. The report also endorsed a large variety of diversionary programs, including new features such as bail hostels and community based residential care units. It was particularly critical of the low levels of police cautions, and saw the introduction of screening panels under the Community Welfare Act, 1982, as a way of ensuring that the rate was substantially increased.<sup>7</sup>

Although it might appear at first sight that the Houston Report was a radical document, in fact the proposals for closure of large institutions were very much conditional on the implementation and effectiveness of the diversionary programs. Houston didn't recommend immediate closures, because there were simply too many imponderables. There was the critical question of finance. In the straitened budgetary climate of the early 1980s, the Department had been unable to get the money to implement the 1982 legislation, and finance for the Houston proposals thus depended on diverting money from other sources.<sup>8</sup> No one could be sure whether the expansion of diversionary programs would result in fewer committals to institutions. Instead there was growing research evidence in America that the new style of rehabilitative programs 'had no appreciable effect on

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<sup>6</sup> The members included officials as well as representatives of trade unions and non- government organisations. M Houston (chair) 'Report on Services for Young Offenders' 27 June 1983, p. 2. SR 14/3155.

<sup>7</sup> ibid., p. 81 et seq.

<sup>8</sup> The money was to come from funds earmarked for multi - purpose units in the capital works program, under the control of the Public Works Department, no easy task.



recidivism'. This led one writer to conclude that 'nothing works', although other authorities disputed this judgement.<sup>9</sup> Also, it was difficult to manage aspects of a plan controlled by other Departments, such as the expansion of police cautions, especially as the police had in the past been reluctant to do so. Police continued to caution very few juveniles in preference to court appearances.<sup>10</sup>

There was a general consensus among officials that the old gaol, Endeavour House, at Tamworth, was no longer suitable, even for a high security unit. There would inevitably be public controversy over the siting of its replacement, especially as it was proposed that it be located in a residential area, Parramatta. Houston's plan was therefore a cautious one, favouring the development of innovative programs of diversion, but not abandoning the existing institutional facilities until this could safely be done.

Although plans for reform of the institutional system were proceeding, some of the new alternatives to incarceration required statutory authorisation, so the review of legislation was necessarily complementary to institutional reform. In 1977, the new Government decided, however, to proceed with only limited, interim amendments to the existing Act, pending consideration of the reform package. The main reason not to proceed with the whole legislative package was simply that it had been prepared by the previous Coalition government. The Wran government wished to propose new legislation

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<sup>9</sup> R M Martinson 'What works - Questions and answers about Prison Reform' The Public Interest vol. 35, p. 25, quoted in J A Conley The President's Crime Commission Report: Its Impact 25 Years Later, Anderson Publishing Coy., Cincinnati, 1994, p. 91. See also D Lipton, R Martinson & J Wilks The Effectiveness of Correctional Treatment: A survey of treatment evaluation studies Praeger, New York, 1975; S E Martin, L B Sechrest & Redner New Directions in the Rehabilitation of Criminal Offenders: Final Report National Academy of Sciences, Washington, 1981. For a contrary view, see A Borowski 'Programmes for violent juvenile offenders: what works?' Australian and New Zealand Journal of Criminology September 1986, vol. 19, p. 155.

<sup>10</sup> The rates for Queensland and Victoria were between sixty and seventy per cent. In 1980/81, the rate for New South Wales was 6.7 per cent. Within New South Wales, there were large variations between regions,

which bore its own stamp. Nevertheless, the interim amendments were in fact the same as those that had been prepared for the previous (Liberal) Minister.<sup>11</sup>

The only significant amendment required that where a child was interrogated in a police station, evidence of any admission to an offence was inadmissible unless police had taken reasonable steps to have a parent present during the interrogation. This was to counter fairly widespread claims, in respect of both children and adults, that undue pressure was often applied by police to secure confessions. The age of criminal responsibility was raised from eight to ten, but this was not controversial. Both of these measures had been recommended by Muir and the Review Committees.

In July 1978, a submission went to Cabinet on the rest of the legislative package.<sup>12</sup> An Inter-departmental committee chaired by Langshaw sorted out most problems, but there were some issues still in dispute. There was also the political problem that the new Government wanted to be seen as doing something different from the legislation being prepared under the Liberal-Country Party Coalition. Even at this stage, there were also signs that the Government was hesitant about public reaction. In March, Jackson had indicated that when Cabinet decided on the legislation, there would be an opportunity for further public comment, either by way of a green paper or by allowing the Bill to lie on the table of the House.

The Department faced a different, and awkward problem. The Cabinet Minute was very large and Jackson very inexperienced; he was certainly not *au fait* with its

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for example North Coast was 13.8 % and Illawarra 3 %. See 'Young Offender Statistics 1980 - 81' produced by the Department of Youth and Community Services March 1983 SR 14/3155.

<sup>11</sup> The most controversial provision was that which required medical practitioners to report cases of suspected child abuse, an issue outside the scope of this work.

<sup>12</sup> Annual Report, Department of Youth and Community Services 1978 NSWPP 1978 - 79, vol. 5, p. 1291 et seq., p. 12

complexities. It therefore proposed a special Cabinet meeting, at Minda Children's Court, but the 1978 elections intervened, and the idea was abandoned.<sup>13</sup> Instead, the Premier announced that a comprehensive green paper would be issued, setting out the details of what was proposed, together with the reasoning behind each proposal.<sup>14</sup> It was hurriedly prepared (in just twelve days) and tabled on the last sitting day of Parliament in December, 1978.<sup>15</sup>

Public comment on the proposals was invited, and by the deadline for submissions, some seven hundred and sixty were received. A Legislative Advisory Panel, established to review the submissions, reported in August, 1979.<sup>16</sup> Cabinet finally approved the drafting of legislation in February, 1980.<sup>17</sup> In 1981, Jackson was replaced by Kevin Stewart, a much more experienced Minister, who followed the convention of acting mainly on the advice of the permanent head of the Department.

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<sup>13</sup> Elections were on 7 October, 1978. See Parliament of New South Wales Parliamentary Record, Sydney, 1996.

<sup>14</sup> Green papers, although used in Britain since 1967, were not common in Australia. See A Silkin 'Green Papers and Changing Methods of Consultation in British Government' Journal of the Royal Institute of Public Administration vol. 51 1973, p. 427.

<sup>15</sup> New South Wales Parliament Report of the Minister for Youth and Community Services on Proposed Child and Community Welfare Legislation NSW Government Printer, Sydney, 1978

<sup>16</sup> There were twenty - two members, half of whom were officials and the rest from the non - government sector, broadly representative of peak groups. The author chaired the panel, which included a number of prominent citizens: Eva Cox, then Director of the NSW Council of Social Service, Averil Fink, Director of the Council on the Ageing, Trish Kavanagh, wife of the Hon L J Brereton, a Minister in the Wran Government, and later a Judge of the Industrial Relations Commission, Richard Chisholm, lecturer in law at the University of New South Wales and later a Judge of the Family Court, Mary McLelland, of the Department of Social Work at Sydney University and also Chair of the Child Welfare Advisory Council, Jim Samios, later a Liberal Member of the Legislative Council. The panel was well aware of the decarceration movement in other countries. A literature survey commissioned for the panel included articles by well - known advocates of alternatives to incarceration, including : M Hoghughi 'Democracy and Delinquency' - British Journal of Criminology (1978) vol. 18 no, and M Liroy 'Open residence An alternative to closed correctional institutions for hard core juvenile delinquents' Canadian Journal of Criminology (1978) vol. 20 no 4. A Cabinet Minute followed in November 1979, followed by yet another inter - Departmental committee, as well as a Cabinet sub - committee which recommended a number of changes. For details of the process, see Annual Report Department of Youth and Community Services 1980, NSWPP 1981 - 82, vol. 5, p. 1347 et seq., p. 10.

After Stewart's arrival, there was a period of administrative turbulence during which Gorman resigned, Vardon was transferred from a policy to an operational position, McAulay was dismissed, while Langshaw's status was restored.<sup>18</sup> The Bill was finally approved by Cabinet and introduced in Parliament on 14 May, 1981, the last day before the winter recess, the object being that the Bill would lie on the table of the House until the budget session in August, to allow further public comment.<sup>19</sup>

Many submissions sought the incorporation of the United Nations Declaration of the Rights of the Child and the International Convention on the Rights of the Disabled as enforceable provisions of the legislation. Apart from the fact that this raised questions of constitutional law (it being the sole prerogative of the Commonwealth to enact legislation making treaties and similar instruments part of domestic law) there would have been administrative chaos if every substantive provision of the legislation had to be weighed against the vague and platitudinous phrases of such instruments. The Act did contain statements of principles, such as 'normalisation' of services to the disabled, but these were expressed in such a way that they were of little legal effect.<sup>20</sup> One significant provision, inserted at the instance of officials, was that the child should not suffer a greater penalty than an adult would, for an offence of the same kind.<sup>21</sup>

Children's Aid Panels was probably the biggest issue of the review. Both Muir and the Legislation Review Committee (Phibbs) had recommended 'counselling panels' along the lines of the South Australian model, but with added safeguards to ensure due

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<sup>17</sup> Drafting took almost a year, and when the Bill went to Cabinet for approval in March 1981, it was again referred to an inter - Departmental committee and Cabinet sub - committee, where some eighty alterations were made.

<sup>18</sup> SMH 24 April, 1982.

<sup>19</sup> See comments by the Hon R F Jackson, Minister, NSWPDLA 14 May, 1981, pp. 7223 - 7282.

<sup>20</sup> Community Welfare Bill, clause 259.

process.<sup>22</sup> The Department initially went along with these proposals, but when estimates of the cost were prepared, it appeared that they would be extremely expensive. Panels of this kind would require administrative support, and would need to be established all over the State. This was a significant issue, because New South Wales had a far more dispersed population than South Australia, where more than seventy per cent of the State's population lived in Adelaide. Of course, the additional costs would to some extent be offset by the savings which would accrue, as the Department hoped fifty per cent of juveniles would be diverted from the court system.

A much more important factor was the growing scepticism regarding panels. They had been rejected by the Australian Law Reform Commission.<sup>23</sup> There was also evidence that the South Australian panel system had not lived up to expectations, as the numbers of children appearing before either panels or courts had increased more than four times the increase in the juvenile population. There was also a significant increase in the numbers of girls compared with the previous system. It was clear that there had been massive net-widening, 'bringing into the system youths whose behaviour would otherwise have been ignored'.<sup>24</sup> The way in which girls were disproportionately involved in diversion programs reflected similar experience elsewhere.<sup>25</sup> Richard Chisholm, of the University

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<sup>21</sup> *ibid.*, clause 123(1)(a).

<sup>22</sup> 'Counselling panels' were those where the child and parents physically faced a panel of people in an attempt to plan future action to reform the child's behaviour. 'Screening panels' are administrative bodies which decide whether a child should appear before a 'counselling panel' or go before a court. Screening panels have no direct contact with either parent or child.

<sup>23</sup> Australian Law Reform Commission Child Welfare Australian Government Publishing Service, Canberra, 1981, p. xxviii.

<sup>24</sup> R Sarri & P W Bradley 'Juvenile Aid Panels: An alternative to Juvenile Court Processing in South Australia' Crime and Delinquency vol. 26 no 1, January, 1980, pp. 42 - 62.

<sup>25</sup> C Alder & K Polk 'Diversion and Hidden Sexism' Australian and New Zealand Journal of Criminology 1982, vol. 15, pp 105 - 106. See also L Hancock & M Chesney - Lind 'Female Status offenders and justice reforms: an international perspective' Australian and New Zealand Journal of Criminology 1982, vol. 15, p.p. 110 - 112.

of New South Wales law school, also criticised the likelihood that panels would 'exert power over children who were innocent' and were essentially coercive in nature.<sup>26</sup>

Sue Vardon, who had become Director General of the South Australian Department of Community Welfare, later conceded this had been the case, although she blamed it on administrative changes which acted as a disincentive to police to warn or informally caution, those being the previously available non-court options.<sup>27</sup> Overseas evidence supported this scepticism. The eminent American criminologist, Norval Morris, had concluded that community based treatment in the United States had not reduced incarceration rates.<sup>28</sup> Similarly, Paul Lerman argued that the Californian community based treatment system had expanded the social control of delinquents by officials. He claimed it had resulted in an expansion of detention facilities, was not less costly than traditional alternatives, and produced recidivism rates that were similar to those for ordinary institution inmates.<sup>29</sup> A Royal Commission Report into the South Australian

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<sup>26</sup> R Chisholm 'After the Community Welfare Bill - What next ?' in Proceedings of the Institute of Criminology, no 49 'Child Welfare in the 80s' 1981, p 38.

<sup>27</sup> S Vardon 'The South Australian Juvenile Justice system' in Current Australian Trends in Corrections Federation Press, Sydney, 1988, p. 107. However, the original report of the Social Welfare Advisory Committee which proposed the panel system, recommended voluntary referrals to Aid Panels as a kind of early intervention strategy, in effect a deliberate widening of the net of social control. See J Wundersitz 'The Net - widening effect of the Aid Panels and Screening Panels in the South Australian Juvenile Justice System' Australian and New Zealand Journal of Criminology vol. 25, no 2, July, 1992, pp 118 - 120.

<sup>28</sup> A Rutherford & O Bengur Community - Based Alternatives to Juvenile Incarceration National Institute of Law Enforcement & Criminal Justice, Washington, 1976, p. 30.

<sup>29</sup> P Lerman Community Treatment and Social Control: A critical Analysis of Juvenile Corrections Policy. University of Chicago Press, Chicago, 1975, pp. 3 - 15. See also S Cohen 'The Primitive City: notes on the dispersal of social control' Contemporary Crises vol. 3, 1979, p. 350; S Messenger 'Confinement in the Country' Journal of Research in Crime and Delinquency, vol. 13, 1976, pp. 82 - 92; T Blomberg 'Diversion and accelerated social control' Journal of Crime and Criminal Law vol. 68, 1977, pp. 274 - 282; M Zander et al., Diversion from Criminal Justice in an English context: Report of a Working Party of the National Association for the Care and Resettlement of Offenders Barry Rose, London, 1975, pp. 3 - 44.

Juvenile Courts Act in 1977 emphasised flaws in the panel system, particularly their propensity to disregard issues of due process.<sup>30</sup>

The cost of the proposed Children's Aid Panels program was a major concern in New South Wales. There was also an expectation that its introduction would result in lower recidivism rates as well as a reduction in the numbers of those being committed to institutions. The South Australian findings were therefore disturbing and cast serious doubt on the desirability of introducing such panels. The Legislative Advisory Panel came to the conclusion the South Australian model had too many problems, and that a better way would be to introduce administrative screening panels only. These panels would consist of three persons, police, a departmental officer and another person.<sup>31</sup> This kind of panel would be inexpensive, but would hopefully achieve a higher cautioning rate than had previously been the case.

The use of isolated detention as punishment was also still a significant issue. Earlier reports by Muir and Phibbs had called for it to be replaced with 'therapeutic segregation' of a non-punitive kind, for a maximum of twenty-four hours.<sup>32</sup> The Legislative Advisory Panel had rejected isolated detention but accepted room confinement and segregation.<sup>33</sup> This issue was the subject of intense debate in the inter-Departmental

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<sup>30</sup> Mohr quoted extensively from the leading judgement of Justice Abe Fortas of the United States Supreme Court in *Gault* to emphasise this factor. He also found that the method of determining whether a child should go to an Aid Panel or to Court was arbitrary. R F Mohr 'Report of the Royal Commission into the Administration of the Juvenile Courts Act, 1971 - 74 and other Associated Matters, Part 2' South Australian Parliamentary Papers 1977, no 112.

<sup>31</sup> See clauses 129 - 136 of the Community Welfare Act, 1982, and also schedule 5.

<sup>32</sup> Department of Youth, Ethnic and Community Affairs Report of Child Welfare Legislation Review Committee (Rev. E P Phibbs, chair) August 1975, pp. 73 - 74; A G Muir Report to the Minister for Youth and Community Services on Certain Parts of the Child Welfare Act and Related Matters NSW Government Printer, Sydney, 1974, p. 96.

<sup>33</sup> Department of Youth and Community Services Report of the Legislative Advisory Panel, unpublished Sydney, 1979, paragraph 14. 10. 3. 2. The Department's view, in the Green Paper, was for a three - tier system, six hours room confinement, twelve hours segregation and twenty - four hours isolated detention

committees and Cabinet, with opposition coming from civil libertarians in the Attorney-General's Office and the Women's Affairs unit within the Premier's Office, who regarded the practice as inhumane. The final decision was a compromise, six hours of 'room confinement', meant to be the equivalent of a parent who sends a recalcitrant child to his or her own room.<sup>34</sup> The officials maintained that practical experience over many years had shown that some form of separate confinement was an absolute necessity in the case of young offenders who were often violent and prone to destructive, uncontrolled behaviour when disciplined.

This issue was a good example of the way in which other Government instrumentalities, with no experience in operating juvenile corrective institutions, could distort policy. 'Room confinement' was a meaningless term, since hardly any inmates of institutions had their own 'rooms', except those detained in cells in places like Tamworth. Such confinement would therefore necessarily have to be in a room set aside for this purpose. Moreover, although the Act required that the place of confinement be, 'as far as practicable', no less favourable than other places in the institution, such a room would necessarily have to be devoid of furniture and be stoutly constructed. This was because many inmates placed in isolated detention destroyed cell furnishings. Six hours 'room segregation' would therefore in practice mean six hours isolated detention in a bare cell.

This provision, designed to placate those who had campaigned against this form of punishment, was actually negated by another provision of the Act, also a compromise, which gave the Superintendent power to segregate an inmate 'for psychological reasons'. The Act, perhaps somewhat optimistically, provided that 'psychological segregation' was

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<sup>34</sup> Community Welfare Bill, 1981, clause 253 (1)(d)(v). New South Wales Parliament Report of the Minister



not to be imposed as punishment. There were restrictions placed on this form of segregation, including a twelve hour limit. Also, anyone under eighteen years segregated for psychological reasons had, at all times, to be 'seen by and (able to) see and speak to an officer'.<sup>35</sup>

As a system of managing inmates who were violent, it was not only impractical but disruptive to staffing arrangements. Those administering institutions had, for a number of years, detained inmates in isolation contrary to law, through the device of referring to the circumstances as 'segregation', which was not proscribed by the Act, rather than 'isolated detention', which was subject to strict statutory restrictions. The change of terminology effected by the new legislation would prove irksome to staff, but just as much subject to circumvention. Several years later, the Ombudsman found that two sixteen year old boys had been kept in solitary confinement at Endeavour House (formerly known as the Institution for Boys, Tamworth) for three months, a 'serious abuse of authority' in contravention of the Child Welfare Act.<sup>36</sup>

Delay in the enactment of reforms was partly due to the level of 'community participation'. In introducing the Community Welfare Bill, the Minister, Jackson, claimed that it was 'the product of a genuine democratic participation in the legislative process ... which involved those in the community who have been active in seeking change'.<sup>37</sup> This view was supported by Richard Chisholm, a leading member of one of the early committees, who felt that the consultative process had helped to forge a new set of

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for Youth and Community Services on Proposed Child and Community Welfare Legislation, p. 63.

<sup>35</sup> 'Psychological segregation' is contained in section 240 of the Community Welfare Act, 1982. 'Room confinement' appears in section 254.

<sup>36</sup> SMH 20 October, 1984.

<sup>37</sup> NSWPDLA 14 May, 1981, p. 7226

values which were embodied in the legislation.<sup>38</sup> This however, was putting a political gloss on the reality. 'Participation' is one of those words open to many shades of meaning. In the politics of the 1970s, it has been described as 'a solution to the newly discerned problems of ... alienation and anomie'.<sup>39</sup>

The use of the word democratic to describe the process in forming the legislation seemed to imply that participation was widespread, and commanded popular consent, although orthodox democratic theory holds that there are 'dangers inherent in wide popular participation in politics'.<sup>40</sup> The term 'community' is even more nebulous. Some writers have considered it to be meaningless.<sup>41</sup> Others, such as Van Krieken, have contended that community participation is used by governments as an instrument of social control, 'both as a vehicle for the articulation of discontent ... and as a means of resolving ... that discontent ...'.<sup>42</sup> The main purpose of the participation of those outside the public service was to neutralise critics.<sup>43</sup>

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<sup>38</sup> R Chisholm 'After the Community Welfare Bill - What next ? ', p 38.

<sup>39</sup> C Crouch Introduction to Participation in Politics Croom Helm, London, 1977, p.1

<sup>40</sup> C Pateman Participation and Democratic Theory Cambridge University Press, London, 1970, p.1.

<sup>41</sup> M Stacey 'The Myth of Community Studies' British Journal of Sociology vol. 20 no 2, 1969, p. 134

<sup>42</sup> R Van Krieken 'Participation in Welfare: Democracy or Self - Regulation' Australian Quarterly Autumn 1981, p. 75

<sup>43</sup> G Andrews et al Towards Regionalisation, Access and Community Participation NSW Government Printer, Sydney, 1980, p. 90. After lying on the table of the House for some months, the 1981 Bill lapsed with the prorogation of Parliament for elections held that year. A fresh bill was introduced the following year, with few changes. See comments by the Hon K J Stewart, Minister, NSWPDIA 9 March, 1982 p. 2244. Some changes had nevertheless been made in the disciplinary provisions. Superintendents were to be given power to punish for misbehaviour (this term was not defined as had been the case in the 1939 Act), and the punishments ranged from a caution, through deprivation of privileges, exclusion from recreation, additional duties, to six hours 'room confinement'. The issue of what would constitute 'misbehaviour' was to be dealt with in rules made by the Director General but required to be tabled in Parliament, and therefore subject to disallowance by either House. Inmates could no longer be brought before the Children's Court for breaches of discipline, although they could be charged with offences under the criminal law. This was quite a change, since under the old Act, an inmate could be sentenced to three months gaol for a breach of institution discipline, not constituting a criminal offence.

Shortly after the Act was passed, in May 1982, a unit was established to plan for its implementation.<sup>44</sup> By August that work was ‘progressing well’ and nominations had been sought from eighty-five community organisations for membership of the many new bodies to be established under the legislation.<sup>45</sup> In fact, only a few sections of the 1982 Act ever commenced. None of these related to juvenile corrections, although there was an attempt to provide the legislative basis for community service orders and also formal remission of sentences, both of which were rendered nugatory, because the proclamation was faulty.<sup>46</sup>

Another reason why the legislation took so long to implement was the estimated cost. Although the Department received far more money under the Wran government than under the previous administration, virtually all of this was earmarked for grants to community organisations working in fields other than juvenile corrections.<sup>47</sup> Beginning in 1981, the year before the new Act was passed, there was a serious economic recession, and the government experienced significant budgetary problems.<sup>48</sup> Implementation of the

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<sup>44</sup> Annual Report Department of Youth and Community Services 1984 NSWPP 1984 - 85 - 86 vol. 20, no 433, p. 6

<sup>45</sup> Hon D. Grusovin. NSWPDLC 24 August, 1982, p. 334. Most of the bodies referred to related to sections of the legislation outside the scope of this work.

<sup>46</sup> Provisions relating to the establishment of the Home Care Service and also Disaster Welfare Services were proclaimed to commence from 1 February, 1984. See Government Gazette 27 January, 1984, p. 342. There were some parts of this proclamation which purported to commence provisions relating to juvenile corrections. These were the powers under section 310 to make regulations for community service orders and the remission of sentences. However, no regulations were made, nor could they have been made, because the operative sections in the Act itself, creating community service orders as a new sentencing option, and creating a power to grant remissions, had not been commenced by the proclamation.

<sup>47</sup> The funds allocated to the Department increased every year after 1976 at a greater rate than inflation. See for example Annual Report Department of Youth and Community Services 1978 NSWPP 1978 - 79 vol. 5, p. 1291 et seq., p. 7, which claimed that for the second year in a row, there had been a substantial increase in the budget. The figure for 1978 was 25 %. In 1979, it was 11.6 % - Annual Report Department of Youth and Community Services 1979 NSWPP 1980 - 81 vol. 8, p. 1415 et seq., p. 7. In 1981, it rose to a 21.8 % increase over the previous year - Annual Report Department of Youth and Community Services 1980 NSWPP 1981 - 82 vol. 5, p. 1347 et seq., p. 7. In 1981 the increase was 14 %, with a total of \$38.7 million distributed to community organisations - Annual Report Department of Youth and Community Services 1981 NSWPP 1982 - 83 vol. 6, p. 1515 et seq., p. 7

<sup>48</sup> At the time, New South Wales had the highest unemployment rate in Australia and there was a budget shortfall of about \$90 million. For the first time since 1976, Wran was forced to increase taxation. See E Charles, H Nelson & K Turner The Wran Model Oxford University Press, Melbourne, 1985, p. 99 and 206.

legislation, the cost of which was estimated at six million dollars, simply did not have a high priority with the Government.<sup>49</sup> Of equal importance was the fact that the reform agenda underpinning the 1982 Act was abandoned by Frank Walker when he became Minister in 1983.

### *Regionalisation*

One action of the new Wran government which had a major impact on the juvenile correction system was the regionalisation of services. This was a policy initiative, which had its origin in the regionalisation of some large departments under the previous Coalition government.<sup>50</sup> It received further impetus from the review of government administration, begun by Wran soon after the election. Professor Peter Wilenski, who carried out the review, established a task force, his aim being to promote increased community participation in government decision-making through the regionalisation of service delivery. The activities of the task force led to all departments being required to prepare regionalisation plans.<sup>51</sup> In 1977, the Department of Youth and Community Services

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<sup>49</sup> Rosemary Foot, NSWPDLA 10 March, 1982, p. 2366. The same figure was later quoted by Virginia Chadwick, Shadow Minister, in an attack on the failure to implement the 1982 Bill. See NSWPDLC 30 September 1986 pp. 4072 - 4082. See also comments by Wendy Machin, MLA, NSWPDLA 6 May, 1987, p. 11311, and Virginia Chadwick, MLC, NSWPDLC 12 May, 1987, p. 11716

<sup>50</sup> The previous coalition government had taken some steps towards regionalisation, by enacting the Regional Organisation Act in 1972, and this had resulted in the Education Department setting up a regional structure. The Health Department regionalised in 1975. For details of the Health regionalisation, see SR 18/1403

<sup>51</sup> The task force was chaired by Professor Gary Andrews of Sydney University. See G Andrews Towards Regionalisation, Access and Community Participation. For details of the Wilenski review, see R Alaba Inside Bureaucratic Power: The Wilenski review of NSW Government Administration Hale & Iremonger, Sydney, 1994.

made a beginning, with the appointment of a working party.<sup>52</sup> The actual restructure, from a highly centralised control to one based on ten regions, took place in 1981.<sup>53</sup>

There were significant effects on the juvenile correction system. Under the old divisional structure, supervision of superintendents of institutions had, since the late 1940s, been exercised by central office executives who were, in the main, former superintendents with an intimate knowledge of the practical operation of institutions. That system had been put in place precisely because of the problems encountered in the 1930s and early 1940s. Under the regionalised system, executive supervision passed to the regions, and this meant that each superintendent reported to an Operations Manager, who reported to the Regional Director. These officials had a wide range of duties, and few had any juvenile correctional experience. Co-ordination among the ten regions was supposed to be achieved through regular meetings of the Director-General with all Regional Directors, but this was a loose arrangement, and in practice, executive supervision of institutions suffered.

Under the regional structure a deliberate policy of providing institutional facilities for each region was followed. Under the old system, most large institutions were located within an hour or two's drive of Sydney, so that when problems arose, a senior executive could be there promptly.<sup>54</sup> Also, the large places like Gosford took inmates from all over that State, with allocation decisions based on age and criminal experience, not location. Regionalisation was supposed was to bring services closer to clients. So far as the

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<sup>52</sup> Annual Report, Department of Youth and Community Services 1978, NSWPP 1978 - 79 vol. 5, p. 1291 et seq., p. 7

<sup>53</sup> Annual Report, Department of Youth and Community Services 1981, NSWPP 1982 - 83 vol. 6, p. 1515 et seq., p. 7

juvenile correctional system was concerned, this meant locating facilities and services in regional areas so that, theoretically, there would be a greater capacity to maintain contact between the child and relatives.

The Department attempted to meet this need by including in its 1981 Corporate Plan the establishment of six 'multi purpose centres' in country regions. These units were meant to provide residential accommodation for custodial remands, institutional committals, wards, emergency accommodation, motel-style accommodation for visitors, as well as being available for day activities such as attendance centre programs, and general use by the community. Some attempt at segregation was to be attempted through the separation of groups in different parts of the building.<sup>55</sup> The concept, while being based on the desire to provide residential facilities in regional areas, was flawed. For reasons of economy, it was simply not practical to build a series of separate establishments for each of the five different groups for which the Department wanted to provide residential accommodation, in each country region. These centres were thus a radical departure from existing practice, in that offenders and non-offenders were to be accommodated on the same campus, something that had been forbidden since the practice was exposed and condemned by McCulloch in 1934.

Only one centre ever became operative, at Wagga, in 1984.<sup>56</sup> It was a very expensive experiment, costing \$3.4 million in capital costs, with a staff of thirty and

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<sup>54</sup> The main exceptions were Tamworth and Hay, which were much more remote, but their establishment in remote areas meant that there would be less public scrutiny over these institutions, which were intended to be essentially punitive.

<sup>55</sup> The locations selected were: Wagga, Lismore, Tamworth, Dubbo, Queanbeyan, and also one in a town to be selected in the far west of the State. See M Houston (Chair) Report on Services for Young Offenders, unpublished, undated, but c. 1983, pp. 83 - 86. SR 14/3155

<sup>56</sup> The Riverina Centre at Wagga provided accommodation for 20 inmates. See Annual Report, Department of Youth and Community Services 1987, NSW Government Printer, Sydney, 1988, p. 89

accommodation for a maximum of twenty inmates.<sup>57</sup> Apart from the cost factor, the centre at Wagga failed. There were high levels of absconding, generating outspoken resentment in the local community, since it was situated adjacent to a residential area. Another problem was that if as many committals as possible were to be accommodated locally, inevitably this meant that there could be no segregation of serious offenders from other offenders, let alone non-offenders, because there was only one part of the building reserved for committed inmates.<sup>58</sup>

The distinction between the two types of institutions provided for in the 1939 legislation, still in force, that is 'training schools' for those committed to an institution and 'shelters' for those held on remand, virtually disappeared.<sup>59</sup> The abolition of the distinction between training schools and shelters spread to locations not affected by regionalisation, and action was taken to ensure that all institutions were proclaimed as both training schools and shelters, although in some cases, training schools were used for remand and shelters used for committed juveniles, without the necessary proclamations being made.<sup>60</sup> This decision was largely undertaken for reasons of economy, despite the

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<sup>57</sup> M Houston (Chair) Report on Services for Young Offenders, p. 83.

<sup>58</sup> Allegations by Virginia Chadwick, shadow Minister, NSWPDLC 20 March, 1986, p. 1324. The Wagga unit had so many abscondings that in 1987, it was re - classified as to be used only for minimum security inmates, meaning that others were sent to larger institutions like Gosford, as had previously been the case. See Annual Report, Department of Youth and Community Services 1987, NSW Government Printer, Sydney, 1988, p. 89

<sup>59</sup> The statistics published in the Department's annual reports from 1981 onwards show that many remand inmates were accommodated in training schools and a number of committed juveniles were accommodated in remand centres

<sup>60</sup> Endeavour House (formerly the Institution for Boys, Tamworth), in addition to its status as a training school, was proclaimed as a shelter in 1981, but this was in order to permit a particularly dangerous juvenile to be held there rather than at other remand centres, which were less secure. See Government Gazette 11 September, 1981, p. 4806. Bidura, when it opened in 1983, was proclaimed as both a training school and a shelter. See Government Gazette 27 May, 1983, p. 2342. Minda, which opened as a shelter in 1966, and Cobham, began as a shelter in 1980, were both proclaimed as training schools in 1983. See Government Gazette 2 September, 1983, p. 4052. Yasmar, originally proclaimed as a shelter in 1946, was proclaimed as a training school also, in 1984. See Government Gazette 4 May, 1984, p. 2300. Ormond, began as a training school in 1962, was proclaimed as a shelter in 1985. See Government Gazette 8 March, 1985, p.

long tradition of having separate institutions for those on remand as distinct from those committed.<sup>61</sup>

Given their new found autonomy, regional administrations also began to use the facilities at their disposal quite differently. Weekend detention, 'work release' and weekend attendance schemes were introduced at a number of remand centres.<sup>62</sup> Crisis care was offered in some remand centres on a 'voluntary admission' basis.<sup>63</sup> Community Service Order schemes were introduced.<sup>64</sup> To some extent, the flowering of these schemes was a function of the frustration of there being still no proclamation of the 1982 Act. Regional directors simply went ahead and introduced schemes which, for the most part, although included in unproclaimed legislation, had no statutory authority.

Weekend detention was a program that had been set up only in the adult corrective system, so that convicted persons would suffer a limited degree of incarceration, but still be able to work during the week. It was, however, established by statute, with appropriate penalties for non-compliance. There was simply no provision for a scheme for juveniles in either the 1939 or 1982 Acts, and so it had no basis in law. Similarly, Community Service Orders were available to adults, specifically as an alternative to incarceration.<sup>65</sup> The 1982 Act provided for such orders in respect of juveniles, but the relevant sections had

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1024. There does not appear to have been any proclamation of Keelong and Worimi as training schools, or Reiby as a shelter, even though each accommodated both remand and committed juveniles.

<sup>61</sup> Some years earlier, a cottage in the grounds of Mt. Penang Training School at Gosford had begun to be used as a shelter for the central coast area as an attempt to reduce the holding of arrested juveniles overnight in local police cells, and also to reduce the pressure of numbers in remand facilities in Sydney. The Gosford local shelter opened on 22 July, 1976. See Annual Report, Department of Youth and Community Services 1978, NSWPP 1978 - 79, vol. 5, p. 1291 et seq., p. 86.

<sup>62</sup> Annual Report, Department of Youth and Community Services 1981, NSWPP 1982 - 83 vol. 6, p. 1515 et seq., p 8, p.26.

<sup>63</sup> Annual Report, Department of Youth and Community Services 1982 NSWPP 1983 - 84 vol. 9, no 174, p. 48.

<sup>64</sup> Annual Report, Department of Youth and Community Services, 1984 NSWPP 1984, no 236, pages 86, 94, 97.



never been proclaimed to commence.<sup>66</sup> Juvenile Community Service Orders were thus also illegal.

The fact that such schemes had no statutory authority was not a minor matter. For example, Community Service Order schemes typically involved using juveniles on manual work provided by charitable organisations, local councils and public authorities. Where there was statutory authority, the duties and responsibilities of the parties, the juvenile, the supervising officer, the host organisation, were all defined by legislation. Where there was no such authority, a whole host of issues, such as liability for injury, damage to property or members of the public, could not be properly addressed. Again, if a juvenile was detained pursuant to a purported 'weekend detention' scheme, and absconded, it could be argued that such a person was not lawfully detained in the first place.

The purported legal device for orders such as community service and weekend detention, was that appropriate 'agreed to' (that is, agreed to by the juvenile) conditions were attached by a magistrate to a probation order.<sup>67</sup> 'Work release' and 'work experience' programs operated as a form of leave granted to an inmate. The idea of allowing 'voluntary admission' to places like remand centres to run 'weekend attendance' programs was even more problematic. The attendance centres established earlier at Ashfield and Granville had been deliberately operated in public school premises, not training schools or remand centres, because the whole idea was to divert juvenile offenders away from institutions. Running such a program at an actual remand centre meant that the juvenile was being drawn in to the institutional system, and could hardly be regarded as

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<sup>65</sup> See Community Service Orders Act, 1979.

<sup>66</sup> The juvenile Community Service Orders Scheme was contained in Part VIII, division 4, of the 1982 Act, which was never proclaimed.

<sup>67</sup> C Cunliffe - Jones 'New Initiatives in the Treatment of Delinquents', p 82.

‘diversionary’. The proliferation of these programs of doubtful legality was a reflection of the devolution of control from the centre to regions.

### *Reforms under the Walker ministry*

In 1983, Frank Walker replaced Stewart as Minister. He had a reputation as a committed civil libertarian, and was particularly interested in reform of the juvenile correction system. He was impatient for change, but the reforms he attempted were largely outside the existing legislative framework. Walker came to the conclusion that Langshaw was not the person to push through the kind of reforms he wanted, so in October, 1983, Langshaw was, without explanation, relieved of his duties.<sup>68</sup> After a few weeks Hans Heilpern, formerly on the Minister’s personal staff, was appointed to succeed him.<sup>69</sup> Heilpern had no background in child welfare and lacked the administrative experience to match that of Langshaw and his predecessors.<sup>70</sup> His views were far more radical than Langshaw’s, in fact he was later described as ‘a trendy left-winger of the cloth cap type’.<sup>71</sup> Under his control, the Opposition claimed that the Department suffered from ‘plain bad

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<sup>68</sup> Press comment at the time was that Langshaw’s departure had been expected ever since Walker became Minister. It also linked his dismissal to a strategic management review carried out by McKinsey and Coy. This review was critical of decision - making processes in the Department, and recommended major structural changes. *SMH* 18 October, 1983. See also S Sanders ‘The Bosom of the State’ *Australian Society*, vol. 2, 1 May 1983, p. 10. The review by Mc Kinsey & Coy, commissioned at the behest of the Premier, began in June, 1982. See Annual Report, Department of Youth and Community Services 1982 *NSWPP* 1983 - 84 vol. 9, no 174, p.40. The Report was released in February, 1983. See Annual Report, Department of Youth and Community Services 1984, *NSWPP* 1984 no. 236, p. 7.

<sup>69</sup> Heilpern was appointed only two months later, in December, 1983. In the interim, Alan Maddox, a comparatively junior executive, acted as Director - General. Heilpern’s appointment was only one of a number of ‘political’ appointments. These included Peter Primrose (later a left - wing ALP member of parliament), David Marchant (former private secretary to Paul Landa, MLC, a Minister in the Wran government), and Chris Sidoti, (later appointed by the Federal Labor Government as Human Rights Commissioner). Each of these people for a time filled the key position of head of the Director-General’s unit

<sup>70</sup> He had, before joining Walker’s staff, lectured in law at a rural College of Advanced Education.

<sup>71</sup> Kevin Rozzoli, MLA, *NSWPDLA*, 6 May, 1987, p. 11305

management', and further that Heilpern himself was an 'unmitigated disaster'.<sup>72</sup> Some senior executives in the Department shared this view.

Both Walker and Heilpern were fundamentally opposed to juveniles being treated in institutions and favoured community-based treatment. The reforms sought were radical ones: a large reduction in the juvenile incarceration rate, the initial closure of at least one major institution, with more to follow. Shortly after Walker became minister, and despite the fact that the work of the Houston Task Group had reached an advanced stage, he established another Departmental task force to advise on the restructuring of services to young offenders, chaired by Roger Pryke.<sup>73</sup>

When he reported in May, 1983, Pryke placed considerable emphasis on the claim that in New South Wales there was a much higher rate of juvenile incarceration than the Australian average, in particular that the rate was four times higher for both boys and girls than in Victoria. Compared with Victoria the New South Wales performance appeared particularly poor, however doubt exists as to whether the comparison, to be referred to many times in the next few years, was a valid one. The figures quoted by Pryke were significantly different from those published by the Australian Institute of Criminology. According to Pryke, there were 130 juveniles in Victorian institutions on 31 March, 1983, but according to the Institute, there were more than twice that figure, 291, as at 30 June, 1983. It is inconceivable that this population would have more than doubled in the space

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<sup>72</sup> See comments by the Leader of the Opposition, Nicholas Greiner, MLA, NSWPDLA 6 May, 1987, p. 11269, and by Virginia Chadwick, MLC, shadow Minister NSWPDLC 13 May, 1987, p. 11727.

<sup>73</sup> Pryke was a former Catholic priest, who had left the priesthood and married. After leaving the priesthood in the 1970s, he abandoned Catholicism and worked for a time in the Department of Corrective Services, before coming to the Department of Youth and Community Services. His views were those of the radical left, probably a contributing factor in his selection to undertake this task. The terms of reference required this task force to examine the possibility of closing at least one large institution, regional programs and community based alternatives.

of three months, so Pryke's figures were highly suspect. There were also large unexplained differences for other figures used by Pryke<sup>74</sup>

Although the New South Wales rates were high, they were not as bad as claimed in the Report. Pryke believed the NSW rate was high because of a lack of alternatives to custody.<sup>75</sup> This was a valid criticism, but it is arguable that a much more critical factor was the reluctance of NSW police to use cautions meant that greater numbers of children appeared before the courts and this tended to increase the numbers being committed. New South Wales court lists were much more congested than other States, and this inflated the numbers of those held in custody on remand. The official figures did not differentiate between committed and remand detainees.<sup>76</sup> Another difference was that New South Wales had a much larger, and much more geographically dispersed, Aboriginal population than Victoria.<sup>77</sup>

Pryke estimated that, after a subjective assessment of all those detained, a quarter of those in custodial remand and almost half of those committed could be released if alternative programs were available.<sup>78</sup> The main recommendations of the task force were the establishment of sixteen non-secure community residential care units, each

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<sup>74</sup> A comparison between the rates quoted by Pryke as emanating from the Australian Institute of Criminology and the rates actually reported by the Institute in an official publication show critical differences. See R Pryke (chair) Report to the Minister for Youth and Community Services from the Task Force Set up to advise the Minister on the Restructuring of Services to Young Offenders 27 May, 1983, p. 4. For comparison, see S. Mukherjee, C Carcach & K Higgins Juvenile Crime and Justice Australian Institute of Criminology, Canberra, 1997, pp. 66 - 67

<sup>75</sup> R Pryke (chair) Report to the Minister for Youth and Community Services from the Task Force Set up to advise the Minister on the Restructuring of Services to Young Offenders, p. 4

<sup>76</sup> See explanatory comments by C Carcach and G Muscat in relation to tables in Juveniles in Australian Corrective Institutions 1981 - 1998 Australian Institute of Criminology, Canberra, 1999.

<sup>77</sup> In Victoria, the Aboriginal population was concentrated in just two areas, Robinvale and Lake Tyers, both former reserves. Few Aborigines lived in Melbourne. In New South Wales, there were substantial Aboriginal communities in most of the towns on the North Coast and along the Darling River, as well as in many other country areas. In Sydney, there were significant populations in Redfern, La Perouse and Mt. Druitt.

accommodating six to eight inmates, with a staff of seven ; establishing an Adolescent Support Service, directed at keeping juveniles out of custody; and closure of Daruk, once the Adolescent Support Service had begun to function. A number of major changes to existing institutions were also proposed. Mt. Penang would be reduced from two hundred beds to fifty. Maximum security units at Tamworth and Kamballa would close and be replaced by secure units at Minda and Yasmar.<sup>79</sup>

A comprehensive plan went to Cabinet in May, 1984, and after considerable discussion, was approved in September. Its main features were the establishment of Young Offender Support Teams, a Community Service Order scheme, an additional Community Youth Centre at Liverpool, Community Cottages for Offenders in a number of suburban and regional locations, the rationalisation of existing institutions, and the construction of a high security unit at Werrington. There were also to be substantial changes to the police cautioning system, aimed at diverting a much greater percentage of juvenile offenders away from the court system.<sup>80</sup>

Although reference was made to the Pryke Report, the real preparatory work had been done by Houston. Walker claimed that the entire re-organisation was achievable at no additional cost.<sup>81</sup> Considerable doubt was cast on this, since the Department's Annual Report for 1985 boasted a staff increase of two hundred and fifty, 'the first for many

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<sup>78</sup> R Pryke (chair) Report to the Minister for Youth and Community Services from the Task Force Set up to advise the Minister on the Restructuring of Services to Young Offenders, p. 9.

<sup>79</sup> ibid., pp. 9 - 20.

<sup>80</sup> The cautioning rate in New South Wales remained at very low levels. In 1984/85, only 1300 juveniles were cautioned, compared with a total of 17,100 court appearances, a rate of about 4.3 per cent. See Annual Report, Department of Community Services 1985, NSW Government Printer, 1985, p. 31.

<sup>81</sup> K Buttrum 'Progress Report to Cabinet on Reorganisation of Young Offender Services' 4 July, 1985. SR K 141890

years'.<sup>82</sup> Such a large staff increase must have been predicated on the assumption that, at some time in the future, it *might* be possible to decrease institutional staff, if the diversionary programs were as effective as anticipated. This was exactly the essentially pragmatic, conservative position taken by Houston, although not by Pryke.

The Young Offender Support Scheme, which was introduced in the major centres of population, was a progressive initiative. Over the years, the probation system had been poorly resourced. There was no longer any post-discharge supervision, and supervision of court-ordered probation was limited to a few visits spread over six months.<sup>83</sup> Generalist field officers carried out the supervision in addition to their other work, which often had greater priority. The perfunctory nature of the probation supervision was commented upon in the Houston Report.<sup>84</sup>

The new scheme was essentially a pro-active one. A central feature was to help young offenders find solutions to problems that would otherwise lead to custodial remands or sentences, such as finding accommodation and employment. A more intense form of supervision for probationers as well as those discharged from institutions was commenced, and the staff were also given the job of supervising community service order projects.<sup>85</sup> Essentially, the new scheme resurrected many features of the child-saving kind of 'probation' which Mackellar had envisaged when it was introduced by the Neglected Children and Juvenile Offenders Act in 1905, and which had formed the essential

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<sup>82</sup> Annual Report, Department of Community Services 1985, p. ii.

<sup>83</sup> On 10 May 1971, a direction had issued to the effect that all supervision was to cease at six months, if the response was satisfactory. This was later changed, after objections by Magistrates, to a situation where supervision was relaxed to visits every 2 or 3 months, if a case was satisfactory after five months. See Direction by Director General 28 May, 1973, no. 469 SR 18/1403.

<sup>84</sup> M Houston (chair) 'Report on Services for Young Offenders' 27 June 1983, unpublished. SR 14/3155.

<sup>85</sup> K Buttrum 'Progress Report to Cabinet on Reorganisation of Young Offender Services' 4 July, 1985.

ingredient of the development of juvenile courts in the United States.<sup>86</sup> On the other hand, although the effort devoted to keeping offenders out of custody was desirable, it also diverted a lot of resources to supervision, in the absence of evidence to suggest that this would reduce recidivism. In fact some experts suggested that the greater the State intervention in the lives of young offenders, the worse the likely outcome.<sup>87</sup>

Substantial difficulties were encountered in the implementation of the plan. Community Service Order schemes had no statutory basis. Orders of this kind were therefore not direct sentences, but conditions imposed on probation orders. Since the whole idea of Community Service Orders was that they were to be used where a child would otherwise have been committed to an institution, tacking them on to a probation order gave a clear signal that they were in fact simply a variant of probation rather than an alternative to committal.

The idea of 'community cottages' should not be confused with the 'cottage home' system popular in the late nineteenth century. The 1980s version involved much smaller units, located in residential areas, to accommodate a maximum of six offenders, and to be staffed around the clock by youth workers. About fifteen were planned throughout the State. With a ratio of eight staff to six inmates, they would be much more expensive than conventional institutions. Their principal benefit was that inmates could attend

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<sup>86</sup> S L Schlossman Love and the American Delinquent University of Chicago Press, Chicago, 1977, p. 62. See also J W Mack 'The Juvenile Court', p. 116; S J Barrows Children's Courts in the United States US Government Printing Office, Washington, 1904. p. xii, and C Kelsey who quotes Judge Richard Tuthill, Judge of the Cook County Juvenile Court in Illinois in 'The Juvenile Court of Chicago and its work' Annals of the American Academy of Political and Social Science vol. 17 March 1901, p. 301. For a full discussion of this aspect, see Chapter 2.

<sup>87</sup> J Kraus 'Some Policy Implications of Departmental Research' Department of Youth and Community Services, 1982. Copy in Mitchell Library. See also J Kraus 'On the adult criminality of male juvenile delinquents' Australian and New Zealand Journal of Criminology, vol. 14 September 1981, p. 162, in which Kraus demonstrated that recidivism rates for adult offenders who were also juvenile delinquents were significantly higher for those who have been committed to juvenile corrective institutions.

school, go to work, participate in community activities, and the atmosphere would be much more informal than in institutions. They were not to be a discrete sentencing option for magistrates, but admission would be determined by the Department, from those committed to an institution.

From the inception of the scheme, attempts were made to establish the cottages without surrounding communities being aware. Thus they were not proclaimed as institutions because that would have required notification in the Government Gazette, and would also have required re-zoning for other than residential use.<sup>88</sup> This stratagem failed, because almost as soon as the program was mooted, details found their way into the press. In June, 1985, the location and details of one proposed for Charlestown appeared on television and in newspapers.<sup>89</sup>

In almost all of the communities selected, there was strong opposition. In Charlestown, there was a protest march and public meeting, attended by the Shadow Minister. In Port Macquarie there was a public protest meeting, and similar problems encountered in Croydon, Maitland, Blacktown and Penrith.<sup>90</sup> At Doonside, the local ALP member, John Aquilina objected to the location of a centre in his electoral district, on the ground that there was already a large number of refugees in the suburb.<sup>91</sup> Opposition to the centres became more serious when a motion of no confidence in the Minister, Walker,

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<sup>88</sup> The first group of 'community cottages' were designated as Youth Project Centres on 4 February, 1986, pursuant to section 4 of the Child Welfare Act, 1939. This action only required a declaration by the Minister, no publicity in the Government Gazette, and no re-zoning under the Environmental Planning and Assessment Act. SR K 141938 and K 141963.

<sup>89</sup> News items appeared on NBN 3 television News on 30 May, 1985, and in the Newcastle Morning Herald 1 June, 1985. See SR K 141938

<sup>90</sup> For details of the Charlestown site, see SR K 141938. Details of problems at Croydon, Penrith, Maitland, Blacktown appear in SR K 250104. For a reference to the protest meeting at Port Macquarie, see the Lismore Northern Star 15 June, 1985. Details of the Croydon cottage appear in the Western Suburbs Courier 5 August, 1987.

<sup>91</sup> SR K 257300.



was moved in the Legislative Assembly over the issue.<sup>92</sup> A State-wide organisation was set up to oppose their establishment.<sup>93</sup> Later, an incensed resident vowed to stand as an independent against the local ALP member for Charlestown.<sup>94</sup> There was also an allegation of corruption relating to the purchase of the property at Penrith, an unwelcome development since by this time the Wran administration was being widely accused by the Opposition of being a corrupt government.<sup>95</sup>

In February, 1986, possibly because of the controversy stirred up by this issue, Walker was replaced as Minister by Peter Anderson, a member of the right-wing faction of the ALP, a former policeman, and someone with much more conventional views on the treatment of juveniles than Walker.<sup>96</sup> Soon after Anderson became Minister, he closed the program down.<sup>97</sup> This has to be seen against the background of Nicholas Greiner becoming Leader of the Opposition and beginning to attract electoral support with a 'law and order' campaign. The Government, driven by opinion polls which indicated that this campaign was proving popular, found itself obliged to follow a similar course.

Another central feature of the plan to re-organise juvenile justice services which came to grief was the new police cautioning system. Guidelines had been issued with the

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<sup>92</sup> The motion was moved by Paul Zammit, MLA, but defeated on party lines. NSWPDLA June, 1985, pp. 5392 - 5422.

<sup>93</sup> Undated circular, circa 1985. Copy filed with SR K 250104.

<sup>94</sup> Newcastle Morning Herald 13 January, 1986.

<sup>95</sup> The corruption alleged was that the co-ordinator of the Penrith 'community cottage' had sold the building in which it was established, to the Department. See file minute 20 July, 1985, SR K 250104.

<sup>96</sup> Peter Thomas Anderson was the ALP member for Penrith, and didn't want a centre established in his electoral district. Before becoming Minister for Youth and Community Services, he had previously held the police and corrective services portfolios. He had worked as a police prosecutor in Children's Courts and so was quite familiar with the juvenile corrective system. For the suggestion that Walker lost the portfolio because of adverse public reaction to the reforms, see comments to that effect by Virginia Chadwick, shadow Minister for Youth and Community Services, NSWPDLC 20 March, 1986, p. 1329.

<sup>97</sup> See Lake Macquarie Post 11 June, 1986. See also comments by Virginia Chadwick, shadow Minister, to the effect that the program was closed down on 1 July, 1986. NSWPDLC 7 April, 1987, p. 10115. In fact, the cottage at Croydon still operated after that date, as conceded by the Hon. J Hallam, in the Legislative Council. NSWPDLC 9 April, 1987, p. 10423.

object of substantially increasing the cautioning rate to something approaching that in other States. Formal charges were only to be brought 'as a last resort', and this required approval of a senior officer. Immediately, police began cautioning much larger numbers of juvenile offenders than ever before. It was not long, however, before the Opposition began to attack the new cautioning system as 'being soft on crime'. Virginia Chadwick, shadow Minister, gave examples of cautions administered to car thieves, participants in an \$8,000 hold-up, and a juvenile who was guilty of breaking into and wrecking sixty cars.<sup>98</sup> The use of cautions in such cases was plainly not envisaged when the scheme was introduced, since it was supposed to be for 'minor offences'.<sup>99</sup>

The use of cautions for car theft was particularly objectionable in the public eye, as this crime was claimed to have been rising exponentially since 1979.<sup>100</sup> For the time being, the scheme continued to operate, although as it became clear that the Opposition's 'law and order' campaign was attracting a lot of support, the Government's resolve on the issue faltered, especially after Walker ceased to be Minister for Youth and Community Services, and the retirement of Neville Wran as Premier. In 1987, Greiner, Leader of the Opposition, claimed that cautions had increased by three hundred per cent, and were the

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<sup>98</sup> Virginia Chadwick quoted from the guidelines in moving a motion condemning the changes to the juvenile justice system. NSWPDLC 20 March, 1986, p. 1327. According to her, the approval of a Sergeant 1st class was required before a court prosecution could be undertaken.

<sup>99</sup> In announcing the new scheme Frank Walker had said that cautions would be given for minor offences. SMH 12 October, 1984. See also 'Officers Report on Matters arising out of the Cabinet Minute on the Reorganisation of Young Offender Services' undated but late 1984, being a report of a meeting between officers from the Departments of Youth and Community Services, Police, Corrective Services and Attorney General. This report stated that cautions would not be given where guilt was disputed, it was a serious offence or the child was unco - operative. SR 14/3169.

<sup>100</sup> Chadwick quoted figures showing that juvenile car theft had risen by 48 % in the years 1979 - 1982. NSWPDLC 20 March, 1986, pp. 1329 - 31. Cautioning for car theft was a particularly sensitive issue, and was the major reason for the abandonment of the new cautioning system.

‘root cause’ of the breakdown in law and order.<sup>101</sup> The new Premier, Barrie Unsworth, took a much more conservative view, and himself embarked on what was called a ‘back to basics’ agenda in relation to crime.

John Aquilina, Minister for Youth and Community Services from July, 1986, scrapped the revamped cautioning system.<sup>102</sup> This was one of a number of decisions taken in the run down to the 1988 elections at which the Labor Party lost office. The saga of the new cautioning system is a good example of how a perfectly sensible and long overdue reform, proven effective in many other jurisdictions, was destroyed by improper use by police combined with politicians panicking in response to public perception of a breakdown in ‘law and order’.

Another aspect of Walker’s plan was to get rid of the high security unit for boys which had operated at Tamworth since 1947. This institution was housed in a former prison, and for many years the regime followed there was uncompromisingly harsh, and intended to be a deterrent to those misbehaving in open institutions. After Jackson became Minister, its name was changed to ‘Endeavour House’ and the Department claimed that changes had been made to the program then and again in 1978, but these do not appear to have been very substantial.<sup>103</sup> In 1984, Roger Pryke claimed that even more fundamental changes to the program had been made. According to him, Tamworth was no longer used as a place of punishment for those who had misbehaved at other institutions,

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<sup>101</sup> SMH 2 September, 1987. Greiner was quoting from figures supplied by the NSW Bureau of Crime Statistics and Research.

<sup>102</sup> The abandonment of the cautioning system was referred to by John Aquilina, Minister for Youth and Community Services. SMH 16 October, 1987.

<sup>103</sup> In 1975, group interaction techniques and personal counselling were introduced. These changes were probably fairly minimal, and introduced after a riot which occurred at the institution on 10 November, 1974, during which three boys gained access to the roof and had to be forcibly removed. Annual Report, Department of Youth and Community Services, 1975, NSWPP 1976, vol. 12, p. 1131 et seq., p. 52. In

but instead was being used for long term detention of juveniles convicted of very serious crimes. A recreation area, surrounded by high cyclone fencing, was constructed outside the gaol walls, and some boys were being allowed to participate in local community activities.<sup>104</sup>

Nevertheless, there was a general consensus that a gaol was no place to accommodate juveniles. Both Houston and Pryke recommended that Tamworth close, and in the general re-organisation of the juvenile correction system approved by Cabinet in September, 1984, it was again marked for closure.<sup>105</sup> There was, however, a good deal of vacillation about what would replace it. Originally, the Department had planned that a new high security unit be built in the grounds of Daruk, at Windsor, but when Daruk itself was recommended for closure by Houston, he suggested that a thirty-bed unit, Taldree, at Parramatta be converted into a high security unit, instead of building a new complex, partly in order to save money.<sup>106</sup> By the time Cabinet approved the re-organisation of 1984, the proposed location of the high security unit had changed to land the Department had at Werrington.<sup>107</sup> However, there was opposition to the proposal, especially from the local member of parliament for the area, John Aquilina.

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1978, unsupervised group session were introduced, again a fairly minimal change. Annual Report, Department of Youth and Community Services, 1978, NSWPP 1978 - 79, vol. 5, p. 1291 et seq., p. 42

<sup>104</sup> R Pryke Report: 'Residential Care for Young Offenders - overview' 25 January, 1984 SR 14/3169

<sup>105</sup> M Houston (chair) 'Report on Services for Young Offenders' 27 June 1983, unpublished, p. 30. See also R Pryke (chair) Report to the Minister for Youth and Community Services from the Task Force Set up to advise the Minister on the Restructuring of Services to Young Offenders. For the reference to closure of Tamworth, see notes on the implementation of the plan approved by Cabinet, SR 14/3169. The program was to be carried out in five phases, and Tamworth was in the last one.

<sup>106</sup> M Houston (chair) 'Report on Services for Young Offenders' 27 June 1983, unpublished, p. 80.

<sup>107</sup> The location at Werrington was on a large site, which also housed a home for intellectually disabled wards, as well as Cobham Children's court and the associated Cobham remand centre. It was mentioned in 1985 as the site for a replacement for Tamworth. See R D Blackmore, Senior Children's Court Magistrate to Director - General, May 1985 SR 14/1369. Another reference was made by the shadow Minister, Virginia Chadwick, to staffing arrangements for this unit at Werrington (staff of 41 proposed). See NSWPDLC 20 March, 1986, pp. 1323 - 25.

In 1984, part of Yasmar was designated as the site for a secure unit.<sup>108</sup> However, this was a failure, because the renovated unit proved easy to escape from.<sup>109</sup> The following year, secure units were set up for both boys and girls at Minda despite the fact that this centre had been marked for closure in the general plan of 1984. There had, from its opening in 1966, been design problems at Minda, which also made escape easy, so it was a strange choice for such units.<sup>110</sup> Eventually, in 1986, the Werrington scheme for boys was abandoned, and even though some more dangerous juveniles were spread around the system, Endeavour House at Tamworth continued to be used throughout the 1980s.<sup>111</sup>

The plan to greatly reduce the size of Gosford, and eventually close it, also ran into trouble. Mt. Penang was a large employer in the district and its reduction or closure would adversely affect many local businesses, so the plans were not popular in the town. There was also another factor. The Superintendent, Lawrence Maher, had fostered a number of activities by local organisations which made extensive use of the facilities at the training school. These included a wide range of events utilising the excellent sporting facilities, a riding for the disabled program, a child care centre, and a bushfire brigade.<sup>112</sup>

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<sup>108</sup> Annual Report, Department of Youth and Community Services, 1984, NSWPP 1984, no 236, p. 79.

<sup>109</sup> Between March and May 1985, there were 127 abscondings from Yasmar. See G Luke, Departmental Official, to R D Blackmore 7 June, 1985 SR 14/3169.

<sup>110</sup> Minda was a series of single story buildings built around enclosed quadrangles. The buildings had flat roofs, and were easily accessible for the purpose of escape by athletic youngsters. Once on the roof, it was only about a three metre drop to the outside.

<sup>111</sup> The decision to abandon Werrington was announced by Minister Peter Anderson. At the same time, he announced that there would be an upgrade of security at all institutions. See SMH 2 July, 1986. Tamworth was eventually closed in the 1990s, after criticism of the Department by the Acting State Coroner in the inquest on a juvenile who died at Maitland Gaol shortly after having been transferred from Endeavour House. See D W Hand 'Finding of Inquest into the death of Dermot Terrence Pidgeon at Maitland Gaol on 21 . 10. 89' dated 30 October, 1990.

<sup>112</sup> The sporting venues were of particular significance. Matches in the local football competition were played on the training school oval, attracting big crowds. Maher had even managed to have floodlights installed so that matches could be played at night. Liquor was available from booths set up near the ovals. Visiting footballs teams were sometimes accommodated in cottage accommodation on the grounds (the old 'sub - institution', afterwards converted into a privilege cottage, and known as McCabe).

Gosford was a swinging electorate, and the high level of use of the facilities ensured that Gosford remained open.

*Conflict with the judiciary*

Both Walker and Heilpern believed that far too many juveniles were in custody and were determined to change the situation. They blamed the sentencing practices of magistrates, and began to attack them, relying on the data in the Pryke Report. Although it can now be argued this was inaccurate, the statistics quoted by Pryke purported to show that courts were committing too many juveniles, when compared with other States. Pryke himself had claimed that, although the committal rates were high, the principal cause was the lack of non-custodial alternatives.<sup>113</sup> When Walker announced the major re-organisation of the juvenile correction system in 1984, he claimed that only two per cent of offenders were in institutions for serious crimes, the rest of them were allegedly there for stealing 'small amount of money or goods'.<sup>114</sup> This was based on Pryke's contention that an audit of all the cases of those in custody showed that substantial numbers should not have been detained by courts, and that some had been committed for trivial offences. Walker also claimed that juveniles were improperly detained in custody during remand, since a substantial percentage of those so detained were not subsequently committed.<sup>115</sup>

Such claims incensed Children's Court magistrates, and in January, 1985, the Senior Magistrate, Rod Blackmore replied, enclosing an analysis of sentences imposed for property related offences. This showed that, contrary to Walker's claim, in the

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<sup>113</sup> R Pryke (chair) Report to the Minister for Youth and Community Services from the Task Force Set up to advise the Minister on the Restructuring of Services to Young Offenders, p. 4

<sup>114</sup> SMH 12 October, 1984.

overwhelming majority of cases, the value of property exceeded five hundred dollars.<sup>116</sup>

Blackmore went on to produce evidence that undermined all of the claims made against the courts.<sup>117</sup> He also complained about recent developments in the administration of juvenile justice, specifically leave policy, high levels of absconding, lax security in institutions and the remission system. He was particularly critical of the granting of leave, claiming that it was being used deliberately to circumvent available legal procedures, and that the Department was, in effect, over-riding the court's decisions. He quoted a number of cases of improper granting of leave.<sup>118</sup>

The Child Welfare Act contained no direct power for leave to be granted to an offender committed to an institution.<sup>119</sup> However, when Walker became Minister, leave was allowed much more freely than ever before. It reflected Walker's desire to reduce numbers in institutions, using any means available. The practice began to attract adverse

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<sup>115</sup> R Pryke (chair) Report to the Minister for Youth and Community Services from the Task Force Set up to advise the Minister on the Restructuring of Services to Young Offenders, p 9.

<sup>116</sup> Walker had claimed the sixty per cent of juveniles in institutions were there for stealing less than \$500, and eleven per cent were there for stealing less than \$15. NSWPDLA 28 March, 1985, p. 5404

<sup>117</sup> R D Blackmore 'A comparative Study of Outcomes of Property Related Offences committed by juveniles,' January, 1985. SR 14/3169

<sup>118</sup> R D Blackmore: working paper 'Release of Juveniles on leave from Custodial Remand' The paper quotes the following cases where leave was granted:

- \* a person charged with abducting a girl, this offence being committed while on remand for a similar offence
- \* a person remanded in custody for rape
- \* a girl given leave in order to have an abortion

SR 14/3169

<sup>119</sup> There were oblique references. For example, the power to apprehend an absconder contained in section 55 included someone who was 'absent from an institution without the leave of the superintendent'. Because there was no express power, it had been used very sparingly prior to 1983. The usual practice was that juveniles who were allowed outside an institution, for example to go to the dentist or doctor, or to attend court, were accompanied by an escort. Those allowed out to attend sporting functions were always escorted. One exception was the program introduced at Thornleigh Training School in 1951, when girls approaching the end of their period of detention were allowed to go out to work daily. See Annual Report, Child Welfare Department, 1951, NSWPP 1950 - 51 - 52, vol. 1, p. 481 et seq., p. 23. Section 53 (1)(d), amended in 1973, gave express power to grant leave, but this was specifically for the purpose of attending a Youth Project Centre such as the community youth centre established at Stanmore.

public criticism. In one instance, three boys, all remanded in custody for very serious offences, had been allowed to go on a skiing trip, from which they absconded.<sup>120</sup>

Blackmore claimed that newly relaxed security obtaining in institutions had also resulted in a huge increase in abscondings. Many abscondings were occurring in circumstances of 'relatively little supervision', there were numerous instances of abscondings by inmates who had been remanded in custody on charges of absconding, and more than a third of absconders committed additional offences while at large. A more serious allegation was that the Department was mischievously making statements not supported by facts, and denigrating magistrates. He challenged Walker's claim that there had been only one hundred and twenty abscondings State-wide for the year ended 30 June, 1985. Blackmore refuted this by pointing out that in a three month period in the same year, there had been one hundred and five absconding appearances alone, before a single court at Glebe.<sup>121</sup> In 1984 and 1985, approximately fifteen acrimonious letters were sent by Blackmore to Heilpern, indicating that relations between the magistrates and the Department had deteriorated seriously.<sup>122</sup> Heilpern even tried to prevent Children's courts having access to certain details of previous court appearances by children.<sup>123</sup>

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<sup>120</sup> The boys had been remanded in custody on charges of armed hold-up, assault occasioning actual bodily harm and being in possession of a shortened firearm, respectively. See comments by Mr. P Zammit MLA, NSWPDLA 28 March, 1985, p. 5400.

<sup>121</sup> Blackmore pointed out that the Glebe figures did not take into account all those who had absconded but not been prosecuted, or those brought before other courts. R D Blackmore 'The Incredible Vanishing Juvenile Absconders and Escapees' May 1985 SR 14/3169.

<sup>122</sup> See R D Blackmore to Attorney General, 28 January, 1985, reporting on the operations of the Children's Court for 1984. Blackmore said in this letter that relations with the Department had 'reached a low ebb'. SR 14/3169.

<sup>123</sup> Heilpern wanted, in cases where a child was charged with a criminal offence, to exclude records of previous court appearances which were non - criminal. This would have meant that the court would have been unaware of complaints relating to truancy, neglect, uncontrollability, for example. Conversely, he also sought to exclude criminal antecedents when non - criminal complaints were before the court. This was vehemently opposed by Children's Court Magistrates and did not eventuate. The Department, not the court, kept the records. See Blackmore to Heilpern 2 November, 1984 and later Heilpern to Avery, Commissioner of Police, 4 December, 1985. Departmental file 86/ 153.



Walker's plan for a remission system brought him into further conflict with the judiciary. Walker claimed the new system was necessitated by changes then being made to the adult remission system. There were juveniles, nearly all male, detained in juvenile institutions who had been sentenced according to (adult) law in higher courts for serious offences. However, most of these detainees were covered by the changes to the adult system anyway, since their sentences had been imposed through the adult system, not under the Child Welfare Act. There were also significant numbers of males aged eighteen to twenty-one, sentenced to imprisonment but transferred to institutions by Ministerial order.<sup>124</sup>

The real purpose was to reduce the institution population through the use of the new remission system. Under the sentencing system which had operated since industrial schools were first established in the 1860s, committals were invariably indeterminate, with the timing of release being a matter for decision by the Minister. Thus, a kind of informal system of sentence reduction existed in practice, but it was not regulated by statute, and in practice depended on the recommendation of the Superintendent. It was not until 1931 that the first juvenile committal for a definite period occurred.<sup>125</sup> Thereafter, some 'definite committals' were made, often in cases where the offender was approaching the age of eighteen (and thus would otherwise be required to be released at that age if given a general

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<sup>124</sup> Transfers of this kind had been available since 1939, under section 94 of the Child Welfare Act, 1939. The numbers of such transfers increased substantially in the 1970s, so much so that Yawarra Training School at Kurri, which had ceased to operate in 1979, because of an overall decline in the numbers in institutions, was re-opened in 1980, solely for the accommodation of young prisoners transferred from prisons. This expansion of the use of section 94 probably reflected increased pressure of numbers in the prison system at the time. See Annual Report, Department of Youth and Community Services 1980, NSWPP 1981 - 82, vol. 5, p. 1347 et seq., p. 43. Yawarra was closed as an open institution for young adults transferred from prison in 1986, because of security problems, following a number of escapes. See comments by the Hon Brian Vaughan, NSWPDLC 2 October, 1986, p. 4439.

<sup>125</sup> It was such a curiosity that the Department sought advice from the Crown Solicitor as to its legality. See Annual Report Child Welfare Department 1930 & 1931 NSWPP 1932 vol. 1 p. 547.

committal) or had committed serious offences. Most offenders continued to be committed 'in general terms'. The 1939 legislation allowed the Minister to discharge 'general committal' inmates at any time, but this did not apply to those committed for definite terms.<sup>126</sup> This problem was circumvented in practice by exercise of the Royal Prerogative, so that discharge still took place at Departmental discretion, some time before the expiry of the sentence.<sup>127</sup>

The differences between the sentences of these classes of detainees were accentuated by the new adult remission system, but this was not a significant problem for the management of institutions, since for many years those sentenced in adult courts but detained in institutions had been subject to a different sentencing regime. Changes to the adult remission system in 1966, 1968 and again in 1983, did serve to underline what was increasingly seen as the unfairness of the indeterminate sentencing system which used for the sentencing of juveniles. The Department's view was that the proper solution was to provide a statutory basis for remissions, and so the Community Welfare Act of 1982 contained provision to introduce such a system.<sup>128</sup>

In 1984, at Walker's request, the Department then drew up a scheme for automatic remission of children's court sentences of two thirds plus one third of the residue. This was based on the adult system, and would produce a detention of eighty-one days for a twelve months committal. This was marginally less than the existing arrangements. At the same time the Department warned that there was a likelihood of adverse reaction from

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<sup>126</sup> Child Welfare Act, 1939, section 23(1)(h) & (i).

<sup>127</sup> This was somewhat cumbersome, as it involved submission to another Department and finally personal signature by the State Governor. There was thus a nominal difference between the two types of committal. Those committed in general terms earned discharge through good behaviour and progress through the grade system. Those subject to 'definite committals' were rewarded for good behaviour through the mechanism of the exercise of the Royal Prerogative, but in practice the effects were similar.

the judiciary. With Walker's approval, a *draft* instruction was circulated to Superintendents in March 1984, mainly because the scheme was new and complicated, and it was considered they could make valuable comments which might improve it. Superintendents were however told to implement it, even though it was not finalised or formally promulgated.<sup>129</sup>

Almost immediately, the new arrangements attracted adverse publicity. In June 1984, a boy committed to an institution by Judge Herron at Newcastle District Court on forty-six break and enter charges was released immediately, because he had already spent eighty days in custody on remand. The *Newcastle Morning Herald* ridiculed the remission system with the caption 'A Year in gaol passes in 5 minutes'.<sup>130</sup> There was further public criticism of the system by Judge Ducker several months later.<sup>131</sup> Confusion about the status of the new arrangements and criticism from a variety of quarters continued for several years. Since it had no statutory basis, different Superintendents applied it in different ways.<sup>132</sup> The judiciary responded by imposing longer committals to compensate for what was perceived as the Department interfering with sentences imposed by the courts.<sup>133</sup> A 1985 parliamentary debate on a motion seeking to condemn Walker for his administration of the Act focused on the chaotic state of this unofficial remission

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<sup>128</sup> Community Welfare Act, 1982, Section 230(3).

<sup>129</sup> P Daffen, Deputy Director General to Judge Herron, District Court, 28 June, 1984. Daffen enclosed a copy of the draft instruction and advised that although it was still under consideration, it had been necessary to implement it 'as a temporary measure' in order to resolve an industrial dispute in institutions. SR K 149199 and K 149200.

<sup>130</sup> The situation was made even more ridiculous by the fact that Queensland police, expecting that the boy would be in custody, were waiting to interview the boy in relation to a stabbing offence, but he was released before they were aware that he would not be in custody. See *Newcastle Morning Herald* 7 June, 1984.

<sup>131</sup> SMH 17 August, 1984.

<sup>132</sup> B Hawker to Director General 10 January, 1985 SR K 149199/200.

<sup>133</sup> This was the case in the adult jurisdiction, not merely the juvenile, even though the Court of Criminal Appeal decided that courts could not impose longer sentences to compensate for the reduction in the period

system.<sup>134</sup> Shortly after, Magistrates, who had complained that they had been unable to find out the details of the system being followed, were advised that it was again being reviewed.<sup>135</sup>

The outcome of this review was a decision that all general committals were to be released under ten weeks, unless special approval was given for their continued detention, and a Discharge Review Committee, chaired by a Judge, was to consider the release of determinate committals.<sup>136</sup> The ten week period reduced the standard period of detention for a general committal, from eighty-one days to seventy, a source of further annoyance to the judiciary.<sup>137</sup> The Committee never became operative.<sup>138</sup>

The decision to reduce the standard period of detention to seventy days had a minimal effect, compared with what had been steadily achieved, with no adverse public comment, in the previous ten years. After Langshaw became Director General in 1969, the standard period of detention for general committals had, by 1974, been reduced from about nine months to about 4.5 months.<sup>139</sup> In 1983, Langshaw introduced an 'accelerated discharge' program which, by 1984, had further reduced the standard committal to three months.<sup>140</sup> Thus, in the space of a little more than ten years, the committal period had been reduced by more some sixty-six per cent. The 1984 remission system only brought the standard general committal down to eighty-one days, a further reduction of eleven per cent.

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spent in detention, brought about through the changes to parole and remission. D Weatherburn 'Appellate Review, Judicial Discretion and the Determination of Minimum Periods', pp. 276 - 281.

<sup>134</sup> Motion was moved by Mr. P Zammit, MLA. NSWPDLA 28 March, 1985, p. 5398.

<sup>135</sup> Director General: Circular to Magistrates 1 July, 1985 SR 14/3169.

<sup>136</sup> Walker approves submission by Director General 18 September, 1985 SR K 149199/200.

<sup>137</sup> On this occasion, no attempt was made to portray the reduction from 81 days to 70 as being part of any system of remission. It was simply a reduction of the time served, implemented by executive authority.

<sup>138</sup> file minute by Leslie Bell 19 March, 1986. SR K 149199/200.

In 1987, the system was again attacked by a Justice of the Supreme Court, in a case where a juvenile committed for three months was detained for just twenty days.<sup>141</sup> In the face of mounting public criticism, Minister Aquilina abandoned the scheme. It was replaced by one drawn up, this time in close consultation with the senior magistrate, Rod Blackmore. The new scheme provided for all remissions to be earned by good behaviour, and to be limited to one third of the head sentence.<sup>142</sup> This change was opposed by ‘progressive’ elements within the Department, who warned of an extra demand for accommodation and costs estimated at \$13 million per annum.<sup>143</sup>

The introduction of the remission system was an example of a reasonable policy initiative destroyed by dreadful administrative implementation, accompanied by risky alienation of the judiciary. Bringing the remission of sentences under some statutory scheme was long overdue, but vulnerable because it had the appearance of being far too generous, it was imprecise, and not aimed at providing an incentive to good behaviour in order to earn release, but simply at clearing out the institutions. This aim could not be sustained politically at a time when an election was due within months, and the Opposition’s ‘law and order’ campaign was proving very attractive to voters.<sup>144</sup>

The government further sought to emphasise its reversal of Walker’s policies by announcing that Gosford would be expanded by one hundred places, including a new

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<sup>139</sup> SMH 26 September, 1974.

<sup>140</sup> W C Langshaw, file minute 1 July, 1983. SR 14/3169.

<sup>141</sup> Daily Telegraph 16 January, 1987. In this case, the Superintendent had applied the remission formula for a general committal (nominally 12 months) to a much shorter committal of three months, contrary to the practice followed in the adult courts, where short sentences did not attract remission. This case illustrates the confusion that inevitably took place when Superintendents followed draft instructions, in the absence of precise binding instructions or regulations made under statute. See Superintendent, Worimi to Director General 16 January, 1987, SR K 284931 and K 149199/200.

<sup>142</sup> R D Blackmore, circular to Magistrates 1 September, 1987. SR K 284931 and K 149199/200.

<sup>143</sup> K Buttrum to Director General 12 May, 1987 SR K 284931.

maximum security unit. It also indicated that they were considering further legislation to enable imprisonment of persistent absconders as well as remand in prison for serious older offenders. Aquilina explained the policy reversal by saying that the government was responding to changes in community attitudes, also that 'a lot of the liberal ideas don't work'.<sup>145</sup>

### *Aborigines*

Before the 1980s, the incidence of Aborigines in the juvenile correction system was not regarded by the Department as a serious issue. In common with most other States, there were no special programs for Aborigines.<sup>146</sup> In 1969, following an inquiry by a Select Committee, the Aborigines Welfare Board was abolished. A number of the Board's functions, including the management of reserves and settlements, as well as the care of wards of the former Board, were transferred to the Department. This actually had little impact on the juvenile corrections system, because, although the Board had operated two homes for dependent children, it did not have any for delinquents, and juveniles who fell into that category had, before 1969, been committed to Departmental institutions.

In the 1970s, public awareness of Aboriginal issues began to change, stimulated by the creation in 1968 of a Commonwealth Office of Aboriginal Affairs by the Holt government. State governments, too, came to recognise that Aboriginal children were over-represented in the juvenile correction system. Moreover, institutional detention of Aborigines meant cutting them off from contact with their families. This was because

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<sup>144</sup> The Leader of the Opposition, Nicholas Greiner, vowed to abolish the remission system completely, and when he became Premier in 1988, it was abolished by virtue of the Sentencing Act, 1989.

<sup>145</sup> SMH 16 and 17 October, 1987.

about sixty-five per cent of Aborigines lived in the country, some quite remote from the Metropolitan areas where institutions were located.<sup>147</sup> Strangely, there was no systematic attempt to define or analyse the actual extent of the over-representation. At a 1977 symposium, Elizabeth Sommerlad claimed that in New South Wales, 6.5 % of the population in juvenile correction facilities was Aboriginal, although she did not give any source. This figure compared quite favourably with those from States like Queensland (thirty to forty per cent) and Western Australia (seventy per cent).

One issue was what the over-representation should be compared with. It was to be expected that Aborigines, dispossessed and for the most part living in impoverished circumstances, would inevitably have higher rates of juvenile crime, but a more valid measure might have been to compare them with non-Aboriginals at the lower end of the social strata, rather than with the whole population. Also, the demographic profile of Aborigines showed many more juveniles compared to adults, than in the general community.<sup>148</sup>

Other ethnic minorities, Indo-Chinese and South Sea Islanders were also over-represented.<sup>149</sup> Two surveys in 1981 and 1982 showed that seventeen and sixteen per cent

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<sup>146</sup> E Sommerlad 'Aboriginal Juveniles in Custody' Australian Child and Family Welfare vol. 3, no 3, December, 1978, p. 43.

<sup>147</sup> E Sommerlad Aboriginals in Custody: Report arising from a National Symposium on the Care and Treatment of Aboriginal Juveniles in State Corrective Institutions, Sydney 30 May - 1 June, 1977 Department of Aboriginal Affairs, Canberra, 1977, p. 15 ; G Luke & C Cunneen Aboriginal Over - representation and discretionary decisions in the New South Wales Juvenile Justice System Juvenile Justice Advisory Council, Sydney, 1995, p. 59.

<sup>148</sup> According to Sommerlad, 56.5 % of Aborigines were under the age of twenty, compared with 37.5 % in the general population. E Sommerlad Aboriginals in Custody: Report arising from a National Symposium on the Care and Treatment of Aboriginal Juveniles in State Corrective Institutions, Sydney 30 May - 1 June, 1977, pp. 7 - 8.

<sup>149</sup> M Cain Juvenile Detention: Issue of over - representation, Department of Juvenile Justice, Sydney, 1995, pp. 28 - 29.. Cain surveyed the period 1990 to 1994, which lies outside the scope of this work, but in the 1980s, over - representation by these two groups was already known to the Department. The author had, in the 1980s, executive responsibility for Minda and Yasmar, and both these ethnic groups were a significant presence at that time in these institutions.

respectively, of children in alternate care were Aboriginal, but both covered dependent children as well and no separate figures for delinquents were given.<sup>150</sup> Another survey at Reiby, an institution at Campbelltown, showed that between 1981 and 1984, sixteen per cent of girls admitted were Aboriginal and twenty per cent of boys.<sup>151</sup> These were, however, isolated surveys, and in fact, until accurate statistics began to be collected by the Australian Institute of Criminology in 1993, there were no reliable figures.<sup>152</sup> Later interest in the treatment of Aborigines in the Juvenile Correction system was also heightened by the Royal Commission into Aboriginal Deaths in Custody, because in a number of instances, it was claimed that deaths of adults in gaol were attributable to the treatment they received in juvenile institutions.<sup>153</sup>

Progress in devising specific programs to reduce the incarceration rate was slow. In 1977, Aboriginal caseworkers began to be employed, and by 1981, their numbers had risen to ten. Their duties were of a general nature, and not specifically directed at delinquency. In 1978, an Aboriginal Contact Centre, Gullama, was opened at Redfern. It was essentially an advisory and referral unit.<sup>154</sup> The first schemes of direct relevance to the juvenile correction system began in 1981. An informal Community Service Order scheme

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<sup>150</sup> Seventeen per cent was the figure quoted by the Residential and Alternate Care Task Force (V Dalton, chair) Final Report, February, 1982, NSWPP 1981 - 82, no 105, p. 31. Sixteen per cent was quoted as established by an Aboriginal Children's Research Project, mentioned in the Annual Report of the Family and Children's Services Agency, attached to the Annual Report of the Department, for 1982 NSWPP 1983 - 84 vol. 9, no 174, p. 53.

<sup>151</sup> Admissions to Reiby, January 1981 to January, 1984. SR 14/3171.

<sup>152</sup> C Carcach & G Muscat Juveniles in Australian Corrective Institutions 1981 - 1998 Australian Institute of Criminology, Canberra, 1999, p. 21. Michael Cain refers to a survey in January 1990, presumably one conducted internally by the Department of Juvenile Justice, which showed that twenty per cent of those in custody were Aboriginal. M Cain Juvenile Detention: Issue of over - representation.

<sup>153</sup> For an example, see the case of Malcolm Smith, who committed suicide whilst in prison. Royal Commission into Aboriginal Deaths in Custody (Commonwealth) Report of the Inquiry into the Death of Malcolm Charles Smith Australian Government Publishing Service, Canberra, 1989.

<sup>154</sup> Annual Report Department of Youth and Community Services, 1981, NSWPP 1982 - 83 no 173, p. 151 et seq., p. 39.



began at Lismore, and was later extended to other North Coast towns.<sup>155</sup> In 1981 a 'community worker' was appointed to Bourke specifically to deal with truancy and juvenile crime, a political initiative after an outbreak of lawlessness in the town.<sup>156</sup> Five years later the Department announced that it would follow a policy of 'where possible' keeping Aborigines in the local area where they lived.<sup>157</sup>

Such a policy was almost impossible to implement where juveniles were incarcerated, because Aboriginal families were spread throughout New South Wales, with substantial populations along the Darling River basin, and also on the north and south coasts, as well as Redfern. There were suggestions that a small institution might be built in the western part of the State, but the problem was that no matter which town was selected, it would only be close to Aborigines living in the immediate vicinity, and still hundreds of kilometres from every other Aboriginal settlement, and with virtually no public transport to most settlements.

In 1987, ten young offender support workers were appointed in recognition of the 'disproportionate number of Aboriginal young people committed to institutions'.<sup>158</sup> Their task was to try to avoid the incarceration of offenders, for example by finding accommodation for those who would otherwise be refused bail. These efforts were of doubtful effectiveness, and no evaluation appears to have been reported. Chris Cunneen

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<sup>155</sup> Annual Report Department of Youth and Community Services, 1982, NSWPP 1983 - 84 vol. 9, no 174, p. 50. Later four more towns, Tabulam, Woodenbong, Coraki, Ballina, were included. The first three of these has Aboriginal reserves, and there was also a substantial population on Cabbage Tree Island, near Ballina. Annual Report Department of Youth and Community Services, 1984 NSWPP 1984 - 85 no 433, p. 104.

<sup>156</sup> Annual Report Department of Youth and Community Services, 1982, NSWPP 1983 - 84 vol. 9, no 174, p. 51.

<sup>157</sup> Annual Report Department of Youth and Community Services, 1986, NSW Government Printer, Sydney, 1986, p. 33.

<sup>158</sup> Annual Report Department of Youth and Community Services, 1987, NSW Government Printer, Sydney, 1987, p. 21.

and Tom Robb, in a 1987 survey of the North Western part of the State, reported a rather depressing position, in line with the Reiby survey of 1981-84. They found the police intervention rate for Aboriginals was, in some places, up to ninety times that for non-Aboriginals. They concluded that this might have been the result of very high numbers of police being stationed in towns like Bourke, where there had been a history of street violence, and consequent 'over-policing'. An interesting feature of their findings was that there were a number of areas where both intervention rates were substantially lower, indicating that this was very much dependent on local police policy, which varied considerably in different places.<sup>159</sup>

In relation to committal rates, a 1992 inquiry found that in this same area, Community Service Orders (in theory meant to be a substitute for committal) were made at only half the rate for the inner city of Sydney, because there were insufficient officers available to supervise such orders.<sup>160</sup>

### *Drugs*

Another emerging problem within the juvenile correction system was drugs. Drug-taking by juvenile offenders was not an issue in the administration of the juvenile correction system until the late 1960s. In 1967, the Department's Annual Report mentioned it for the

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<sup>159</sup> C Cunneen & T Robb Criminal Justice in North Western New South Wales NSW Bureau of Crime Statistics, Sydney, 1987, pp. 219 - 221.

<sup>160</sup> It would, of course be unsafe to apply the results of post 1988 statistics to the situation in the 1970s and early 1980s, although the lack of resources would indicate that a similar position existed in that period. Apart from the time gap, there was, in the 1980s, an increasing political emphasis on 'law and order' issues, which may well have been reflected in greater intervention rates by police in certain areas. The 1987 legislation also affected the situation, since it substituted, for the previous 'child saving' model a juvenile justice model, where arguably, to a greater extent, juvenile were expected to take responsibility for their actions. See M Goldsmith (chair) Juvenile Justice in New South Wales: Report of the Standing Committee on Social Welfare of the Legislative Assembly of New South Wales NSW Government Printer, Sydney, 1992, p. 113.

first time. The number of drug offences was quite small, only sixty-six for the whole year, but the mention indicated some concern that the problem was expected to grow.<sup>161</sup> This was understandable, given the growing use of drugs in the wider community at the time. The consumption of drugs by young people was associated with a world wide trend in the 1960s, characterised by revolt against authority, and the rejection of established cultural values.<sup>162</sup> There were only sporadic mentions in ensuing years, but in 1975, it was reported that there had been a significant increase in the previous five years.<sup>163</sup> Most of the cases related to marijuana.<sup>164</sup> The reporting of an increase, however, seemed to raise few concerns. A criminological study in 1981 by Jon Kraus showed there was no statistical association between smoking of marijuana by a group of juvenile offenders and criminality, although there was in relation to opiates.<sup>165</sup> By 1983, it had been established that only 3.6 % of juvenile crime was drug-linked.<sup>166</sup>

Despite mounting evidence that this was a significant problem, little seems to have been attempted by way of providing any special services.<sup>167</sup> It was not until 1986 that work began on the preparation of a 'policy document on drug and substance abuse'.<sup>168</sup> This was probably prompted by a 1986 inquiry by the Women's Co-ordination unit which found, in

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<sup>161</sup> Annual Report Department of Youth and Community Services 1967, NSWPP 1967 - 68 vol. 1, p. 275 et seq., p. 33.

<sup>162</sup> S Cohen Visions of Social Control: Crime, punishment and classification Polity Press, Cambridge, 1985, p. 35.

<sup>163</sup> Annual Report Department of Youth and Community Services 1975 NSWPP 1976 vol. 12, p. 1131 et seq., p. 52.

<sup>164</sup> Annual Report Department of Youth and Community Services 1979, NSWPP 1980 - 81 vol. 8, p. 1415 et seq., p. 13.

<sup>165</sup> J Kraus 'Juvenile drug abuse and delinquency: some differential associations' British Journal of Psychiatry vol. 139 1981, p. 422.

<sup>166</sup> P Loza, Youth, Family and Aged Bureau, Department of Youth and Community Services: 'Young Offender Statistics 1980 - 81', prepared in March 1983. SR 14/3155.

<sup>167</sup> In the Annual Report for 1985, it was revealed that drug offences (possession, dealing and other drug offences) had risen from 676 to 1035 in one year, an increase of more than fifty per cent. Annual Report, Department of Youth and Community Services, 1985, NSW Government Printer, Sydney, 1985, p. 31.

a survey of girls in State care, that two-thirds had used alcohol or drugs.<sup>169</sup> It seems that nothing eventuated, since a Departmental green paper on juvenile justice issued in 1993 made no mention of any policy in existence.<sup>170</sup> The year before, a report by the Standing Committee on Social Issues of the Legislative Council, found that fifty per cent of boys in custody were detained for drug-related offences, and in some institutions, that figure was as high as eighty per cent.<sup>171</sup> In 1987, two drug counsellors were appointed to the Stanmore Community Youth Centre.<sup>172</sup> Despite the rather alarming nature of these reports, it is relevant to consider that surveys had shown, over a number of years, widespread use of alcohol, marijuana and other drugs by pupils of secondary schools in New South Wales.<sup>173</sup>

One important issue was the proper identification of drug users on admission to an institution. A juvenile who had been a regular drug user 'outside' would require medical treatment when incarcerated, as drug-taking would abruptly cease. The escalation of the problem was disclosed in a 1989 survey which showed that one third of detainees described themselves as having a drug problem, a quarter had used narcotics and forty per cent said they had a family member with a drug problem. The survey found there was poor capacity to identify symptoms or render assistance.<sup>174</sup> The poor response to the drug

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<sup>168</sup> Annual Report, Department of Youth and Community Services, 1986, NSW Government Printer, Sydney, 1986, p. 22.

<sup>169</sup> H L'Orange (chair) Girls at Risk, Women's Co-ordination Unit, Premier's Department, Sydney, 1986, p. 187.

<sup>170</sup> J Howard & E Zibert 'Young Offender drug use: knowledge and perceptions of Juvenile Justice Centre Youth workers' Drug and Alcohol Review, 1994, vol. 13, no 1, p. 48.

<sup>171</sup> M Goldsmith (chair) Juvenile Justice in New South Wales: Report of the Standing Committee on Social Issues of the Legislative Council of New South Wales, p. 175.

<sup>172</sup> Annual Report, Department of Youth and Community Services, 1987, NSW Government Printer, Sydney, 1987, p. 63.

<sup>173</sup> P Hommel et al., Highlights of the 1983 Survey of Drug Use by Secondary Students in New South Wales, Drug and Alcohol Authority, Sydney, 1984.

<sup>174</sup> J Howard & E Zibert 'Young Offender drug use: knowledge and perceptions of Juvenile Justice Centre Youth workers', p. 47 and p. 54.

issue seems to be another example of institutional inertia, a failure to respond to new challenges.

### *Legislative Reform after 1982*

The legislative reform program, stalled because of lack of finance during the recession of the early 1980s, entered a new phase when Frank Walker replaced Kevin Stewart as Minister. At the time of Walker's appointment it was claimed that he had actually requested the portfolio, but this may simply have been a political gloss to divert attention from what was in fact a demotion for Walker.<sup>175</sup> He was a leading member of the left faction and had, when Attorney General, argued against a number of its provisions.<sup>176</sup> Immediately Walker took over, late in 1983, he caused a review of the legislation to be undertaken to ensure that it was 'in accordance with the best contemporary policies and practices'. This review, undertaken by a member of his personal staff, was meant to be completed by the end of 1984.<sup>177</sup> It was not completed until late 1985.<sup>178</sup>

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<sup>175</sup> For the claim that Walker sought the Youth and Community Services portfolio, see S Sanders 'The Bosom of the State' *Australian Society*, vol. 2, 1 May 1983, p. 10. Frank Walker, Q.C., had been Attorney General, a senior Ministerial post, since the election of the new Government in 1976. He was ambitious and would also have been a contender for the Premiership if Wran had decided to transfer to Federal politics. His translation to the Youth and Community Services portfolio by Wran was therefore a very substantial demotion, even though he was given two other portfolios, Housing and Aboriginal Affairs (He was slightly referred to within the public service as the 'Minister for YACS, Shacks & Blacks'). When Jack Ferguson, Deputy Premier since 1976, and the leader of the left faction in the Labor Party, retired in 1984, Walker was beaten in the contest to replace him as Deputy Premier by Ron Mulock, a right-wing member. See *SMH* 9 February, 1984.

<sup>176</sup> Reference was made to this opposition in a speech made by a Labor backbencher, (and at the time close associate of Walker) Michael Knight, who said there had been disputes 'at every one of the many stages of the formulation' of the legislation.. *NSWPDLA* 10 March, 1982, p. 2381.

<sup>177</sup> Annual Report Department of Youth and Community Services 1983, *NSWPP* 1984 - 85 - 86, vol. 20, no 433 p. 7. The person charged with conducting the review was Bruce Hawker, later on Premier Carr's personal staff as chief of staff in his Ministerial Office.

<sup>178</sup> *Annual Report, Department of Community Services* 1985, NSW Government Printer, 1985, p. 5. The Director - General of the Department, Heilpern, circulated to senior staff a document of over 200 pages, containing proposals for amendments. Heilpern to Directors 15 August, 1985. File C.O. 85/2931 *SR* K 141922.

The Opposition asserted that a leaked Cabinet Minute revealed that the reason why the 1982 Act was not implemented was that it would have cost \$13 million.<sup>179</sup> However, this figure included \$10 million for a prison for intellectually disabled offenders, a cost which was arguably dubious.<sup>180</sup> Yawarra, which was surplus to requirements, was available for this purpose, so only a small capital expenditure would have been necessary. Also, since the intellectually disabled prisoners would come from the prison population, it followed that staffing and other recurrent costs should be met by a transfer from the Corrective Services budget. In fact, total recurrent expenditure for the first full year of operations (April 1986 was the date planned for commencement) was estimated at \$3.4 million.<sup>181</sup>

Cabinet approved Walker's changes in January 1986, however the legislation was not presented to Parliament until April 1987, an inordinate delay in view of the fact that the process had been going on since 1973.<sup>182</sup> In the Annual Report for 1987, it was claimed that, apart from discussions with other government Departments, there had been further consultation with community groups.<sup>183</sup> Those groups were not identified, and later it was revealed that no such consultation had taken place.<sup>184</sup>

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<sup>179</sup> Virginia Chadwick claimed to be quoting from a leaked Cabinet Briefing paper, presented by Walker, in which this figure was given. See NSWPDLC 13 May, 1987, p. 11717.

<sup>180</sup> The breakdown of the figure of \$13 million was confirmed by John Aquilina who stated that, apart from \$10 million for the adult prison for the intellectually disabled, there was also an amount of \$900,000 for other services to the intellectually disabled, which would be included in separate legislation, then in the drafting stages. NSWPDLC 7 May, 1987, p. 11462. On that basis, the cost of implementation was reduced to the quite reasonable sum of \$2 million.

<sup>181</sup> B Hawker to Heilpern, undated, but including reference to a recent meeting on 22 January, 1986. This minute gave projected recurrent expenditure for 1986/87 as \$3,437,000. Departmental File C.O. 85/2931 SR K 141922.

<sup>182</sup> the Hon Virginia Chadwick claimed the delay was because of the cost of key features of the earlier Bill, which had since been dropped. NSWPDLC 13 May, 1987, p. 11717.

<sup>183</sup> Annual Report, Department of Community Services 1987, NSW Government Printer, 1988, p. 6.

<sup>184</sup> This was the claim made by the Hon Virginia Chadwick. NSWPDLC 13 May, 1987, p. 11715.

There were some differences between the 1982 and 1987 legislation. Instead of one piece of legislation, as in 1982, six bills were presented to Parliament.<sup>185</sup> This itself involved no substantial change in content, but it may have been done to facilitate the separation of juvenile corrections from the rest of the Department's activities, which occurred in the 1990s. The actual changes, for the most part, involved no fundamental issues. The use of panels was finally abandoned, although this had been virtually concluded in the 1982 Act.<sup>186</sup> The conditions under which leave might be granted were spelt out, no doubt because of the controversy this issue had produced. A small number of substantial changes were made. Segregation was reduced from six hours to three.<sup>187</sup>

One curious provision was that the Superintendent was prevented from ordering inmates to work, except 'housekeeping and educational activities'.<sup>188</sup> This meant they could no longer be required to participate in the much of the work which had traditionally been carried out, and produced a situation where juveniles were at a loose end for much of the time.<sup>189</sup> It was a complete reversal of the policy of encouraging 'habits of industry' which had been one of the mainstays of the industrial schools system. In summary, the changes made, which had been claimed to be extensive, turned out to be minimal, and

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<sup>185</sup> The Bills, all cognate, were debated together. They were:

Community Welfare Bill, 1987  
 Children (Care and Protection Bill, 1987  
 Children (Community Service Orders) Bill, 1987  
 Children (Criminal Proceedings) Bill, 1987  
 Children (Detention Centres) Bill, 1987  
 Children's Court Bill, 1987.

The last four bills were of direct relevance to the juvenile correction system

<sup>186</sup> The 1982 Act had proposed only administrative panels, consisting of police and Departmental officials. In the 1987 Act, panels were excluded altogether and the police cautioning system re-affirmed. See comments by the Hon John Aquilina, *NSWPDLA* 8 April, 1987, p. 10357.

<sup>187</sup> six hours was allowed if approved by the Director - General. His power was, of course able to be delegated to other officials.

<sup>188</sup> Children (Detention Centres) Act, 1987, section 18.

certainly not sufficient to justify the delay of four years which took place between Walker becoming Minister and the passage of the legislation.<sup>190</sup>

Even then, the saga continued, because in November, 1987, further amendments to the as yet unproclaimed Acts were introduced. The more significant of the changes were the complete abolition of general committals, a requirement that Children's courts fix non-probation periods for longer sentences, loss of remission as punishment for misbehaviour in an institution, and power to remand in prison for those over sixteen charged with serious offences.<sup>191</sup> These changes were all designed at emphasising the strength of the government's commitment to 'law and order', ahead of the approaching State election. In doing so it was following a trend well established both nationally and internationally.<sup>192</sup>

### *Conclusion*

In the years 1976 to 1983, substantial progress was made in many facets of the juvenile correction system. Inmate numbers were markedly reduced, a plan was formulated for the gradual expansion of alternatives to incarceration and legislative reform, which would provide the legal foundation for some of these alternatives, had been virtually completed, only awaiting modest funding for implementation. On the other hand, the plan for construction of multi-purpose centres was a retrograde step, because it was based on the notion that a number of services which were basically incompatible, could be delivered from a single site.

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<sup>189</sup> The explanatory notes circulated by the Director - General to senior staff on 15 August, 1985, show that this change was taken on ideological grounds, to prevent the use of inmates 'as slave labour'. File C.O.85/2931 SR K 141922.

<sup>190</sup> Royal Assent was given on 29 May, 1987 NSWPDLA 29 May, 1987, p. 13209.

<sup>191</sup> J Aquilina, NSWPDLA 23 November, 1987, pp. 17010 - 17011.

<sup>192</sup> B O'Reilly and J Bagen 'Juvenile Justice and Election Mania' Polemic vol. 6, no 1, 1995.



From 1983, the pressure for more speedy and radical reform escalated. Some of the reforms then attempted, such as an improved police cautioning system and community-based treatments, were eminently justifiable in the context of contemporary thinking. However, most of the proposed reforms either failed or had to be abandoned. Principally this was because of the way in which Walker sought to implement change, unnecessarily antagonising the judiciary and the police. The opposition of the judiciary, police and community groups fuelled the law and order campaign being pursued by a newly invigorated Opposition in the mid 1980s.

The reform hopes which had flowered in the 1970s were stifled by the new rhetoric. Law and order policies flourished because of the ill-thought out reforms, poor administration and the failure of Labor reformers to galvanise key interest groups to support their policies. The reform endeavours of the latter part of the 1980s therefore largely came to nought.

Rex Jackson-*courtesy State Library*



## CHAPTER 9

### CONCLUSION

In 1943, Professor Tasman Lovell, chairman of the Child Welfare Advisory Council referred to the administration of the juvenile correction system as ‘the dead hand of uninspired efficiency’.<sup>1</sup> These despairing comments were true for the system during most of the twentieth century when the bureaucracy was in control of juvenile corrections. There were, of course, some significant reforms, including the establishment of children’s courts, the introduction of probation and psychological assessment, as well as the diversion of juvenile delinquents from both the criminal justice system and institutional treatment. However, these reforms only serve to highlight the fact that there were lengthy periods when the essence of those reforms atrophied or were reversed. The reforms themselves have all been the subject of later criticism, on a variety of grounds, ranging from unwarranted social control to net-widening. Certainly, many initiatives initially regarded as important reforms were subsequently found to be ineffective.

Probation became perfunctory over time, and not administered in the therapeutic way that its proponent, Sir Charles Mackellar, envisaged. It did result in net-widening, but once it became a recognised step in the hierarchy of sentencing, many more juveniles remained in the community, usually in the care of parents, rather than being committed for lengthy periods to institutions, and so its overall effect was beneficial to the children concerned. Mackellar considered that lengthy incarceration was bad for the child. Later

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<sup>1</sup> SMH 5 November, 1943.

research has shown that avoidance of incarceration was an outcome beneficial for the child concerned, and also for society generally.

The children's court was criticised for being too informal and too ready to relax the rules of evidence, to the detriment of those accused. That criticism, originally expressed in respect of American courts, was less valid for criminal cases in New South Wales, where the ordinary rules of evidence applied. Also, the vast majority of children accused of crimes pleaded guilty and the discretion of the court was directed not at disputed matters of fact or law, but at finding the proper disposition. Diversion programs were responsible for net-widening, but they too avoided incarceration, and programs such as cautions generally had a good record in terms of avoiding recidivism, certainly much better than more invasive treatments such as probation and committal.

For the great majority of juvenile delinquents, if recidivism rates are any guide, the less involvement there was in the criminal justice system, the greater the likelihood of success. Such an approach, essentially based on the rationality of acting in the best interests of the child was, however, rejected in New South Wales throughout the twentieth century. The law and order political campaigns which gathered momentum from the 1970s suggest that Governments operate according to a different, political, rationality, more concerned with votes than solutions that work.

This thesis has argued that the juvenile correction system adhered to outdated treatment regimes during long periods of the twentieth century because there was a prevailing attitude that juvenile delinquents didn't count for much. They were regarded as belonging to an inferior class, destined for the most part to follow in the steps of their inadequate and often criminal parents. This attitude was, to some degree, based on

entrenched colonial fear, evident in a number of mid-nineteenth century public inquiries, which stressed the dangers posed by an emerging criminal class. Of course, it is impossible to prove definitively the connection between colonial fear and twentieth century attitudes to juvenile delinquents, but there are many indications that negative attitudes persisted.

As far back as the 1850s, Henry Parkes' proposals for a nautical training ship were built upon the idea of different classes of youth. He envisaged the school having two divisions. The upper was to be for the sons of well-to-do people, who would pay for their lads to be given a superior naval education. The lower would be for delinquents, who would only receive training sufficient to enable them to become able seamen, and in the process they would perform all the dirty work. Exactly the same two-tier system was proposed for the boys reformatory, built at Rookwood, but never used for that purpose. Both of these proposals followed the class based scheme operating at Mettray, a model for reformatories all over the world.

There was also the continued use of barrack style institutions, despite the fact that this form of treatment, from the 1850s, had been repeatedly condemned as damaging to children. Critics claimed that such places meant that more vicious delinquents would contaminate the others. There was also the impersonal nature of care that large institutions inevitably generated, which had been amply demonstrated in relation to huge institutions like the Randwick Asylum. There were numerous instances of authorities recommending the use of the cottage home or 'family system' for the care of delinquents, but consistently, large congregate care institutions were operated, mainly because they were cheaper. Even when cottage homes were purportedly established, so many children

were crammed into them that their stated purpose of providing a family environment became unattainable.

Coupled with the use of congregate institutions was excessive regimentation. This involved the use of military discipline, instituted when the first nautical industrial school was established, and punishment of the smallest infringements. It also meant restriction on talking for most of the working day, and the use of severe corporal punishment, and later isolated detention as the standard response to minor infringements. Isolated detention was even extended to the failure to achieve the minimum score on the points system which operated in most institutions. When problems arose with the management of inmates, such as absconding and open rebellion, the invariable response was coercive measures. This was demonstrated by the cruel punishments revealed at inquiries at Gosford in 1923 and Yanco in 1934. There was also the illegal and extended use of isolated detention, sometimes for weeks at a time. There were also the dreadful regimes at Tamworth and Hay, and the extensive use of prison, which took the punishment system to inhumane levels. Little effort was expended on looking at the question of whether the institutional regimes themselves might have been producing these management problems. Paramount emphasis was always given to custodialism rather than the welfare and interests of the child.

All this took place while those in authority were claiming that the treatment of delinquents was continually becoming more professional and individualised. This statement was not supported by the evidence. It was, for example, claimed that children appearing before the court were professionally assessed, but those assessments were in part carried out by untrained staff, certainly did not extend to all children, and notably did not

include girls for many years. Even when psychological problems were identified, or children were identified as intellectually disabled, there was no treatment available for many years, and they simply took their place in institutions with other inmates. The staff employed in both institutions and field operations were not professionally trained. Field staff had some sub-professional training, but institutional staff had none, and mostly learned their skills on the job. They were poorly paid, and the lack of investment in their training was again a reflection of the attitude that investing money in the care of delinquents was not productive.

This parsimonious attitude was in evidence throughout the twentieth century. Every annual report dwelt upon the average cost per head of looking after inmates of institutions, indicating that the minimisation of such costs was a priority. The original buildings at Gosford were built using inmate labour as an economy measure. When Yanco was taken over from the Department of Agriculture, inadequate accommodation was utilised for some time, with inmates constructing new dormitories, again an economy measure. In the years between 1915 and 1945, hardly anything was spent on improvements to the system, so that by the early 1940s, it was in a parlous state. Institutional treatment was essentially custodial in nature, and provided little assistance for delinquent children that would have helped them cope with life, such as vocational training.

The emphasis on cost minimisation was only one facet of the influence of bureaucratic dominance of the system. From 1866, industrial schools had been run predominantly by the government, in contrast with every other Australian State. This attitude was reinforced when the State Children's Relief Board was abolished in 1923. All



except one Departmental head (Charles Wood, 1934-1938), from then until the 1970s, believed that the government could do the job better than the private sector. For that reason, there was only token involvement of people from outside the Department in running the system. There was also a prevailing view that the Department's dirty linen should not be aired in public. Thus, Departmental executives condoned illegal punishments. In cases where the ill-treatment of inmates by officials were exposed, the officials were invariably dealt with under the disciplinary provisions of the public service, even though the legislation provided criminal sanctions for such behaviour.

There was also resistance to the use of Official Visitors, because that exposed the administration to external scrutiny. The fear of outside scrutiny was also at the heart of issues like vaginal examinations where the Department falsely claimed that they were neither routine nor extensive. The same can be said about the deceptive descriptions it gave to the programs at Tamworth and Hay. These were portrayed as places where more individual attention could be given to difficult inmates, but in reality they were places of severe punishment.

From the inception of the system in the 1860s to the 1980s, incarceration has been the distinguishing feature of the juvenile correction system. After a brief period of genuine reform during the Mackellar years, incarceration, as the preferred form of treatment, triumphed. Governments of every political colour consistently demonstrated that, by relying on a carceral system and coercive methods of control, they placed a low value on the juveniles being cared for, little faith in reformatory prospects, but considerable value in spending as little as possible.

## APPENDIX 1

### NOTE ON SOURCES

This thesis relies heavily on documents held in the State Records of New South Wales. Coming from a public service background myself, I know that while published official material such as Annual Reports can usually be accepted as accurately reporting events such as the beginning of a new program or the opening of an institution. For other than strictly factual material, they need to be treated with some scepticism. They tend to portray controversial matters in a manner favourable to the Department and the government of the day, and they generally omit altogether reference to unfavourable developments. Publicly available documents are written in particular form of officialese, the object of which is to put a favourable gloss on something, while avoiding literal misrepresentation. Archival sources, on the contrary, often present a very different version, because they were written, for the most part, in the expectation that their contents were for internal consumption only and would not become public.

Not all historians have been able to balance the 'official' version, prepared for public consumption, with the internal, and often much more revealing, accounts contained in archival sources. For example, Ramsland and Cartan, in their work on the Gosford Farm Home, relied to a large extent on Annual Reports and other official material, supplemented by recollections of former staff members, when some archival material was available, providing different insights into the operations of this institution.<sup>2</sup> John Seymour, Richard Chisholm, and Rod Blackmore also relied

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<sup>2</sup> Examples include the following: papers dealing with the dispute over classification, beginning in 1908 (SR 5/7750.2); Bethel's submission to the Minister following the Fincham inquiry (Legislative Assembly Tabled Papers, NSW Parliament Archives 1923/422); the report by Public Service Board Member Alec Hicks on the state of the Department in 1942 (SR 14/6346); the inquiry into the Department by a committee headed by Justice Roper (SR 14/6347); the proposals by Minister D H Drummond to establish an 'intermediate institution' between industrial schools and prison (SR 3/3163) as well as Education Department files dealing with Child Welfare Department administration (SR 20/12872).

largely on public sources, but that is understandable, since all were lawyers and their works were essentially accounts of the juvenile correction system written from a perspective of legal or legislative issues. Another notable contributor to the historiography of juvenile corrections was Mary Tenison Woods, a child welfare reformer herself, but at the time she completed her survey of institutions in South Australia, Victoria and New South Wales, archives were not accessible. More importantly, her account of the Girls Industrial School in the early 1940s was shaped by her experience as an activist fighting for improvement. It focused on the failure of welfare policies to fulfil their stated aims but relied on experience rather than detailed archival research to make the argument.

However, it is fair to say that the majority of historians who have written about the juvenile correction system have paid due attention to archival material. Dickey, Garton, Davey, Barbalet, O'Brien, Scrivener, Van Krieken and Williamson all used archives to varying degrees, but there were severe limitations on their access to key archival sources.

For the most part, access to documents controlled by the Department of Community Services was granted to me. These sources were not always so available to previous historians. There were, however, exceptions. Some material from the 1980s, which related to the revision of the Community Welfare legislation carried out at the direction of Minister Frank Walker, was excluded.

Some of the material to which access was available has, of course, already been referred to in published works. However, there was other material of considerable interest which had not been the subject of detailed analysis. Included in this category are the papers relating to the construction of a Reformatory School for boys at Rookwood in the 1880s and consideration in the 1930s to some kind of 'intermediate institution', between juvenile and adult corrections. There were also reports by the Public Service Board on the administration of the Department in the 1940s, as well as attempts to establish a separate treatment system for a very wide range of people with disabilities, both juvenile and adult. There is also the documentation of a system of unofficial isolated detention in parallel to the official one, at Parramatta Girls Training School, and the

medical examination of girls, which was a contentious matter in the early 1970s. Additional material relating to the disputes over the classification of children in the period just before the First World War threw new light on this subject. Some additional material relating to the Fincham Inquiry into alleged ill-treatment of inmates at Gosford Farm Home in 1923 was also available from the Archives of the New South Wales Parliament.

There were, however, some significant gaps in the archival material. For example, although fairly extensive material relating to the Girls Industrial School at Parramatta was available in the State Archives, there was very little relating to the Farm Home at Gosford. This is a serious deficiency, since it was the largest and one of the oldest institutions still functioning at the end of the twentieth century. In addition, there was virtually nothing relating to the institutions at Raymond Terrace (apart from papers associated with the Royal Commission of 1927) and Narara, which both operated as adjuncts of Gosford at different times. Similarly, no records survived for La Perouse, which was an annexe of Parramatta for a number of years.

A comparatively small number of documents originating before the middle of the twentieth century have made their way into the archives. Many were apparently destroyed when the Department's head office was moved in the 1950s from Bridge Street to William Street. At that time, legislative restriction on the destruction of archival material was not in place, and Departmental officials simply decided what should be kept.<sup>3</sup>

A useful, but unpublished source of information was the diary kept by Alexander Thompson, Superintendent at Parramatta Girls Industrial School, and later Assistant Secretary and Secretary of the Department. Mr. Thompson kept this daily diary from about 1907 to 1934, and although the complete set was not available, the volumes for some significant years, for example those covering the Fincham and McCulloch inquiries were accessible. The diaries were in the possession of Mr. Thompson's grandson.

Another unpublished but most interesting document was an account of the 'Lover System', compiled by Michael Fitzpatrick, and based on his personal observation of the way this system worked at Parramatta Girls Training School. In 1989, Vincent Heffernan, Superintendent at Gosford Farm Home for some years from 1944, and later Superintendent of Institutions and Assistant Under Secretary of the Department, compiled a set of notes on his recollections of Gosford Farm Home, and other matters, which provided a useful counter balance to other accounts of life at Gosford. He also supplied the author with other information in letters written before his death.

In about 1950, Frank Wetherall, Chief Probation Officer of the Child Welfare Department wrote 'The Changing Concepts of Child Welfare in N. S. W. in respect of the Child, the Law and the State. Period 1800-1950'. A copy of this unpublished typescript is held in the Mitchell Library. Brian Boyle, who was staff inspector for Education Department schools operating within the child welfare system, compiled a description of all Departmental establishments, with brief notes on their past histories. This useful summary, which may contain inaccuracies, has not been published, but a copy is held by the State Records Office.

In 1984, while studying for the degree of Master of Arts at the University of Sydney, the author was given access to a large number of documents and other material, including punishment registers held at Kamballa, formerly the Girls Industrial School, Parramatta. Information extracted at the time from those documents has been used, although it seems that some documents did not find their way into the archives held at the State Records Office, when the institution was closed shortly afterwards.

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<sup>3</sup> The Archives Act, 1960 (NSW) created an Authority to conserve State Government archives, and section 14 of the Act prohibited destruction of archives without the permission of that Authority. Before that, no such restrictions applied.

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