Criminology AUSTRALIA

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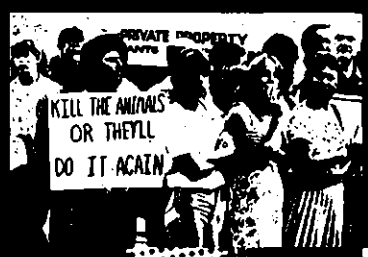

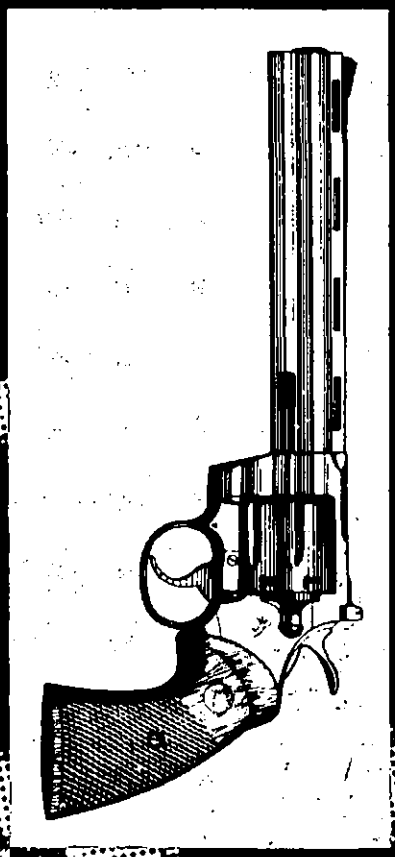

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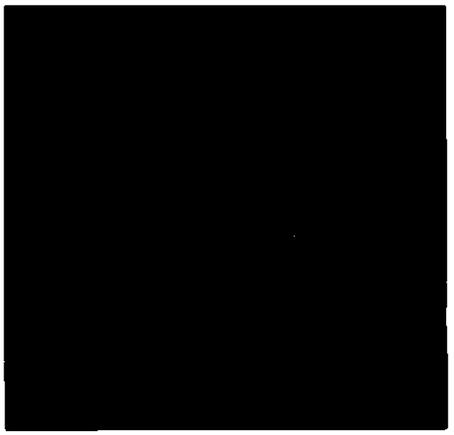
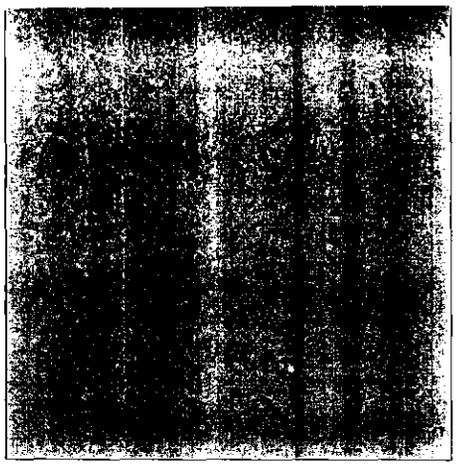




Welcome to the latest publishing venture of the Australian Institute of Criminology. With the launching of this first issue of *Criminology Australia,* the Institute aims to provide a much expanded and more lively information service about crime and criminal justice issues of interest to readers in Australia and overseas.

Since its establishment as an independent statutory body in 1971, the Institute has produced a wide array of publications, including two important precursors of *Criminology Australia.* In October 1973, the Institute published its inaugural newsletter, a modest typed document of twelve pages held together by a cover staple.

On the cover page, it was announced that the newsletter was intended 'for criminologists in particular and for persons interested in the criminal justice system in general. It aims to keep them informed about the Australian Institute of Criminology and the Criminology Research Council'.

In a foreword to the newsletter, the then Acting Director of the Institute, Mr Justice James Muirhead, expressed the hope that the newsletter would ultimately 'become recognised as a valuable and regular source of information throughout this country and this region'. This objective seeems to have been met, for by 1979 demand for the newsletter had reached the point at which it was decided to replace it with a more comprehensive and substantial news magazine called *The Reporter.*

The Institute continued to publish *The Reporter* on a quarterly basis until 1988. As in the case of the newsletter, the scope and content of *The Reporter* was focused principally upon research, training and related Institute activities.

With the publication of *Criminology Australia,* this focus is changed. We believe, rightly or wrongly, that the Institute has reached a stage in its evolution where it no longer requires a 'house journal' to inform the outside world about its activities. With the assistance of a most active media liaison program, and through regular publications like *Trends and Issues in Crime and Criminal Justice,* a series which is distributed to key policy makers across the nation, the Institute has been able to achieve a significant and pleasing level of public recognition.

While Institute activities will continue to be featured in *Criminology Australia,* they will now compete for space with other material obtained from both national and international sources. We propose to solicit contributions on important issues as well as welcoming unsolicited topical pieces for publishing consideration. The appearance of *Criminology Australia* is felt to be modern and attractive, and in keeping with the belief that 'you do not have to be dull to be serious', the articles will be readable and interesting.

Our lead article in this issue is about the rise of rascal gangs in Papua New Guinea. Written by Dr Bruce Harris from a paper he prepared for the Papua New Guinea Institute of Applied Social and Economic Research, this interesting contribution signifies the importance that *Criminology Australia* places on developments in the Asian and Pacific region. In future issues, we intend to give emphasis to items from this region and especially from our near neighbours in the South Pacific.

Two timely articles on the New South Wales Independent Commission Against Corruption, by Gary Sturgess and Michael Bersten, examine the purposes and possible pitfalls of this new and controversial development on the Australian criminal justice landscape.

A question and answer article featuring the Commonwealth Director of Public Prosecutions, Mark Weinberg, QC, is the first of a series of interviews with leading figures in the criminal justice field. The idea is that to know the human beings taking decisions important to the community is to understand better the way the system will work.

Dr David Neal, of the Law Reform Commission of Victoria, has added his own comments to those in a recently published book on gun control to make a significant case for new firearms legislation: 'God, guns and guts' on page 18.

The centrepiece this issue is a general article on the National Committee on Violence, describing its terms of reference and giving a background to the problem of violence in Australia. The response of community groups and the general public to forums being held currently by the Committee in all Australian capital cities is resulting in the accumulation of an impressive amount of information about the extent and possible causes of violence. We hope this information will form the basis of a future issue of *Criminology Australia.*

The final two pages of this issue are what we have called service pages, covering new publications, conferences and courses, and new appointments. To make this section of the journal a useful source of information we will need to make it as comprehensive and up to date as possible. So please keep us informed of your events so that they may be included.

I hope you will enjoy *Criminology Australia* and help it develop. Your comments will be welcome.

Now read on . . .

Duncan Chappell

The rascal gangs of Port Moresby

The term 'rascal' is somehow endearing. The rascal gangs of Port Moresby may have been endearing once. Today, however, they illustrate how in only twenty five years a loose collection of bored young men can form the nucleus of an efficient criminal organisation now establishing links through both the drug and stolen merchandise market with the international underworld.

Origins

Rascal gangs first began operating in Port Moresby around 1963. They were loose collections of poor young men, often recent migrants unskilled and untrained for wage-labour employment, who spent time together in the emergent settlement (squatter) areas. They came together haphazardly and spontaneously and their main activities were vandalism, intimidation, mutual protection and petty theft. These activities required little formal organisation.

The functions of these early gangs were, first, to establish self-esteem and second, to acquire certain goods, primarily food, beer and cash.

The need for self-esteem was a common thread among the stories I heard from (then) rascals who came to town with no education and no appropriate skills, looked seriously for work and were told time and again they were unqualified. The message given with brain-numbing consistency was that they were, in a word, worthless.

Finally, the only place they felt they belonged was with a group of their peers.

With the legalisation of liquor in 1965 and the rapid spread of small, local outlets, break, enter and theft offences became increasingly common. Mostly these were to obtain beer or money to buy beer, as beer drinking was the major social activity of the group.

Expansion and institutionalisation

By the late 1960s, these gangs became more permanent and were involved in more complex activities. A former Texas Gang—the oldest gang in Moresby—member told me the gang began breaking and entering regularly in 1964 and 1965 but only in the settlement areas. By 1970, they realised that they could do much better by exploiting covenant housing.

This change in activity led to changes in gang structure as well. An early member of the first Hohola gang (a branch of the Texas gang in a then-new suburb) told me that in the early 1970s a

The old and the new in Papua New Guinea.

Courtesy The Canberra Times

* Dr Bruce Harris is Senior Planner with the Department of Finance and Planning, Planning Division, Government of Papua New Guinea.

number of boys from what he called good families began to run with the gang. As residents of the covenant areas, the new members could observe who possessed items worth stealing and the schedules of occupants and could case a house or neighbourhood without arousing suspicion.

When operating in newer residential areas, smaller operational units for specific actions were more effective. The development of the strike force encouraged development of a hierarchy of command which allowed greater flexibility while demanding greater discipline and specialisation.

The new members also had better connections with others in the middle class which meant they were in a better position to exchange stolen merchandise for cash. This represented the first step in an ongoing process of vertical integration of gangs into larger criminal networks and an expansion in the kinds of goods stolen and sold. Initially this involved only a small scale distribution of stolen goods but later it led to major changes and became an institutionalised feature of gang activity and structure.

Recruitment boomed. Becoming a rascal was still an outlet for frustration and anger and a means of defining one's identity, but now it was more. It was now a means of material and social advancement. From the 1970s onward many rural Papua New Guinea youth aspired to migrate to the city explicitly to become rascals, rather than to get a job or pursue schooling.

Consolidation

By 1975 rascal gangs had spread through all the original town area and were beginning to operate in the newer suburbs. This process of expansion was complete by 1980 and the following period was one of consolidation keynoted by inter-gang violence as gangs sought to expel competitors from their areas.

Those gangs which prevailed were those that had been more successful in setting up effective business links. They had good distribution networks and were more disciplined than their competitors. During this process they expanded their criminal activity into such areas as black market beer, auto theft and auto parts distribution, the drug trade, the protection racket, political activity and corruption and other areas.

By 1984, the process of consolidation was complete. Where ten years before, some thirty to forty gangs had existed, now the entire National Capital District was controlled by a dozen gangs. Today each gang is run by a king or lord. The king has lieutenants under him who have specific assignments, such as car theft or robbery.

The king of a gang combines attributes of a modern crime leader and a traditional 'big man' in Melanesian society. His position is achieved, dependent on demonstrated personal ability, bravery and success in gaining access to goods and money. It helps if he has been to gaol at least once, a sign of toughness and experience. The king always gets a share of the goods or cash and is often able to build up a fund of wealth.

However, like the 'big man', the king has responsibilities. The members have a right to a redistribution of goods when the booty is gathered from an action. The king, with his cash accumulation, is expected periodically to fete his followers. This generally takes the form of a beer drinking session, but often involves sports as well. I have been twice to soccer games which were held between two gangs and for which the respective kings provided the beer and food.

The member also has responsibilities. When a young man wants to join, he has to take an oath of obedience to the king/lord and an oath of secrecy regarding the activities of the gang. Often these vows are sealed in blood, with the individual cutting his finger, hand or arm and pressing it against other members' hands which have been similarly cut.

The gangs have stayed far ahead of law enforcement efforts to restrain them. Car theft is now a lucrative activity. Gangs have established more formal relationships with particular businessmen who routinely buy stolen car parts and resell them. Currently, there is a thriving business run through small shops throughout the Central Province region, not only in car parts but also in small appliances, electronic goods, clothes, jewellery and many other items. Gangs have even lately begun opening their own retailing outlets in the form of small shops which members or former members control or operate.

Gangs have also moved into several other areas which promise to be of major importance in the future. First they have become major 'players' in the drug scene. Until the early 1980s, Papua New Guinea served only as an entrepot for traffic from Asia to Australia or New Zealand. However, in the last five to seven years PNG has become a supplier of 'spak brus', pisin for marijuana, which is grown in the Highlands and marketed throughout the country as well as internationally. Spak brus has developed an excellent reputation among both distributors and consumers in Australia, particularly Queensland, and is known in Hawaii and on the west coast of the United States. Gangs are taking a major cut of this market and are increasingly displacing the expatriate middlemen who until now have dominated the market.

Gangs are also involved in political activity and show signs of developing stronger political ties. This is a common occurrence in poor countries with urban gangs, as the gangs serve the political function of mobilising support and discouraging opponents while the politicians can provide kickbacks or favours of various kinds. In Port Moresby this has included understandings that gangs can involve themselves in certain kinds of illegal activity without undue worry over being interfered with by legal agencies. In the last two elections, gangs have been used in the National Capital District to both mobilise support and intimidate, and in some cases physically attack, opponents. Gangs have been used by politicians for purposes of social disruption during strikes and political contests and now constitute an ominous potential weapon in the hands of reactionary or revolutionary forces.

Through the drug trade in particular, rascal gangs have begun to establish links with other gangs at an international level. They have direct and profitable links with Queensland gangs and have begun to deal with gangs in Hong Kong, the Philippines, Taiwan and Japan.

Conclusion

Today the gangs of Papua New Guinea are at once more dangerous and less threatening than they have been in the past. They are more dangerous because they are establishing relations with major international crime groups and this will lead to an increased sophistication and greatly increased level of criminal activity. At the same time, the gangs have moved out of high profile criminal activity such as attacks on the person and into less obvious and more lucrative 'victimless' crimes such as the drug trade. The lull in obvious criminal activity can breed a dangerous complacency on the part of society and law enforcement agencies in particular.

The longer term problem is the potential power of criminal organisations in the context of a country experiencing difficulty in the equal distribution of the benefits of development while its people experience rapidly rising expectations. The lure of drug money is irresistible, and as the drug trade ties the rascals more firmly to international crime organisations the problem becomes more and more difficult to attack.

Given the wrong sequence of events, such as central government instability through repeated successful no-confidence motions, industrial unrest as landowners make larger and more unrealistic demands on companies such as Ok Tedi and Bougainville Copper, and the increasing power of external criminal organisations, rascal gangs, with international support, might well move in to fill a need. The experience of several unfortunate South and Central American countries which have found themselves effectively ruled by international criminal organisations should serve as a warning that remedial steps must be taken now if such dismal scenarios are not to be repeated in Papua New Guinea.

Independent Commission Against Corruption (ICAC)

Public corruption has been much discussed in Australia over the last few years and interest has been heightened recently through the revelations of police officers and former Ministers of Parliament appearing before the Fitzgerald Inquiry in Queensland.

The seriousness of the problem has been brought home to the people in New South Wales through Royal Commissions and the recent trials of the state's former Chief Magistrate and a former Minister for Corrective Services.

Corruption, as New South Wales Premier Nick Greiner put it during debate on the Independent Commission Against Corruption Act, is a crime of the powerful. Where graft is the rule, the rich and the powerful have an inside deal on justice.

Gary Sturgess, Director of the Cabinet Office of New South Wales.

The Premier recognised that the people in New South Wales were losing confidence in the rule of law and if the situation was not redressed then the administration of justice and the very legitimacy of government itself would be called into question by ordinary men and women.

The problem of corruption confronting society has been succinctly put in a paper by Justice Athol Moffitt, former Royal Commissioner and retired President of the New South Wales Court of Appeal, in which he states:

Unless checked, as was the US experience, corruption works its way up from the police and prosecution authorities, the legal profession, the magistrates and the judges taking as it goes members of the executive and legislature. We appear to be on the same path. Corruption once established, particularly at a higher level, breeds corruption. Officials once corrupted do not limit their operations to organised crime. There cannot be a greater weakness in a nation than corruption which seeps into all levels of public office. Its paralysing effect weakens the home front in peace and in war.

It is with similar concerns to those expressed by Justice Moffitt and other Royal Commissioners that the incoming New South Wales Government, under Nick Greiner, acted immediately upon attaining government to introduce legislation aimed at restoring the integrity and accountability of public administration through action against corrupt conduct combined with measures to educate the community in ways to prevent it.

That legislation, the *Independent Commission Against Corruption Act* 1988, was landmark legislation for Australia and has been the subject of much comment. The Government has also moved to expand the power of the State Drug Crime Commission (SDCC) to enable it to investigate all matters involving organised crime, not just drug crime, which is its present jurisdiction. With the expansion of powers of the SDCC and the introduction of the ICAC, New South Wales will have two powerful, balanced organisations dedicated to the elimination of corruption in the state.

Powers and functions of the ICAC

The ICAC is a statutory corporation consisting of a single Commissioner who has total direction and control of the Commission. The Commissioner holds office for a term or terms totalling five years and can be removed from office only by the Governor on the address of both Houses of Parliament. There is also provision for the appointment of Assistant Commissioners on the same terms as those applying to the Commissioner.

The New South Wales Government conducted an exhaustive search to find the right person to head the new Commission and was fortunate indeed in finding the former Federal Director of Public Prosecutions, Ian Temby, QC.

'There cannot be a greater weakness in a nation than corruption . . .'

*Gary Sturgess is Director of the Cabinet Office, New South Wales.

Mr Temby is a man described as being highly capable and fearlessly independent, necessary attributes for the person required to tackle public corruption in New South Wales. Mr Temby has demonstrated this already by indicating that the Commission will set its own priorities and will remain 'independent of the government of the day, whatever its political complexion'.

The powers under Mr Temby's control are considerable, but not unprecedented. The legislation draws on provisions found in Royal Commission legislation, the *National Crime Authority Act* and the *NSW State Drug Crime Commission Act*.

The focus of the legislation is on corrupt conduct in the public sector and the Commission is not, as some have incorrectly stated, a law enforcement agency, for its mandate is to investigate allegations of corrupt conduct and to communicate its findings to the appropriate authorities, including law enforcement agencies, for action they deem appropriate.

In exercising its functions, the Commission shall regard the protection of the public interest and the prevention of breaches of public trust as its paramount concerns.

The protection of the public interest and the prevention of breaches of public trust are crucial elements in the new Government's attempts to ensure that first-rate, and equal, justice is delivered to the people of the state.

The Commission also has an important educational role to advise on ways in which corrupt conduct may be eliminated and to educate and disseminate information to the public on the detrimental effects of corrupt conduct and on the importance of maintaining the integrity of public administration.

This important feature of the ICAC reflects the corruption prevention and community relation functions undertaken by the Hong Kong ICAC.

The functions of the New South Wales ICAC are wide-ranging in this respect. They empower the ICAC to:

- ☐ examine the laws, practices and procedures governing public officials in order to facilitate the discovery of corrupt conduct and revise the methods of work or procedures which may be conducive to corrupt conduct;
- ☐ instruct, advise and assist on ways in which corrupt conduct may be eliminated;
- ☐ educate and advise public authorities, public officials and the community on strategies to combat corrupt conduct, including the dissemination of information to the public and the detrimental effects of corrupt conduct and on the importance of maintaining the integrity of public administration;
- ☐ enlist and foster public support for combatting corrupt conduct.

'The Government has a moral commitment to a corruption free community.'

The community interest in restoring the integrity of government operations is clearly in existence. It is clear that the community attitudes should not be 'brushed aside' and that harnessing community support in preventing corruption is paramount. The Government has a moral commitment to a corruption free community and the ICAC will facilitate the effective implementation of this objective.

Corrupt conduct is widely defined in sections 7 and 8 of the Act to include:

(a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority; or

(b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions; or

(c) any conduct of a public official or former public official that constitutes or involves a breach of public trust; or

(d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which involves any of a number of matters including official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition), obtaining or offering secret commissions, fraud, theft, perverting the course of justice, illegal drug dealings, and illegal gambling among others.

It should also be noted that conduct may amount to corrupt conduct even though it occurred before the commencement of the Act, and it does not matter that some or all of the effects or other ingredients necessary to establish corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.

In addition, conduct committed by or in relation to a person who was not or is not a public official may amount to corrupt conduct with respect to the exercise of his or her official functions after becoming a public official.

Further, conduct may amount to corrupt conduct even though it occurred outside the state or outside Australia.

However, conduct does not amount to corrupt conduct unless it could constitute or involve a criminal offence, or disciplinary offence or reasonable grounds for dismissing or terminating the services of a public official.

It should also be noted that the Ombudsman, the Commissioner of Police, the principal officer of a public authority, or an officer who constitutes a public authority is under a duty to report to the Commission any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct.

Evidence of the Greiner Government's commitment that no public official will escape the net of the Commission is demonstrated by the fact that the term 'public official' is defined to include Members of Parliament, the Governor, judges, Ministers of the Crown, all holders of public offices and all employees of departments and authorities as well as local government members and employees.

The Commission will be able to act on complaints of corrupt conduct which are brought to its attention or on its own motion. However, this does not mean that the Commission will be circumventing the investigative obligations of other relevant organisations.

Particular emphasis has been given in the Act to the Commission working in co-operation with law enforcement agencies, the Auditor-General and other investigative bodies including the Ombudsman.

Where the Commission investigates a matter it will have power to obtain statements of information and to inspect documents and premises of public authorities.

The Commission, will be able to override certain claims of privilege by public officials in obtaining documents and information. There will also be powers similar to those of the National Crime Authority and the State Drug Crime Commission, to obtain documents and other things from private persons, where these may be relevant to the investigation. However, the Commission will not be able to override legal professional privilege or religious confessional privilege.

During the course of debate on the legislation in Parliament the Government took the somewhat unprecedented step of agreeing to a number of amendments to the Act. As a result of these amendments, the Act now authorises a person at a

'Corrupt conduct defined to include . . . misuse of information . . .'

hearing before the Commission to refuse to divulge a privileged communication passing between a legal practitioner and a person for the purpose of providing or receiving legal services in connection with a person's appearance, or anticipated appearance, before the Commission.

In order for the new provision to apply, the communication must be one that would be privileged under the general law of legal professional privilege. The provision therefore imports the common law. For example, if the communication facilitates criminal conduct or fraud, the privilege will not apply.

The Commission will have the power to apply to a justice for a search warrant, or to issue a search warrant itself. The Commission will also have power to apply for warrants for listening devices under the *Listening Devices Act*.

The Commission will also be empowered to apply for an injunction from the Supreme Court in circumstances where conduct which is about to occur could cause irreparable harm. There will also be power to apply to the court for restraining orders under the *Crimes (Confiscation of Profits) Act*. The Commissioner or Assistant Commissioner can also hold hearings in a similar way to a Royal Commissioner, and with comparable powers.

Hearings are to be held in public unless the Commission is satisfied it is in the public interest that the hearing be held in private for reasons connected with the subject matter of the investigation, or the nature of the evidence to be given. At the hearing the person presiding is to announce the general scope and purpose of the hearing. Persons who are substantially and directly interested in a hearing may be given leave to appear and to be represented by a legal practitioner.

As with Royal Commissions, an answer which tends to criminate the person cannot, however, be used in subsequent proceedings against the person. The Commissioner will also be able to recommend to the Attorney-General that a witness assisting the Commission be granted an indemnity. The Commissioner, and only the Commissioner, will have the power to issue a warrant for the arrest of recalcitrant witnesses. The Commissioner will not be able to punish for contempt. Any contempt may, however, be certified to a judge of the Supreme Court, and the judge would then deal with the matter.

Accountability of ICAC

A great deal of concern was expressed in Parliament that the Commission would be unaccountable for its actions.

In this respect, the Government went to great lengths to ensure that the Commission would be fully accountable by including in the Act provisions for the

'The Commission will have the power . . . to issue a search warrant itself.'

Commission's functions to be monitored and reviewed by a Parliamentary Joint Committee.

The Parliamentary Joint Committee consists of three members of the Legislative Council and six members of the Legislative Assembly and its functions bear recording in full:

(a) to monitor and to review the exercise by the Commission of its functions;

(b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;

(c) to examine each annual and other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;

(d) to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission;

(e) to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

Provision has also been made for an Operations Review Committee to advise the Commissioner whether the Commission should investigate a complaint or discontinue an investigation as well as to advise the Commissioner on such matters as the Commissioner may from time to time refer to the Committee. The Committee is to consist of the Commissioner, an Assistant Commissioner, the Commissioner of Police, a representative of the Attorney-General and four persons representing community views.

The Parliament and the community will also be able to monitor the work of the Commission through its annual report to Parliament which is to include such matters as a description of the matters referred to, and investigated by, the Commission and the general nature and extent of any information furnished by the Commission to law enforcement agencies.

In addition, the Commission is required to provide a description of its activities in relation to its education and advising functions.

There can be no doubt that Mr Temby is aware of the importance of his appointment and the need to ensure that he has the best possible staff at his disposal. He is also aware that the great power he will have at his disposal must be exercised carefully and with discretion.

The question of how he will undertake the task before him was alluded to by Mr Temby in a recent address to the annual general meeting of the NSW Council of Civil Liberties.

In his address, Mr Temby made it quite clear he would have regard for individual rights when investigating corrupt conduct and that public hearing would not be the invariable rule.

Mr Temby also expressed the desire to keep the ICAC as a small, efficient body which would handle manageable references and not be a generalised inquiry on corruption.

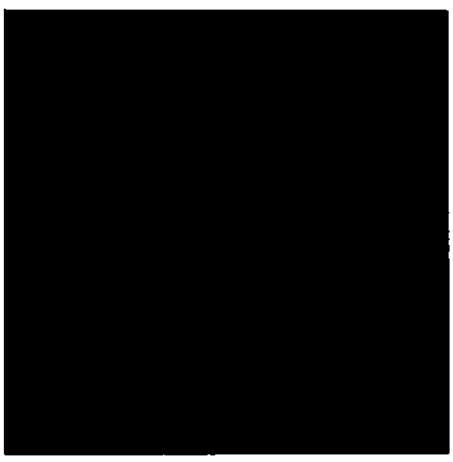
Clearly, the operation of the Commission will be examined closely and it can only be hoped that the Commission is given an appropriate opportunity to demonstrate its usefulness in eliminating corrupt conduct.

In conclusion, it can be seen that the New South Wales Government has introduced legislation not only to root out corrupt conduct in the public sector, but to educate people as to the strict duties which the public sector must adhere to in its day to day operations.

This definition of corrupt conduct has been drafted widely in order to make it patently clear as to the obligations owed by public officials in order to preserve the community's confidence in the bureaucracy and responsible government.

The public sector must not breach the public trust vested in it and the educational functions of the ICAC will enable it to assist both the public and public officials to recognise the circumstances that may leave people open to corruption.

'. . . the great power he will have at his disposal must be exercised carefully and with discretion.'



Michael Bersten*

ICAC: a critique

Introduction

As we wait for the NSW Independent Commission Against Corruption, ICAC, to get fully into stride, critical examination of ICAC is timely if only to encourage ICAC to get it right. Moreover all Australia is watching NSW to see how ICAC works out, South Australia, Queensland and WA having already considered setting up their own ICAC-style bodies.

What is ICAC?

ICAC is a statutory agency. It will be run by a Commissioner who is appointed, on conditions similar to that of a Judge, for up to five years (sections 5, 103 and schedule 1). Although the Act does not specify any particular organisational structure for ICAC, it is expected that, following the pattern ICAC in Hong Kong, it will have three divisions, each responsible for one of its three major functions, namely:

- ☐ investigation of corrupt conduct (defined in sections 7–9) with a view to referral of appropriate cases to relevant law enforcement or disciplinary agencies;

Michael Bersten

- ☐ prevention of corrupt conduct by examining the legal and institutional conditions which make such conduct likely with a view to making appropriate recommendations for reform; and
- ☐ education of the public and public administration as to the evil of corruption so as to make them less tolerant of it.

Section 12 provides that in 'exercising its functions, the Commission shall regard the protection of the public interest and the prevention of breaches of public trust as its paramount concerns'.

What will ICAC do?

Although ICAC can be expected to adhere formally to its statutory functions, there is considerable room for ICAC to emphasise some functions more than others in terms of priorities, effort, resources and so forth. Just what functional mix is achieved rather depends upon what ICAC perceives to be the proper strategy to deal with corruption. The mix matters because ICAC's resources will have limits, necessitating that some functions will suffer depending on the strategy employed.

It is at this key point that ICAC can get it very, very wrong.

If ICAC takes its brief to be 'catching the crooks', translating into an emphasis on big investigations to catch big name personalities, relatively lower priorities will be given to corruption prevention and education. Sensational once the case gets before the public, the focus will be on particular individuals rather than the institutional conditions which make corruption possible and likely.

If the experience of the National Crime Authority (NCA) is any guide, such an approach tends to produce few immediate successes largely due to the complex nature of the cases. Doubts often arise as to whether catching these so-called Mr Bigs has any real impact on the crime problem due to the lack of meaningful standards of success. Failure of any cases, especially those relying on informers, discredits the agency.

This is not to say that investigation of corruption has no place. Instead of either punishment for its own sake or political advantage, investigation of corruption should be directed to three principal goals:

- ☐ the general deterrent effect of ensuring widespread acceptance of the high probability of being caught out for corrupt conduct;
- ☐ informing with practical experience the processes of institutional reform directed at corruption prevention; and
- ☐ educating the public about corruption, thereby reducing public tolerance of corruption and encouraging better informed democratic participation in public affairs.

At a general strategic level ICAC should therefore attempt to properly balance its investigative, preventative and educative functions with the primary aim being to eliminate the conditions which make it possible and likely for corruption to flourish.

Inter-agency co-operation or conflict?

An important feature of the ICAC Act is an obligation upon ICAC to co-operate as far as practicable with law enforcement and other relevant agencies (sections 15 and 16). Whilst co-operation in law enforcement is usually desirable, the ICAC Act creates a potential source of inter-agency animosity, namely under Part 5 which allows ICAC to interfere with the independence of other agencies, which may include the Ombudsman, the Director of Public Prosecutions and the police, by placing an obligation on the agency to which it may refer some matters to report to ICAC on its progress in dealing with the matter together with obeying any direction of ICAC connected with the referral. Examples of conflict could include a direction that an agency undertake disciplinary proceedings, an investigation or prosecution. This may even create a legal issue as to the lawfulness of such a direction where, for example, the Director of Public

* The author is a senior legal officer with the Commonwealth Attorney-General's Department. The views expressed herein are in no way connected with the Attorney-General or his Department.

Prosecutions might understandably claim statutory independence or the police might claim some sort of constitutional independence.

Evaluation: measuring ICAC's success and failure

Knowing whether ICAC is on the right track depends upon the criteria by which such an outcome is evaluated. Although developing standards to evaluate the effectiveness of ICAC will be a complex task, evaluation is necessary so as to provide a meaningful understanding of ICAC's work.

ICAC and the Joint Parliamentary Committee which is to monitor ICAC should accordingly consider the promotion of public debate on evaluation together with setting up evaluation programs at the outset. Research agencies like the NSW Bureau of Crime Statistics and Research would be well suited to co-operate in this sort of task if given appropriate resources and statutory form.

If ICAC shirks evaluation from the start then ICAC cannot expect anybody to ever believe its reports on the impact it has had on corruption in NSW. There will simply be no rational basis for doing so.

Extraordinary powers: fact or fantasy?

Whether ICAC has extraordinary powers is open to a precise answer—yes—despite the ambivalence shown by promoters of ICAC who have vacillated between arguing that ICAC has draconian powers (which are said to be justified in the circumstances) and that ICAC's powers are little different to those of a Royal Commission.

ICAC certainly has more powers than a Royal Commission. Not only is a witness obliged to answer questions before both bodies (the principal coercive power which distinguishes a Royal Commission from court hearings), ICAC has a number of other powers, including

- ☐ coercive powers to compel the production of documents and other material and the attendance of witnesses at hearings (Part 4, Divisions 2 and 3);
- ☐ the power to seek an injunction from the Supreme Court to restrain any conduct related to the subject of an ICAC investigation without an obligation for ICAC to give an undertaking as to damages in order to obtain the injunction (sections 27 and 28);
- ☐ the power of the Commissioner to issue himself a search warrant (section 40); and
- ☐ the power to issue a certificate which is prima facie evidence that a person is in contempt of ICAC (section 99).

ICAC's powers would have been even more extraordinary but for amendments to the original ICAC Bill. These amendments included

- ☐ an obligation on ICAC to conduct hearings in private to avoid prejudicing a court hearing (section 18);
- ☐ statutory privileges against answering questions where to answer would breach the confidentiality between either lawyers and their clients or priests and those who confess to them (section 37); and
- ☐ a provision that nothing in the ICAC Act shall be taken to affect the rights and freedoms of Parliament in relation to freedom of speech, and debates and proceedings in Parliament (section 122).

ICAC: a *secret* Official Secrets Act

ICAC is more than an anti-corruption agency. It is also in effect an official secrets watchdog, a function quite outside the mandate for the Greiner Government to set up ICAC.

Section 8(1)(d) provides that 'corrupt conduct' includes misuse of information or material acquired by a public official in the course of his official duties.

Accordingly the leaking of information by a public official to the media amounts to corrupt conduct which ICAC can investigate. The media could be called before ICAC to answer questions such as to disclose the source of a leak. Refusal to answer such questions could amount to contempt of ICAC (Part 10).

It is within the terms of the Act that publication of leaked material could also be suppressed either by

- ☐ an injunction (section 27); or
- ☐ (in certain circumstances) a direction from ICAC that certain material not be published (section 112).

Consistent with the official secrets theme is the provision for privilege (presumably Crown privilege as a ground) as a factor restraining ICAC, in appropriate cases, from making a request to produce any statement of information, document or other thing or to enter premises and inspect or copy any material (sections 24 and 25). This could be especially relevant to Cabinet and Executive Council documents together with protection of Parliamentary privilege.

Ian Temby QC: Does the Commissioner matter?

An argument put in defence of the extraordinary powers of ICAC is that the appointment of the right person as Commissioner is a guarantee against their abuse.

Such an argument is politically unacceptable. The point is not that ICAC may never abuse its powers but that where a public official wields tremendous discretionary powers, as is the case with ICAC, it is undemocratic and against the principle of the rule of law to entrust the protection of the rights and freedoms of individuals to the supposed moral condition of any person rather than by laws reinforced with a system of democratic accountability.

It is important to be clear that such criticism of the ICAC Act is not criticism of Ian Temby QC who is to be appointed its first Commissioner.

Temby is an excellent choice for Commissioner. His performance as the first Federal Director of Public Prosecutions demonstrates that he has the capacity to build an organisation from scratch into an independent, highly professional agency which performs its functions vigorously in conformity with the statute upon which it is founded.

These qualities are of fundamental importance to the success of ICAC. A Commissioner who is not a proven first class manager will find that effort expended will not be reflected in accomplishments. A Commissioner who is a zealot with pretensions to being a crime buster will drive ICAC into disgrace for insufficient attention will be given to fairness and accountability on the one hand and the mundane, long-term strategies such as corruption prevention on the other.

Independence and accountability

The major feature which distinguishes the NCA and Royal Commissions from ICAC is that they are bound by externally set terms of reference. In contrast ICAC sets its own tasks limited only by the Act and the obligation to investigate matters referred by both Houses of the NSW Parliament (sections 13(2), 73).

Such independence is moderated by three statutory forms of accountability:

- ☐ amendment or repeal of the ICAC Act or removal of the Commissioner by the Parliament;
- ☐ an internal 'Operations Review Committee' (ORC) whose function is advisory (Part 6, section 59); and
- ☐ a 'Parliamentary Joint Committee' (PJC), set up under the ICAC Act. Its functions, analogous to the Committee which monitors the NCA, are principally to monitor and review the work of ICAC together with examining the field of public corruption with a view to suggesting appropriate reforms to ICAC (Part 7, section 64).

ICAC is expressly excluded from investigation by the Ombudsman (section 118).

Whilst giving the appearance of accountability it is far from clear that either the ORC or the PJC has the

statutory equipment to fulfil such a task.

The ORC has no statutory powers whatsoever. ICAC has only the obligation to consult the ORC before it decides to either discontinue an investigation or not to commence an investigation of a complaint (section 20 (4)) but is under no obligation to take its advice. This peculiar situation however gives rise to the possibility that the ORC will be over-run with paperwork which it is under an obligation to examine, namely all the complaints of corrupt conduct which ICAC does not want to deal with. This possibility will almost certainly be a reality if ICAC attracts great public interest.

Two other odd features of the ORC which deserve legislative reform are:

- ☐ the membership of the ORC includes an officer heading an institution which may be a major target for the ICAC, namely the Commissioner of Police (section 60(1)(c)); and
- ☐ the lack of any provision or obligation for the ORC to report to Parliament on its activities.

The PJC has the power under section 69 to 'send for persons, papers and records'. The meaning of the power under section 69 is far from clear as on the one hand it may limit the powers available to an ordinary Parliamentary Committee whilst on the other does not specify what obligations and privileges apply to those sent for. In contrast the powers of the Committee monitoring the NCA are set by the Parliament (section 54 *National Crime Authority Act*, 1984) and hence are far less open to doubt.

A limit on the powers of the PJC (and the Committee monitoring the NCA) is that it is forbidden from investigating the details of particular cases coming before ICAC (section 64 (2)). Such a provision sensibly protects ICAC from the PJC meddling in particular cases.

Nevertheless the PJC is an inadequate form of accountability. The increase in its powers which I will now suggest are indicative of gaps in the present scheme:

- ☐ the powers of the PJC should be clarified;
- ☐ all senior appointments to ICAC should be ratified by the PJC;
- ☐ the PJC should have the power to issue guidelines as to (and thereby take responsibility for) the broad policies, priorities and practices of ICAC; and
- ☐ the PJC should be given sufficient powers and resources to interrogate ICAC to ensure that ICAC follows the guidelines the PJC sets.

ICAC and judicial review

The final form of accountability for ICAC is judicial review of its activities. This may arise in principally two forms:

- ☐ applications for prerogative writs; and
- ☐ the exercise of judicial discretion in dealing with applications by ICAC for phone taps (section 19 (2)), injunctions (section 27) and search warrants (sections 40–48).

The Courts will also be involved in exercising the jurisdiction to deal with cases of contempt of ICAC under part 10 of the Act.

Whilst it can be expected that these forms of judicial intervention will be no less satisfactory in the case of ICAC than in other areas of the law, it appears that the use of prerogative remedies may be limited due to the eccentric drafting of 'corrupt conduct' (sections 7–9) and the 'public interest' obligation on ICAC under section 12 (set out earlier). Arguably neither concept is practically justiciable because both are so amorphous. The 'privilege' factor in sections 24 and 25 (noted above) also raises difficulties as does the question whether Cabinet falls under the gaze of ICAC. Although this restricts somewhat the practical significance of judicial review as a form of accountability for the conduct of ICAC some interesting administrative law litigation is on the cards.

Problems with legislative drafting

In addition to the problems of drafting already noted are a number of others which should be addressed:

- ☐ The power to define 'public authority' and 'public official' by regulation under section 3 should be repealed just as was the power to define 'corrupt conduct' by regulation under section 8 dropped from the first ICAC Bill.
- ☐ Sub-section 8 (2) is surplusage.
- ☐ A potential constitutional problem exists with section 8 (5) if the Act is to bind a 'public official' or 'public authority' in the Commonwealth of Australia, a Territory or States other than NSW.
- ☐ Sub-sections 10 (2) and (3) are surplusage, repeating, in effect, parts of section 20.
- ☐ Sub-section 17(2) creates alarm because it seems to create an obligation at odds with sound management. It provides that 'The Commission shall exercise its functions with as little formality and technicality as is possible . . .'. This cannot really say what it is intended to and should presumably refer to the conduct of ICAC hearings rather than all ICAC functions.

The bad drafting of the Act, of which the above are prime examples, is indicative of the rather shadowy origins of the ICAC Act, rumoured to have been drafted by a prominent QC rather than the ordinary channels, namely the Office of Parliamentary Counsel.

ICAC and politics

Despite the statutory independence of ICAC it does not operate in a vacuum—it is part of the political culture of NSW.

There are real doubts as to how serious the Greiner Government is about corruption.

A number of measures fly in the face of the spirit of ICAC by promoting the opportunities for corruption whilst reducing the likelihood of bringing such conduct to book through

- ☐ increasing direct ministerial control over government departments; and
- ☐ reducing public accountability.

These measures include

- ☐ the abolition of the Corrective Services Commission;
- ☐ the policy of restricting the power of the Ombudsman to investigate only 'serious' complaints against the police; and
- ☐ reorganising anti-drug agencies in NSW so as to centralise control under the Minister for Police.

ICAC will have to contend with the expectations of the coalition parties—to investigate over seventy unspecified matters, many having some connection with the former Labor Government.

ICAC will also have to contend with the fear that it is an instrument by which to conduct a witch-hunt against Labor.

ICAC may also be drawn into the political arena when the Parliament considers proposals to refer a complaint of corrupt conduct to ICAC under Part 8 of the Act. No matter who makes such a proposal it will take courage to oppose rather than support it and risk the charge of covering up.

One can expect (and hope) that ICAC will not be swayed by the expectations of either political party but will adhere to the terms of its legislative charter.

Indeed ICAC may believe that to prove its independence it must at an early stage mount, in accordance with the Act, a substantial investigation into a complaint of corrupt conduct involving the Greiner Government.

That may attract some flak though ultimately keep ICAC out of trouble.

In the long run ICAC will introduce a new unpredictability into NSW politics. Without fear or favour ICAC can be expected to perform its functions with the effect at times of causing political damage to all major parties. Nobody will know when or where the next bomb will go off.

From the public's perspective this would be a desirable outcome—keeping the politicians and the political machines clean by ensuring that they know they will be caught if they engage in corrupt conduct.

Australian prison trends

Daily average

The daily average numbers of persons (to the nearest whole number) held in custody during March 1989 with changes in the totals over the past month and over the past year are:

	Males	Females	Total	Changes since Feb '89	Mar '88
NSW	4 081	239	4 320	+91	+370
VIC	1 973	132	2 105	+30	+121
QLD	2 202	108	2 310	0	-37
WA	1 457	87	1 544	-3	-59
SA	810	29	839	+8	+43
TAS	225	8	233	-19	-35
NT	397	6	403	-12	-14
ACT	76	5	81*	-7	+10
AUSTRALIA	11 221	614	11 835	+88	399

* 61 prisoners (58 of whom were males) in this total were serving sentences in NSW prisons.

The table below shows the number of sentenced prisoners received in each jurisdiction during March 1989 as well as the imprisonment rates (prisoners per 100 000 total and adult populations) based on daily average.

	Sentenced prisoners received		Daily average prisoners (as above)	General population* (in thousands)		Imprisonment rates	
	Total	Fine default only		Adult	Total	Adult	Total
NSW	395	19	4 320	3 771	5 765	114.6	74.9
VIC	193	2	2 105	2 837	4 299	74.2	49.0
QLD	526	145	2 310	1 776	2 793	130.1	82.7
WA	219	127	1 544	1 008	1 576	153.2	98.0
SA	261	128	839	944	1 418	88.9	59.2
TAS	67	25	233	293	449	79.5	51.9
NT	80	20	403	104	155	387.5	260.0
ACT	—	—	81	183	279	44.3	29.0
AUSTRALIA	1 741	466	11 835	10 916	16 733	108.4	70.7

* Projected populations end of January 1989 derived from *Australian Demographic Statistics* June Quarter 1987 (ABS Catalogue No. 3101.0).

Prisoners in custody on the first day of the month

As at 1 March 1989 the actual (as opposed to daily average) numbers of prisoners in custody in each jurisdiction are shown in the table below. This table also shows the numbers of Federal prisoners in each jurisdiction, and the numbers of unsentenced prisoners in remand. The percentage of remandees and remand rate (remandees per 100 000) are also shown.

	Total prisoners	Federal prisoners	Prisoners on remand	Percentage of remandees	Remand rate
NSW	4 324	217	1 056	24.4	18.3
VIC	2 100	73	272	13.0	6.3
QLD	2 361	65	178	7.5	6.4
WA	1 545	76	181	11.7	11.5
SA	833	29*	186	22.3	13.1
TAS	244	3	27	11.1	6.0
NT	406	6*	68	16.7	43.9
ACT	81	13	22	27.2	7.9
AUSTRALIA	11 894	482	1 990	16.7	11.9

* 2 Federal prisoners in South Australia were transferred from the Northern Territory.

Work release and periodic detention data

In some jurisdictions small numbers of prisoners on work release programs are *included* in the daily average number of prisoners. The figures are: 107 in New South Wales, 14 in Queensland, and 1 in South Australia. In Western Australia, work release has now been replaced by the new Community Based Work and Development Orders.

In New South Wales there were 484 males and 25 females in periodic detention centres on the first Sunday of March 1989. Of these, 352 males and 17 females were in stage 1 and 132 males and 8 females were in stage 2 of the program. These figures are not included in the prison statistics.

Comments

- An increase of 91 prisoners in the daily average for New South Wales during March contrasted with the relative stability of prison populations elsewhere. Daily averages in NSW and Victoria are running considerably higher than last year however.
- Queensland prisons experienced a large increase in sentenced receptions—about equally shared between fine defaulters and others. Numbers of South Australian fine defaulters fell.
- Remandee rates continued at their recent record levels, but downturns in Victoria and Queensland may give rise for optimism.

Compiled by John Walker, Criminologist.

Australian Prison Trends is a monthly data compilation based on information supplied by the various corrections departments. The series, devised by David Biles, commenced with data for May 1976. Back issues are available from Publications Section, PO Box 28, Woden, ACT 2606.

Violence u

During 1989, the National Committee on Violence is conducting the most comprehensive investigation into violence in Australia that has ever been attempted.

Chaired by Professor Duncan Chappell, Director of the Australian Institute of Criminology, the Committee has been charged by the Commonwealth and State Governments to provide an effective blueprint for dealing with and minimising violent crime in the future.

The Committee was announced on 16 October 1988 by the Commonwealth Minister for Justice, Senator Michael Tate. It has met and held workshops in Canberra, Adelaide and Perth and will hold more during 1989.

July 1989

Meeting in Melbourne, 22 and 23 July; Melbourne workshop, 24 July; Hobart workshop, 26 July.

October and November 1989

National Conference on Violence, Canberra, 10 to 13 October; meeting in Canberra, 14 and 15 October; meeting in Canberra, 18 and 19 November.

In fulfilling its specific terms of reference the Committee is required to have particular regard to:

- ☐ the contemporary state of violent crime in Australia;
- ☐ related social, economic, psychological and environmental aspects;
- ☐ gender issues in violence;
- ☐ the impact of the mass media, including motion pictures and video tape recordings, in the incidence of violent behaviour;
- ☐ the association of violence with the use of alcohol and other drugs;
- ☐ factors instilling attitudes to violence among children and adolescents;
- ☐ the vulnerability to violence of particular groups;
- ☐ the development of specific strategies to prevent violence, including strategies to propagate anti-violence values throughout Australia, reduce violence involving young people, and promote community education programs;
- ☐ the need for support and assistance to victims of violence; and the need for special measures in the treatment of violent offenders.

The National Committee on Violence contends that violence in our society extends much further than the violent crime which is sometimes sensationalised in the media.

Violent acts, violent responses. Vengeful crowd greets men charged with murder at a NSW police station.

Courtesy John Fairfax and Sons, Sydney. Photographer: John Nobley.

nder scrutiny

Professor Chappell says 'The extent and breadth of the problems of violence, in both its criminal and non-criminal aspects are reflected in the Committee's terms of reference.

'They are terms of reference which recognise the need to provide an understanding of the causes of violent crime and violent behaviour, and the necessity of proposing ways in which we can all enjoy the benefits of living in a less violent country.'

The Committee, whose members possess a broad range of professional qualifications, and experience, must present its final report to the Minister for Justice by 31 December 1989. Before that time, the Committee will sponsor research into violent crime and violent behaviour, examine submissions, and publish reports on particular aspects of violence.

In order to achieve its goals within a limited time-frame, it will be necessary for the Committee to exclude some types of violent behaviour from consideration. These include self-inflicted violence, motor vehicle deaths, negligence generally and television violence.

The National Committee on Violence is one of a number of inquiries which are currently examining, or have recently reported on issues relating to violence in Australia.

Legal categorisation of violence

Not all violence is defined legally as criminal violence. However, certain categories of crime, usually described as offences against the person (as distinct from property offences), are regarded as violent crimes. These are homicide, rape, assault and robbery. Before turning to look at these crimes in the situational contexts in which they occur, it is necessary to define them:

- homicide is a general term which includes murder, attempted murder, and manslaughter. In some jurisdictions, it also encompasses unlawful deaths caused by negligent driving of a motor vehicle;
- murder is used in relation to unlawful deaths caused intentionally or with reckless indifference to human life;
- manslaughter refers to unlawful deaths caused either negligently, carelessly or recklessly but without any intent to kill or cause bodily harm. It also includes unlawful killings accompanied by mitigating circumstances such as self defence or provocation;
- rape refers to unlawful sexual intercourse without the consent of the victim or accompanied by the use or threat of force. Some Australian jurisdictions have abolished the offence of rape and replaced it with that of sexual assault. In these jurisdictions sexual assault covers an expanded range of unlawful sexual intercourse and contact, and may be committed against persons of either sex;
- assault incorporates a number of offences where bodily injury, ranging from very minor to very serious injury, is inflicted unlawfully or intentionally. Threats and attempts to inflict physical injury are also regarded as assaults; and
- robbery is stealing accompanied by the threat or use of violence.

These descriptions give an indication of the legal categorisations of violent crime. Society tends to conceptualise violence primarily in terms of legal definitions and so neglects situational aspects.

Patterns of violent crime

There is little doubt that public anxiety exists over the level of violent crime in Australian society. In 1986 a Gallup Poll asked over 2000 Australians to nominate the issues that were of major concern to them (Australian Public Opinion Polls 1986). For the first time since 1977, fear of violent crime was the most frequently cited issue. Another Gallup Poll conducted in 1987 found that over 90 per cent of those questioned believed violent crime to be on the increase (Australian Public Opinion Polls 1987).

Prior to turning to some of the statistics which provide a picture of violent crime, a cautionary note is required. Crime statistics are collected and analysed by a number of bodies including the police and specialist research organisations such as the Australian Institute of Criminology (AIC), the New South Wales Bureau of Crime Statistics and Research, and the South Australian Office of Crime Statistics. However, official statistics do not provide a complete picture of the level of crime in society. Some offences, both minor and serious, are not reported to the police. This is what is known as the 'dark figure' of crime. While homicide and armed

Expressions of observers at this football punch-up range from mild interest from the bench, through concern among supporters, to amusement from the police.

Courtesy The Herald and Weekly Times Ltd, Melbourne

robbery statistics are usually regarded as fairly reliable indicators, offences such as assault, rape and sexual assault are undoubtedly under-reported. Another caveat is that comparisons between jurisdictions can be hazardous because of the absence of uniform definitions of violent crime and different bases for statistical collection. Finally, changes in definitions of an offence may result in an apparent increase in the rate of that offence. For example, in the case of rape in some jurisdictions legislative changes have occurred, expanding the categories of offence and reforming the evidentiary process. Changes in social attitudes may have also encouraged more victims to report this offence.

Keeping these cautionary observations in mind, official crime statistics can now be examined. The following figures from the Australian Institute of Criminology illustrate trends and rates of crimes against the person in Australia for the period 1973 to 1987:

- ☐ the rate of murder remained fairly constant. In 1973–74 the rate was 1.88 per 100 000 population and in 1986–87 it was 1.76 per 100 000 population (Figure 1);
- ☐ the reported incidence of rape in Australia increased from almost 6 per 100 000 population to almost 15 per 100 000 population (Figure 2);
- ☐ the incidence of serious assault increased from about 20 per 100 000 population to over 80 per 100 000 population (Figure 3); and
- ☐ the incidence of robbery increased from just under 25 per 100 000 population to almost 50 per 100 000 population (Figure 4).

Statistics also provide information about the relative risks of victimisation. The risks of becoming a victim of violent crime are much lower than for property crime. (Figure 5 shows violent and property crime as a proportion of total crime in Australia.) And despite public concern about the level of violent crime in the community, the risk of victimisation is not evenly spread throughout society. For example, more than half the victims of homicide and the overwhelming majority of the victims of serious assault are male, and Aboriginals are over-represented as homicide victims.

Victims

The victims of violent crime in Australia are frequently overlooked in society's quest for the apprehension and punishment of offenders.

In Australia, information about victims of violent crime comes mainly from police statistics and two crime surveys undertaken by the Australian Bureau of Statistics (ABS), one in 1975 and the other in 1983.

ABS surveys support the existence of a substantial 'dark figure' of crime. Some

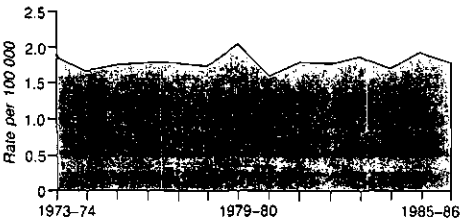


Figure 1
Murder in Australia 1973–87: rate per 100 000 population

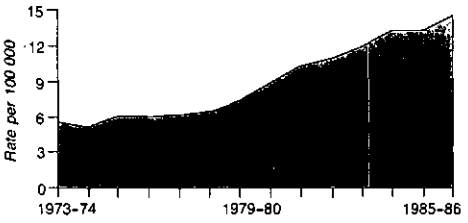


Figure 2
Rape in Australia 1973–87: rate per 100 000 population

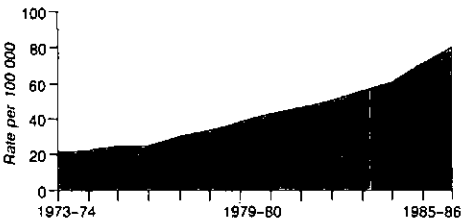


Figure 3
Serious assault in Australia 1973–87: rate per 100 000 population

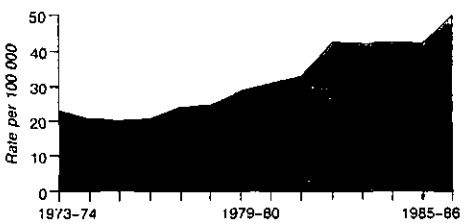


Figure 4
Robbery in Australia 1973–87: rate per 100 000 population

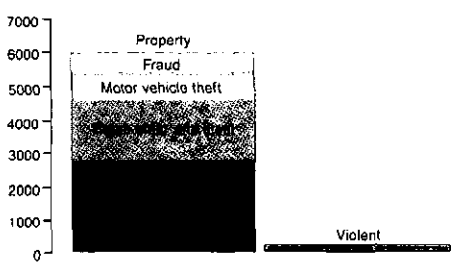


Figure 5
Property crimes outnumber violent crimes 40:1 in Australia

Source: Australian Institute of Criminology.

60 per cent of the incidents recorded in the 1975 survey were not reported to the police. Although in some cases the incident was regarded as too trivial to report, serious crime also goes unreported. For example, it was found that less than one-third of rapes came to the attention of police and that women were less likely than men to report being assaulted (Australian Bureau of Statistics 1975).

If more were known about the victims of crime in Australian society then victims and their families could be better assisted, crime prevention and community services could be more efficiently planned and police forces more effectively deployed.

Australian research provides an interesting social picture of the victims of homicide in terms of gender, class and race. One study (Wallace 1986) found that:

- ☐ nearly two-thirds of victims were blue collar workers. This research supports an earlier study (Najman 1980) where an examination was made of the death certificates of homicide victims for the years 1965 to 1967. The study concludes that the risk of homicide victimisation increased as socioeconomic status decreased;
- ☐ some 60 per cent of homicide victims were male;
- ☐ domestic killings were an exception to this general rule with women more likely to be victimised than men;
- ☐ victims came from all age groups but the 20 to 29 year old age group was slightly over-represented.

It is also known that Aboriginals are over-represented as homicide victims. One study revealed that Aboriginals living on Queensland reserves had a homicide rate '10 times the national and State average' (Wilson 1982). A South Australian study published in 1981 found Aboriginals to be over-represented by a factor of at least ten (South Australia. Office of Crime Statistics). This study also found that about 60 per cent of homicide victims were male. It is worth noting, however, that the picture of the 'typical' homicide victim as being a white male may not be applicable throughout Australia.

Anecdotal evidence suggests that in the Northern Territory a disproportionate number of homicide victims are Aboriginal women.

Other Australian research, notably that published by the Australian Bureau of Statistics (1983), about the characteristics of victims of violent crime has found that, in the case of robbery with violence, and assault:

- ☐ men are more likely to be victims than women. This is especially the case with serious assault where one study found that approximately 80 per cent of victims are male (South Australia. Office of Crime Statistics 1981);
- ☐ the young have a greater likelihood of being victimised than the old; and
- ☐ the unemployed are twice as likely as those who have jobs to be assaulted.

For the offences of rape, assault and robbery with violence, individuals who have never been married have higher victimisation rates than the general population. Additional characteristics of the victims of violent crime are:

- ☐ that they are more likely to be repeatedly victimised than victims of property crime. The 1983 ABS survey found that approximately 40 per cent of assault, robbery and sexual assault victims had been attacked at least twice in the preceding year;
- ☐ over half of the victims of robbery and assault, and over 40 per cent of victims of sexual assault knew or were acquainted with their attacker (Australian Bureau of Statistics 1983). One caveat does need to be made here, however. We know that often women do not report crime to the police, but it may be that they do not report victimisation even in victim surveys.

Public opinion polls and crime surveys appear to show that Australians are concerned about violent crime but generally do not fear that they themselves will become a victim.

A Gallup Poll, conducted in July 1987, asked how likely respondents thought it was that they would be victimised by a violent offender. About 10 per cent thought it very likely, while one-third thought it somewhat likely, over 40 per cent not very likely and about 10 per cent believed it was very unlikely. Similarly, the 1975 ABS survey found that, on the whole, Australians did not perceive themselves to be at great risk of crime but some groups in the community were exceptions to this general rule. Among those expressing a fear of crime of all kinds were:

- ☐ the aged;
- ☐ women;
- ☐ the widowed, separated and divorced;
- ☐ the poor; and
- ☐ those living in large cities. (Braithwaite et al. 1979)

Detailed and more recent national information about citizen fears regarding crime victimisation, and especially violent crime, is not available.

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Publishing

During its life, the National Committee on Violence anticipates publishing:

Monographs

Violence in Australia
Victims of Violence
Violent Offenders
Final Report

Research papers

Violence, Crime and Australian Society
Domestic Violence
Violence against Children
Voilence in the Workplace
Violence and Sport
Violence and the Media
Racial Violence
Moderation
Violence and Drugs

Committee members

Professor Duncan Chappell
Chair, is a lawyer and criminologist who is currently Director of the Australian Institute of Criminology. Before taking up this position he was Professor of Criminology at Simon Fraser University in Canada. He has held academic posts in Australian and overseas universities, been a member of the Australian Law Reform Commission, and has served as an adviser to government, private and public agencies on criminal violence.

Ms Judith Dixon
As Chairperson of the Parliamentary Social Development Standing Committee, Ms Dixon conducted an inquiry into strategies to prevent community violence.

Ms Kim Dwyer
A psychologist and Co-ordinator of the Health and Welfare Child Protection Policy and Planning Unit in South Australia. She has an interest in violence in the home, particularly the abuse of children, and in Aboriginal and women's issues.

Mr Julian Green
A barrister and solicitor of the Supreme Court of Tasmania. At present he is Special Counsel to the Tasmanian Government. He is a former head of the Tasmanian Department of the Premier and Cabinet and the Attorney-General's Department.

Dr William Lucas
Director of Forensic Psychiatry at the South Australian Health Commission and is also a consultant psychiatrist. He formerly taught forensic psychiatry at the University of Sydney Law School. He has special interests in the assessment of offenders, including dangerous offenders and in the evaluation of victims of accidents and crime.

Ms Sue Lundberg
Special Magistrate, Perth Children's Court.

Mr Ray Martin
Host of a national television talks and variety program. He is a former current affairs journalist with extensive experience in television and radio, both in Australia and overseas.

Ms Liza Newby
Principal Consultant Legislation, Review and Development Unit, Department of Health. She has been involved in women's issues, particularly domestic violence and sexual assault.

Mrs Anne O'Byrne
Convenor of the National Women's Counsultative Council and has also held positions on the Launceston General Hospital Board and the Council of the Tasmanian Institute of Technology. Originally a nurse, her interests include women's health and community welfare.

Mr Robert Page
Secretary of the Police Federation of Australia and New Zealand. He is a former officer of the New South Wales Police, has worked as an administrator with the New South Wales Police Association and has carried out research into policing both in Australia and overseas.

Mr Michael Palmer
Commissioner for Police, Northern Territory.

Mr Peter Quinn
Director, Management Services, New South Wales Department of Family and Community Services. He has held a number of senior posts in the New South Wales public service in the areas of juvenile justice and legislation, and Aboriginal affairs.

Mr Peter Ward
A barrister and solicitor of the Supreme Court of Western Australia. At present he is Consultant to the Western Australian Minister for Police.

Submissions and requests for information about any aspect of its terms of reference should be directed to:

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National Committee on Violence
PO Box 28
Woden, ACT 2606
Australia

The Committee can also be contacted by telephone on (062) 83 3833 and by fax (062) 83 3843.

New head of DPP

The new Commonwealth Director of Public Prosecutions, Mark Weinberg, QC, took up his position late last year. Immediately after taking up his position, Mr Weinberg was interviewed by *Criminology Australia*.

The Commonwealth Director of the Office of Public Prosecutions, Mark Weinberg (middle), with (left) Grahame Delaney, First Assistant Director, and Ian Birmingham, Senior Assistant Director.

Q. *There has been a general move away from police prosecutors towards the setting up of offices of public prosecutors throughout Australia. How is this situation being accepted?*

A. It must be remembered that some states preceded the Commonwealth in creating public prosecutors, Victoria for one.

Q. *And the situation in other states?*

A. Victoria, New South Wales, Tasmania and Queensland have directors of public prosecutions. NSW only quite recently; Victoria in 1982.

Q. *Have the new arrangements been accepted, in your opinion?*

A. I think they have been accepted by everyone as a desirable step forward. But some people have said that they preferred these functions still to be carried out by the Attorney, because he is directly responsible to Parliament, which therefore provides greater accountability. But I do not think that is a view that is very widely held. I think it is now thought highly desirable (as it has been for a century in Britain) that the responsibility for prosecutions should be with someone who is not involved in party political processes and can approach these matters independently.

Q. *Ian Temby said in his annual report, that although it was possible for an Attorney-General to issue directions, there was only one occasion . . .*

A. I think what Ian said was that while the Act allowed for the Attorney to issue guidelines, there was in fact only one occasion when it had happened. The Act provides that the Attorney cannot just go ahead and issue guidelines, he has to consult with the Director of Public Prosecutions, and this is what was done.

Q. *When it comes to law reform, are law reform commissions bringing about any major changes?*

A. Law reform commissions do not bring about changes, changes are brought about by governments. It is up to governments to decide whether to implement recommmendations put forward by law reform commissions. There have been a lot of recommendations put forward that have not found favour with the government of the day, for example the work done by Gareth Evans in 1975 on the criminal investigation reference. I was involved in the very lengthy reference into the proposed commonwealth law of evidence. I am not aware what stage that report has reached. Obviously it is a great pity if a body that has such a wealth of expert knowledge at its disposal produces a recommendation which is allowed to lie dormant.

Q. *Does this mean that law reform is proceeding in other ways?*

A. The way to law reform is a very difficult and tortuous path, but it is fair to say that one does not get law reform simply by a commission producing a report. It can only be done over a period of time in consultation with the practising profession and other interested groups. I was involved some years ago with the Canadian Law Reform Commission in its attempts to codify the law of evidence. It produced a first class report but it moved ahead too quickly—far ahead of what the profession in Canada was prepared to accept at the time.

Q. *The profession includes the police?*

A. The practising law profession: the judges, the prosecutors, defence lawyers,

Mark Weinberg, QC

Educated at Melbourne High School, Monash University and Oxford, Mr Weinberg holds the degrees of Bachelor of Arts, LLB (Hons) and BCL.

He was admitted to practise in NSW in 1974, in Victoria in 1975 and his name was entered on the roll of barristers and solicitors of the High Court in 1979.

From 1971 to 1985 he held numerous academic appointments at universities in New South Wales and Victoria as well as overseas. He was Dean of the Faculty of Law at Melbourne University during 1984–85.

Mr Weinberg is the co-author of a number of leading books on litigation and criminal law and the author of a number of learned articles covering a wide range of legal issues. He was appointed a Queen's Counsel in Victoria in 1986 and in New South Wales in 1987.

the people who make the system work. You will get nowhere without consultation with the practising profession; you cannot impose a new regime on them, there has to be consultation.

Q. *Do you see examples of this in the many suggestions for sentencing reform that have not been acted on?*

A. I have seen Mr Justice Starke's report and recommendations and, by and large, I am in agreement with them. The community has become dissatisfied with the gap between the sentences imposed and the time which is actually being served. Mr Justice Starke is suggesting a package, there are two parts of what he is recommending: one that the offender serve virtually all the sentence that is imposed, while two, the maximum penalties for specific offences be very much reduced. You cannot adopt one aspect and not the other. I do not think His Honour wants to increase the actual amount of time spent in gaol, just to make the time spent in gaol reflect the sentence imposed.

Q. *I think the community has a distrust of handing over discretion for early release to corrections authorities.*

A. The community has a distrust of any suggestion that allows prisoners to serve shorter sentences. The area of sentencing is a very difficult and controversial one. Obviously the judge plays a central role, but I would not like to see remissions taken away from the corrections authorities. There must be an element of rehabilitation in sentencing and I fear that gaol management would become very difficult if some form of possible remission were taken away. It is a question of degree. Some people feel that the remission for good behaviour is too great in some states and, to some degree, that might be correct. But on the question of whether it should be abolished completely, I would definitely not agree.

Q. *Moving to the general operation of the DPP. Should reasons for not proceeding to prosecution be released?*

A. This again is a difficult area. There is a stated general policy in this office that reasons for not proceeding should be supplied to those involved and in certain instances to the media. That is in accord with the policy the NSW DPP adopts. In Victoria, on the other hand, the DPP adopts a quite different policy and will provide neither documents, nor detailed reasons, for prosecutions not proceeding. It is not as easy as it may sound because reasons for not proceeding may be based on matters of a personal and confidential nature; a person committed to stand trial may be suffering from some fatal illness in which case it may not be proper to make this information public. Sometimes representations are made on behalf of people who do not know they are suffering from such an illness.

I am certainly not in favour of releasing primary working documents on which a decision not to proceed may have been based, such as documents detailing advice given to me by my staff.

Q. *In that case, would it not be better to have a formal set of words that would put an end to further inquiries?*

A. That would depend on whether you just wanted a bland statement such as the evidence was deemed not strong enough to proceed, or whether you wanted more details. For example if the principal witness were thought to be of dubious integrity and a person who would not be believed on oath, I would be most reluctant to reveal this factor. That would be grossly unfair to the person in question. So it is not as easy as it seems. I have no problems with giving general reasons such as the evidence not being sufficient. Certainly there is a case for giving those sorts of reasons but one has to be very careful.

Q. *The DPP now has responsibility for recovering assets from criminals. Will that take up a lot of time and how will it affect the operation of the DPP?*

A. Already a large part of our work is involved in this area and a large amount of DPP time is taken up with it. There are two new pieces of legislation, the *Proceeds of Crime Act* 1987 and the *Mutual Assistance in Criminal Matters Act* 1987, loosely called the Mutual Assistance Act. The latter allows us to provide assistance to overseas bodies with whom we have special arrangements.

Q. *With regard to the first. How is it possible to distinguish between assets derived from crime and those not derived from crime?*

A. The assets we are interested in are always related to criminal activity. There are really two main areas where criminal assets recovery operates; one is in relation to provisions of the Customs Act which deals exclusively with recovery of pecuniary penalties against persons who have committed drug offences. That Act is not conviction based, that is you do not have to get a conviction to use the provisions of the Customs Act. You can obtain restraining orders preventing people from dissipating their assets, or you can have them actually invested with the official trustee and you can get pecuniary penalty orders which will deprive them of the benefits of their dealing in drugs.

The *Proceeds of Crime Act* 1987 is a wider Act in many ways. It covers not just drugs but other forms of criminal activity. But it is narrower in one sense: it is limited to convictions. It only operates to cause property to be forfeited to the Commonwealth, or pecuniary penalties to be imposed, after there has been a conviction. You can obtain restraining orders before the conviction, but conviction is the trigger for the operation of the forfeiture provisions themselves. There are difficulties with this particular legislation. One of the problems that the DPP has to wrestle with is the difficult question of what attitude to take to people who seek to have assets which are restrained released to pay for legal representation for a trial that is forthcoming.

In one sense,the assets that are restrained are said to be entirely the proceeds of illegal activity and there is no justification for people to get Rolls Royce representation out of assets to which they have no proper claim in any event. On the other hand, there is an element of prejudgement in that approach because the person has not been convicted at that stage, and is being deprived of the opportunity to spend money on his or her legal defence, and must fall back upon legal aid. There are some very difficult questions to be resolved in operating that particular piece of legislation, in working out what attitude the DPP will take in any particular situation.

Q. *Do you have any cases at the moment that fall into this category.*

A. Yes, we have a number of cases where restraining orders have been obtained and applications have been made to have funds released.

Q. *Is the second piece of legislation you mentioned, the Mutual Assistance Act, likely to be used in connection with money laundering?*

A. No, money laundering is an offence that is expressly set out in the Proceeds of Crime Act, a new offence created by Section 81 of that Act. It is an offence that has been subject to very severe criticism. There is certainly some merit in Professor Brent Fisse's objection to that particular offence in its present form, in that it has the potential to work injustice. It is an offence committed by a person who, objectively speaking, ought reasonably to have expected that the money in question was the proceeds of unlawful activity. It is an offence that carries twenty years' imprisonment and you do not normally impose twenty years' imprisonment for, in effect, acting negligently, or stupidly. I have some misgivings about that particular section in its present form; I do not think there is any secret about that. A great many criminal lawyers in this country have the same misgivings.

Q. *Press articles make much of your low profile, presumably as compared to your predecessor's high profile.*

A. I will adopt the profile that seems to me to be appropriate at any given time. Any unwarranted attacks upon this office will meet a vigorous response. Any legitimate criticism will also be taken into account, hopefully, and acted upon.

David Neal*

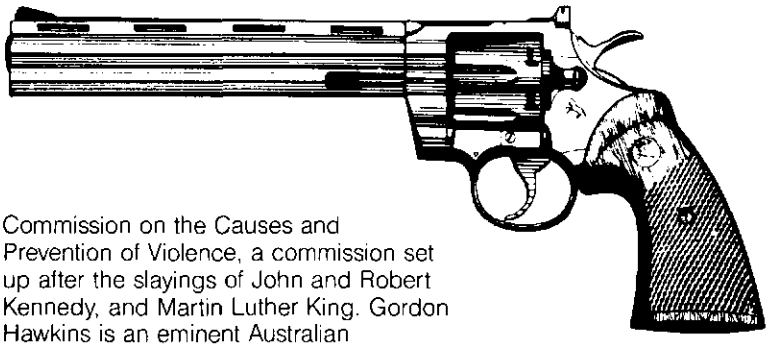
'God, guns and guts'

If you think the gun debate has been passionate here, it is not even warm by comparison to the United States. Bumper stickers like 'God, guns and guts made this country great: we need all three', and 'When guns are criminal, only criminals will have guns', have been part of American bumper lore for years. Shotguns in racks on the back shelf of pick-up trucks are a common sight just out of town. Pro-gun advocates quote the United States Bill of Rights against those who would disarm them.

Sorting the rhetoric from the reality in the American—and now the Australian—gun debate is no easy business. That is why a new American book, *The Citizen's Guide to Gun Control*, will be a welcome contribution for those who want to make an informed assessment of proposals for gun control. Although it is an American book, the arguments and findings have a direct relevance for Australia.

The book is aimed at non-specialist readers and provides a guide to research on gun control extending over the past three decades. In a debate where often even the experts cannot agree, Franklin Zimring and Gordon Hawkins make their contribution by presenting an authoritative, balanced and accessible overview of the major arguments and research findings. Zimring, himself one of the original empirical researchers in this area, did his early work for the National

Dr David Neal



Commission on the Causes and Prevention of Violence, a commission set up after the slayings of John and Robert Kennedy, and Martin Luther King. Gordon Hawkins is an eminent Australian criminologist.

In twenty clearly written chapters, they tackle major questions in the gun debate, questions such as:

- ☐ Do guns make a difference to the homicide rate?
- ☐ Do guns make a difference to the robbery rate?
- ☐ Is it sensible to buy a gun for self-defence?
- ☐ Would gun control reduce the incidence of suicide and accidental deaths?
- ☐ What strategies of gun control are available and how effective are they?
- ☐ Why does the gun control issue generate such emotional reactions?
- ☐ What are the long term costs and benefits of gun control?

Two questions lie at the heart of the gun debate:

(i) Is the rate of violent crime linked to the availability of guns? If so,

(ii) Would gun controls reduce the availability of guns and hence the rate of violent crime?

The question of a link between gun availability and the incidence of violent crime has been tackled in a variety of ways. One approach is to compare the United States and other countries. Zimring and Hawkins open the book with a horrifying 'tale of two cities': Detroit and Belfast. In Detroit—a city of 1.5 million people, about the same size as the whole of Northern Ireland—751 people died in criminal homicides in one year, 1973. That figure was twenty-four more than the total number of civilians killed in the violence in Northern Ireland over the whole five-year period 1969 to 1974, a period when Northern Ireland was in a state of near-civil war. What explains such a high level of violence in Detroit?

Pro-gun control groups are quick to point to guns. But Zimring and Hawkins equally quickly point out that this is not necessarily so. Racial, cultural and economic factors, for example, may explain the higher incidence of murder and robbery in America. However, when the higher incidence of crime in America was put to one side, by looking at the percentage of homicides and robberies committed with guns, America had three times more gun homicides and six times more gun robberies than countries like England and Wales, countries where gun controls make guns substantially less available.

Even so, differences between countries mean that international comparisons may be misleading. Intra-national studies provide a good check on the link between gun availability and gun crime. American researchers have adopted three approaches. First, there was a case study of a single city, Detroit, which had experienced a substantial buildup of guns; from 1965 to 1968 the number of gun permits issued

'. . . the arguments and findings have a direct relevance to Australia . . .'

* Commissioner, Law Reform Commission of Victoria.

increased four-fold. During the same period, robberies committed with guns increased at twice the rate of non-gun robberies. Criminal homicides also increased but while the non-gun killings increased 30 per cent, gun killings increased 400 per cent.

A second approach has been inter-region and inter-city comparisons. In the inter-region comparisons, Zimring and Hawkins report that gun homicides and gun assaults parallel gun ownership: these crimes are higher in regions with high gun ownership and lower in those with low gun ownership. Third, researchers have compared eight cities: the percentage use of firearms in homicide, robbery and assault showed the same result as the inter-region research (see Figure 1).

Taking a slightly different tack, researchers have looked at the deadliness of guns, especially in the crime of homicide. If guns were scarce and would-be killers had to find other weapons, would there be as many deaths? To test this Zimring compared gun and knife attacks in Chicago. He only looked at cases where the victim had suffered wounds which indicated lethal intent. His conclusion: gun wounds were over five times more likely to cause death than stab wounds. Moreover, guns have greater range, are less easily warded off, and require less physical and psychological strength than knives. Thus Zimring concludes that fewer guns would mean fewer deaths, even assuming that killers would choose alternative methods rather than abandoning an attack.

As the weight of evidence and different types of studies mount, denial of the link between gun availability and gun crime becomes less and less plausible. The research surveyed by Zimring and Hawkins has a very repetitive message. Anyone who thinks that the relationship between the availability of guns and the level of gun crime is a coincidence has got an enormous amount of explaining to do.

□ □ □ □ □

Contrary to what many people think, America already has thousands of gun control laws at federal, state and city level. Mostly they regulate the place and manner of gun use (for example, prohibitions on carrying weapons in the city, or in a car, or concealed on your person). Many states also provide stiffer penalties for people who use a gun in a crime. There are also various forms of licensing. Some schemes disqualify high risk groups (those with serious criminal records, mental patients, etc.), others require people to apply for a licence (with or without a waiting period); still others also require registration of each gun; others again require proof of a need for a gun; in some places there is a complete ban on handguns. Most of these are city

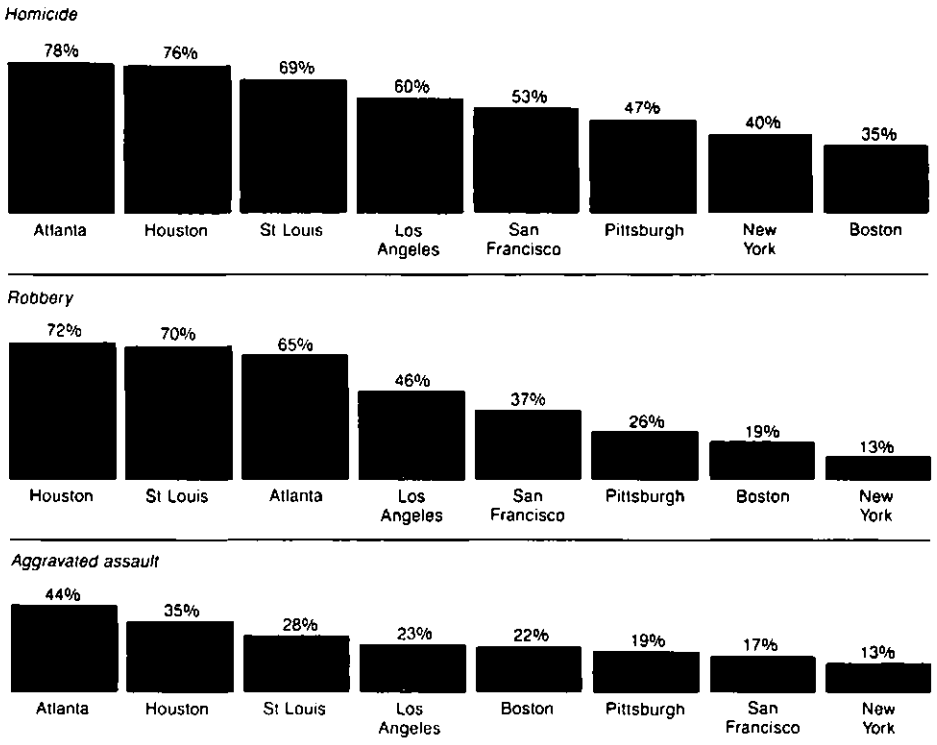


Figure 1
Percentage use of firearms in crime, eight US cities, 1967

From *The Citizen's Guide to Gun Control* by Franklin E. Zimring and Gordon Hawkins. Copyright 1987 by Macmillan Publishing Company. Reprinted with permission of Macmillan Publishing Company

and state laws. The American federal government has also legislated, mainly to restrict importation of and inter-state commerce in guns, particularly through the mail.

Zimring and Hawkins very clearly support gun control. Indeed they regard it as both necessary and inevitable. With respect to the effectiveness of existing gun control laws, they bring in an open finding. The huge number of guns already in circulation, the enormous variation of laws in neighbouring areas, the failure to provide resources for enforcement of the existing laws, and the need for better research make it impossible to conclude for or against the effectiveness of America's existing gun control laws.

Nevertheless, Zimring and Hawkins remain confident that better laws and better enforcement, especially at the federal level, can be effective. Those laws depend on public support for them. Perhaps surprisingly, Zimring and Hawkins report national opinion polls showing large majorities in favour of licensing and registration systems and 'little popular support for the idea that gun controls are somehow violations of America's basic freedoms'. No city or state has significantly weakened its gun control laws in the last twenty-five years. They also point to the emergence of major new political groupings in the United States (women, blacks, the elderly and the young) whose various interests may produce a much stronger anti-gun attitude in the United States. This would lead to much stronger support, especially at federal level, for states and cities which have strict gun controls, and, importantly, the resources to ensure that the laws on the books can be put into practice.

But would the cost of gun control—a daunting cost in the American context—be worth it in the long run?

Yes, according to Zimring and Hawkins, gun control is a crucial investment in America's future. If current trends continue, there would be a frightening 50 million additional handguns in circulation in America within the next half century. 'The domestic arms race' is one of the most powerful reasons for gun control. Although there would be a high cost in restricting the phenomenal increase in the number of new guns introduced into America every decade, Zimring and Hawkins conclude grimly that 'failure to pay short-run costs will mean that for many American citizens there will be no long run'.

□ □ □ □ □

What are the lessons of the American experience for other countries? I can say something of the country with which I am most familiar, Australia.

In 1979, one in six Australians owned a gun. Today one in four does. The links between gun availability and gun crime (to say nothing of gun accidents and gun suicides) are as clear here as they are in America. Studies by eminent Australian criminologists (Vinson, Harding, Wilson) are unanimous on this. Most recently, the New South Wales Bureau of Crime Statistics and Research has made the point forcefully in a comparison of urban and rural gun homicides.

As Figure 2 shows, significantly higher gun availability in rural areas was accompanied by significantly higher rates of gun deaths in rural areas.

Australians have recently become much more familiar with the slogans and arguments from the American gun debate. A spate of mass gun killings in 1987 sparked a volatile gun debate during 1987 and 1988. Arguments such as, 'the really determined killer will find another weapon', received great play.

However, Australian studies of homicide call this argument into question.

The vast majority of homicides are not carried out by really determined killers. They occur in heat of the moment, alcohol-charged situations where the availability of a gun makes the difference between life and death. The stereotypes and emotion which surround murder and manslaughter obscure the disturbing 'normality' of many homicides: the nice, quiet, responsible family man from down the street who turns his gun on a member of his family and then perhaps himself. In most cases—unlike America—the gun used will be a long gun, a much more deadly weapon than the handguns so commonly used in gun assaults in the United States.

And then there are the cases where the killer does not seem to have intended to kill at all but has killed someone by criminally negligent handling of a gun. The cases presented in the inset illustrate this sort of situation. Some of these gun homicides could have been prevented by restricting the availability of guns. But would the cost be worth it?

Since 1980, as Table 1 shows, 235 people have died in gun homicides in one Australian state, Victoria (population: 3 million). In cold dollars, the average social cost of a homicide is more than $1 million—a figure made up of the victim's lost income, trial and imprisonment of the offender, loss of offender's income and the cost of providing alternative support for dependants of the victim and the offender. The social cost of gun suicides and fatal gun accidents should be added to this figure, as should the cost of other

Table 1
Victoria: Gun homicides 1980-87

	Gun homicides	*Total homicides*	*Percentage*
1980	24	55	43.6
1981	24	64	37.5
1982	25	64	39.1
1983	32	67	47.8
1984	29	75	38.7
1985	22	62	35.5
1986	31	72	43.1
1987	48	102	47.1
Total	235	561	
			Average = 41.5%

Source: Victoria Police—Homicide Squad.

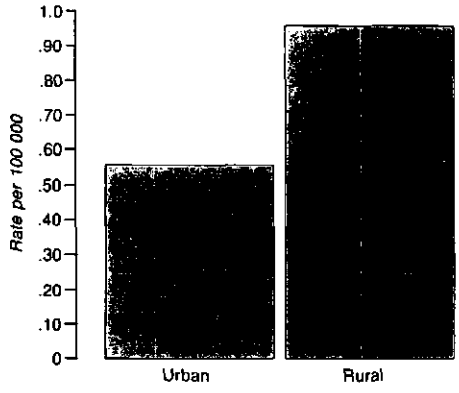


Figure 2
New South Wales: Gun homicides 1968-81

Source: A. Wallace, Homicides the Social Reality (New South Wales Bureau of Crime Statistics and Research 1986) page 65.

gun-related crime. The initial cost of setting up a gun control system and compensating existing owners is not great in comparison with the savings over the next ten to twenty years and beyond. Who would be the losers in such a scheme? Obviously existing gun owners, many of whom passionately believe in their 'right' to own a firearm. Their sense of grievance has led many of them to say that they would defy the laws regulating gun ownership.

While the grievance is understandable, no responsible government can stand by in the face of the available evidence and contemplate annual lists of avoidable deaths. Several things must be done for the future:

- ☐ attitudes to gun ownership must be changed so that it is seen as a privilege, not a right;
- ☐ the growth in the number of guns and gun owners must be stopped;
- ☐ whatever the position with existing gun owners, no new generation of gun owners should be allowed to see gun ownership as anything but a tightly-policed privilege.

At a time of great concern about the problem of crime, hesitation about taking one of the most effective measures to reduce the incidence of our most serious crime is difficult to understand. It is to be hoped that Australian governments, both state and federal, will not miss this opportunity to make a sound investment in our future. This is the message from America.

☐ ☐ ☐ ☐ ☐

As part of its review of the law of homicide, the Victorian Law Reform Commission has made a study of homicide cases prosecuted in Victoria since 1980. Here are some examples of gun homicides where the offender certainly had not pre-planned the killing; in some cases the offender had not intended to kill at all. The easy availability of a gun was a crucial factor in the victim's death.

Case 1: 1985

The accused and his teenage friends were out shooting in a paddock near a railway line. When he saw an adult approaching, the accused put his shotgun into a broken position. On seeing that it was a friend—and in front of everyone—the accused snapped the gun closed, pointed it and fired at close range, killing the friend. The accused insisted that he thought that the gun was unloaded and that he was only trying to scare the friend.

Case 2: 1985

The accused was a 13 year old boy. One day he came home from basketball and got into a heated argument with his 18 year old sister who taunted him saying that he was no good at sport, that he was ugly, etc. The sister went off to her bedroom. The boy went and got a shotgun from his father's bedroom and fired one shot into his sister's darkened bedroom. The sister was killed.

Case 3: 1982

The accused, a 19 year old man, was at home with his father and brother. They had been drinking. After a slight argument, the accused grabbed his father's gun, checked to see that it was not loaded, and pointed it at his father and brother, clicking the firing mechanism harmlessly. On the last click the gun fired and killed the brother. The accused said he did not think he had cocked the gun.

Case 4: 1986

The accused, aged 16, and several others were watching videos together. The accused found a gun belonging to his older brother. The accused claimed he had intended to clean the gun. The others said he came into the room, removed the magazine and pointed it at his friend. The gun went off and the friend was killed.

Case 5: 1980

The male accused, aged 17, and a 15 year old female friend were at his house with some other friends. They had all been drinking. The accused and the girl argued about the dangerousness of guns. She claimed they were very dangerous; he said they were not. He got his gun out and was holding it by the butt and pointing it at her. She grabbed the muzzle, the gun went off and she was killed. He said that it had gone off accidentally.

Case 6: 1984

The accused and three others were on a duck shooting trip. They had made camp, had a barbecue and a few drinks. They were all having a few shots with various guns, including a pistol owned by one of them who worked as a security guard. The accused fired a shot over his friend's head 'as a joke'. Later the accused went to bed. His friend went to his tent, possibly to get even for the joke. The accused got a fright and fired to scare whoever was outside. He killed the friend.

Teaching Criminology in South Australia

Criminology Australia intends to run articles on the teaching of criminology throughout Australia. Rick Sarre of the South Australian College of Advanced Education's Law Department in the School of Business has provided the following look at courses teaching criminology in South Australia.

Three tertiary institutions in South Australia offer units and courses which could be described as instruction in criminology and criminal justice matters.

University of Adelaide

At the Law School, Dr Allan Perry offers a one-term course in criminology.

The course aims to provide an introduction to the historical and contemporary perspectives on the causes of crime and criminality, focusing particularly on exploring the relationship between social, political and economic institutions and the legal system.

It is said to be interdisciplinary, not following a traditional legalistic approach, but emphasising developments in the natural and social sciences which relate to understanding the causes of crime.

There are two main areas of study: the historical development of criminology in the biological, psychological and sociological schools; and an examination of the leading contemporary theories of criminogenesis including social interactionism, naturalism, phenomenology, labelling, socialism and the new conflict theorists.

Dr Perry says he considers it to be an intellectually rigorous analysis of the development of criminological theory.

'More specifically, I attempt to disentangle the disparate threads of criminological theory and present it to the students in a way which enables a coherent understanding of what I consider to be the core theoretical underpinnings of criminology.

'My only regret is that there is insufficient time to develop ideas in adequate depth so the students generally are only able to acquire an awareness of the complexity of the subject rather than any real insights.'

South Australian Institute of Technology

As part of the Associate Diploma in Business Administration, Mr Harold Weir offers a Justice Administration option as part of his contribution to the Elton Mayo School of Management.

The Justice Administration option is normally taken by employees of the Police Department, the Court Services Department or the Department of Correctional Services.

In fact, the course was specifically set up for such personnel. It is planned to replace the current award in 1989 with an award of Bachelor of Business (Justice Administration option).

In the first year, Justice Administration 1 gives students an understanding of the foundations of the justice system and the contribution of the disciplines of philosophy, biology, psychology and sociology. Individual criminal justice agencies such as the police, the courts and the correctional services are discussed and their roles and how these roles are co-ordinated are examined.

Justice Administration 2 provides a study of the criminal justice system in Australia generally, and South Australia in particular.

The administration aspects of the course are continued with the subject Personnel Management 1A covering job analysis, staff recruitment, selection, training and appraisal, and the development and use of personnel records.

The last major segment of the course allows students to specialise in administration associated with their employment, that is police, courts or corrections. Overall the Associate Diploma in Business (Justice Administration Option) takes four part-time years.

The South Australian College of Advanced Education

A unit entitled Issues in Civil and Criminal Justice is taught by Rick Sarre at the Magill Campus of the SACAE. It was introduced in 1985, convenes in the first semester of each year and is a full six point unit.

It is offered as an elective unit in a number of courses including BA (Communication Studies), BA (Journalism), Bachelor of Business (Office Administration) and Bachelor of Education (Secondary Business) and is a core unit of the Graduate Diploma of Education (Legal Studies). It is also offered by correspondence.

The unit aims to give students: an introduction to the structure and operation of the criminal and civil justice system in Australian society; an appreciation of the distinction between the structure of the civil and criminal court hierarchy; and an opportunity to consider and debate contemporary issues touching upon justice and law which are of particular interest to the community.

It is intended that students gain an understanding of the difficulties associated with the concept of justice in a pluralistic society and the role effectiveness and accessibility of the

courts and the legal profession in dispensing justice.

In doing this the student should be able to recognise the issues and arguments attendant upon any debate concerning criminal and civil justice and participate in legal debate in situations where the law is ambiguous, unclear or developing rapidly and where the legal issues are of concern to the community.

An ability to distinguish between civil and criminal rights, processes, liabilities and remedies will be one of the objectives.

Course content

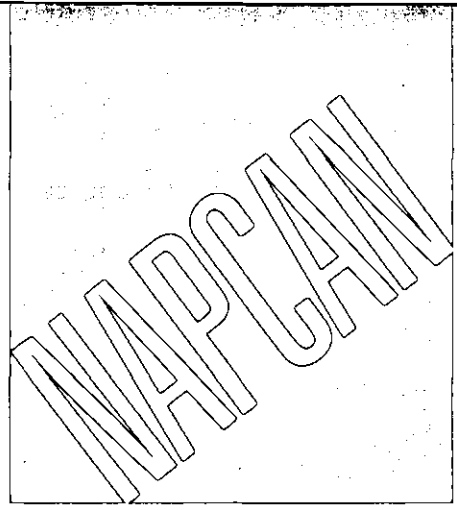
- ☐ The formulation of a justice policy; civil justice in practice—the trial process and non-legal dispute resolution;
- ☐ theories of policing and social control—criminal investigation and police accountability;
- ☐ the criminal trial process—prosecution, the role of judge and jury;
- ☐ sentencing—and introduction to theories of punishment;
- ☐ an introduction to criminological and penological thought—defining and classifying crime, dealing with offenders;
- ☐ aspects of the relationship between the law, psychology and psychiatry—the influence of the work of social scientists upon the law;
- ☐ law reform—the law of tort, no-fault liability and compensation; minority groups and discrimination; victimless crimes; confronting scientific and technological change.

Mr Sarre explains that the subject can be expected to do no more than alert students to the various issues of social and legal justice in Australian society today.

'Only one week's work is set aside for a discussion of the history and future trends of criminological theory. It covers little more than an overview of the various schools of criminology, with an emphasis on the sociological schools and the rise of radical criminology.

'The structure of the unit is such that students do not get too overburdened by the work and thus do not lose sight of the wood for the trees. There is much discussion in class concerning current affairs, and political considerations.

'On the other hand, the peripheral nature of the coverage of each topic denies the student the ability to pursue an issue little more than superficially. However, the broad range of written work that may be submitted for assessment tends to overcome the superficiality to some extent.'



Prevention of child abuse

A national association has been formed to open lines of communication between the many Australian community groups and professionals working towards the prevention of abuse and neglect of children.

The National Association for the Prevention of Child Abuse and Neglect (NAPCAN) aims to initiate and support appropriate prevention programs and operate as a lobby group for the implementation of necessary reforms, including:

- ☐ a national inquiry into all forms of child abuse;
- ☐ a Federal Child Protection Act;
- ☐ adequate provision of resources for child protection throughout the country; and
- ☐ legal reform.

NAPCAN is committed to working for the prevention of all forms of child abuse as defined to include physical abuse, sexual abuse, neglect and emotional maltreatment.

NAPCAN believes that education of children and for adults is of vital importance if we are going to break the cycle of abuse and neglect and see future generations of caring, contributing community members.

Community awareness is the first and most important step in the prevention of abuse, followed by provision of treatment, follow-up services and community based prevention programs.

The association will recommend a multi-disciplinary approach to prevent secondary abuse by badly handled welfare, medical, legal and judicial intervention. It should be possible to pool resources to help everyone affected by child abuse and neglect and recognise the need for long term support for children and their families.

To this end, NAPCAN plans to establish a national directory of resource materials and a national directory of legal and health professionals with appropriate experience and expertise.

Other plans include a Neighbour Network scheme throughout Australia designed to encourage low key community caring and to help in the alleviation of stress which can lead to abusive situations. This scheme will operate similarly to Neighbourhood Watch, with the emphasis on protection and caring for people rather than property.

Neighbour Network aims to provide support for all sections of the community from infants to the elderly by tapping into the community itself to help people cope with day to day life.

NAPCAN is also working towards establishing children's trust funds to help finance education programs and resource development.

Under the guidance of a federal committee of management, committees have been formed in each state and territory. The first annual general meeting/conference of NAPCAN is to be held in Canberra on the 15 and 16 July 1989.

Persons interested in NAPCAN's activities or in attending the conference may contact the executive director on telephone (02) 233 3536 or write to PO Box C302, Clarence Street, Sydney, NSW 2000.

Institute Information Services

CINCH, the Australian criminology database, is available through the National Library of Australia's OZLINE service. CINCH is a bibliographic database with Australian subject matter, relating to criminology, the criminal law, and the criminal justice system. The OZLINE Help Desk can be contacted through (062) 62 1636 or CINCH leaflets can be obtained from the J.V. Barry Memorial Library at the Australian Institute of Criminology. A detailed description of CINCH services will appear in the next issue of *Criminology Australia*.

The Australian Institute of Criminology *Catalogue of Publications 1989* lists all titles published by the Institute up to June 1989. It is available from the Publications Section, PO Box 28, Woden, ACT 2606.

In these service pages, *Criminology Australia* intends to present as much news as possible on new publications, conferences and appointments. To do this we will need to receive the notification as early as possible, preferably over six months ahead in the case of conferences, seminars and courses. News about events in South East Asia and the Pacific are particularly welcome. Please address copy to Jack Sandry, Editor *Criminology Australia*, PO Box 28, Woden, ACT 2606.

Publisher: Australian Institute of Criminology

Challinger, D. (ed) 1989,
Corrections in Asia and the Pacific: Record of the 9th Asian and Pacific Conference of Correctional Administrators.
ISBN 0 642 143161. 46 pp. $10.00.

This record of conference discussions contains information relating to trends and patterns in penal populations, inter-agency co-operation with the criminal justice system, safeguarding of human rights within the penal system and media power and influence upon correction systems.

Mukherjee, S.K., Scandia, A., Dagger, D., and Matthews, W. 1989,
Source Book of Australian Criminal and Social Statistics: 1804–1988.
ISBN 0 642 13569 X. 694 pp. $40.00.

This books contains a significant collection of tables and charts detailing frequency counts of events, actions, characteristics or persons and other criminal and social statistics. It contains no analysis but provides rates, ratios, proportion or percentage distributions and is organised according to subject areas: demography; economy; police resources; crimes known; children before courts; cases processed at magistrates courts; higher courts trials; prison resources and prisoners; and death statistics.

Myrtle, J. (ed) 1988,
Australian Criminal Justice and Welfare Librarians' Seminar: Proceedings of the Sixth Seminar for Librarians in the Criminal Justice System (incorporating the First Welfare Information Network Seminar). Seminar Proceedings No. 25.
ISBN 0 642 14116 9. 156 pp. $10.00.

This biennial seminar promotes co-operation between criminal justice libraries throughout Australia. This record of the proceedings includes papers outlining low cost technological developments, and other strategies, to assist criminal justice librarians not only in overcoming a sense of isolation, but in developing effective networks.

Trends and Issues series
General Editor, Dr Paul Wilson
ISSN 0817-8542. (Subscription $15.00 per annum)
No. 17 Swanton, B. 1989, *Research brief: Missing Persons.*
No. 18 Mason, G. and Wilson, P. 1989, *Alcohol and Crime.*

National Committee on Violence

National Committee on Violence 1989,
Violence in Australia. Monograph No. 1.
ISBN 0 642 14051 0. 52 pp. $10.00.

Grabosky, P.N. 1989,
Victims of Violence. Monograph No. 2.
ISBN 0 642 14398 6. 56 pp. $10.00.

Violence Today series
ISSN 1032-7894 (Included in Trends and Issues subscription price of $15.00 per annum)

No. 1, Chappell, Duncan 1989,
Violence, Crime and Australian Society.
ISBN 0 642 14303 X. 8 pp.

No. 2, Mugford, Jane 1989,
Domestic Violence.
ISBN 0 642 14387 0. 8 pp.

No. 3, Dwyer, Kim and Strang, Heather (forthcoming),
Violence against children.
ISBN 0 642 14606 3.

Publisher: Butterworths Pty Ltd

Bird, Greta 1989,
The Process of Law in Australia: Intercultural Perspectives,
ISBN 0 409 49448 8, 432 pp., $39.

This work uses as its starting point the uniqueness of the Australian legal system, a system which is being developed to reflect the complexity of Australia's multicultural democracy. Topics covered include: the reception of English law from the perspective of the Aboriginal inhabitants; migrants and work accidents; access and equity: courts and tribunals values as expressed in statute law.

Bishop, John B. 1988,
Prosecution without Trial,
ISBN 0409 49478 X, 336 pp., $59.

This book examines the prosecution of indictable charges without trial in New South Wales in particular, but throughout Australia generally. The analysis of the subject is sequential, exploring the procedures to disposition without trial in time sequence through the hierarchy of the courts. All aspects of charge withdrawal, charge dismissal, summary hearing, Nolle Prosequi and plea of guilty are investigated.

Campbell, Ian G. 1988,
Mental Disorder and Criminal Law,
ISBN 0 409 49482 8, 256 pp. $49.

This work analyses the role of the law of insanity in the criminal justice process in Australia and New Zealand, including the decisions that need to be taken concerning the obtaining of and presenting evidence to support such a defence. Topics are covered in three stages—investigative, adjudicative and dispositional, while special emphasis is placed throughout on the utility of psychiatrists and psychologists in providing information and expert testimony in relation to defence of insanity, pre-sentence reports, the calling of courts' expert witnesses on liability questions and the use of expert evidence in determining the credibility of witnesses.

Freckelton, Ian R. & Selby, Hugh 1988,
Police in our Society,
ISBN 0 409 49545 X, 240 pp., $14.50.

This work is a collection of some of the papers presented at a series of seminars held in Victoria in 1987 entitled 'Police in our Society'. It is divided into five parts: Policing our Community, Police and the Media, Police Powers, Police Management and External Review of Police Activity. Contributors include John Bryson, Jocelynne Scutt, George Masterman and Tony Blackshield.

Wells, W.A.N. 1988,
Evidence and Advocacy,
ISBN 0 409 49349 X, 300 pp. $59.

This book is an account of the most important principles of evidence, covering the practical problems counsel must resolve as soon as they appear in court. The book includes information on: the formulation of a personal philosophy for life at the bar; relationships between bench and bar; relevance; the doctrine of Res Gestae; hearsay; and the techniques for effective examination, cross-examination and re-examination (including special techniques called for by statutory provisions).

Publisher: Cambridge University Press

Braithwaite, J. 1989,
Crime, Shame and Reintegration,
ISBN 0 521 355672, 240 pp.

This book put forward the theory that the key to why some societies have higher crime rates than others lies in the way different cultures go about the social process of shaming wrongdoing. It is suggested that when shaming is done within a cultural context of respect for the offender, it can be a powerful, efficient and just form of social control.

Publisher: Collins Publishers Australia

Tregurtha, Andrew 1988,
Between Dark and Daylight: An Autobiography.

ISBN 07322 2472 1. 216 pp. $12.95.
This is Andrew Tregurtha's own story of his short, tragic life. He suffered from undiagnosed hyperactivity and dyslexia as a child, resulting in confrontations with authorities and his move to Kings Cross as a 15 year old, where he became involved in a life of crime. At the age of 16 Andrew Tregurtha was arrested for murder, and in this book he recounts his experience of the criminal justice system, before eventually taking his own life at Berrima Gaol at 22 years of age.

Publisher: Melbourne University Press

De Q. Walker, Geoffrey 1988,
The Rule of Law: Foundation of Constitutional Democracy,
ISBN 0 522 84347 6, 504 pp. $62.95.
Professor Walker describes the history of the rule of law, analyses its meaning, surveys its present condition, and gives a prognosis for its future. The author argues that the survival of any useful rule of law model is currently threatened by distortions in the adjudication process, by the perversion of law enforcement (through the fabrication of evidence and other means), by the excessive production of new legislation with its degrading effect on long-term legal certainty and on long-standing safeguards, and by legal theories that are hostile to the very concept of the rule of law.

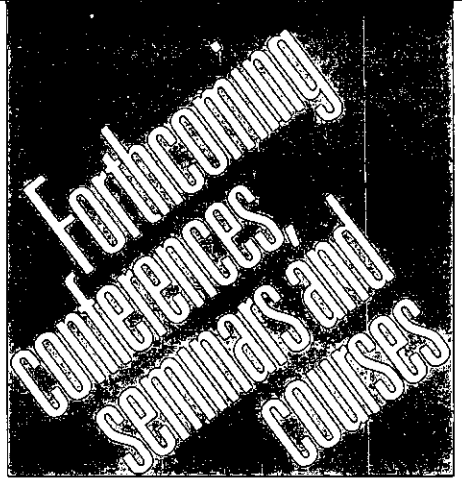
Hansen Fels, Marie 1989,
Good Men and True: The Aboriginal Police of the Port Phillip District 1837–1853,
ISBN 0 522 84350 6, 320 pp., $34.95
In this account of Victoria's early history, Marie Hansen Fels describes those factors which lead to Aboriginal enlistment in the police force, and contrasts this event with the failure of missionary endeavours. These Aboriginal police were La Trobe's orderlies; they were escorts to the Governor of New South Wales and the Bishop of Melbourne, the first guards at Pentridge, the first police on the goldfields, and they may be credited with the relative absence of conflict in rural Victoria in the 1840s.

Videotapes

'How Laws are made' produced by Butterworths. This videotape is a useful tool in teaching students the principal elements of how laws are made and covers such topics as:

- ☐ Origins of the Australian and British legal systems;
- ☐ Australia's system of government;
- ☐ The Court system in Australia;
- ☐ The Adversary system of trial;
- ☐ Solicitors and barristers.

Cost is $59 (excluding Sales Tax). For further information, contact the nearest branch of Butterworths Pty Ltd.



Australian Institute of Criminology

Organised Crime
Canberra, 5–7 September 1989
This seminar will consider what is known about organised crime groups in Australia and the various initiatives that may be used to counter them. The National Crime Authority, the investigative needs and resources of police, and legislation allowing the confiscation of assets of convicted people will be discussed, as well as the wider issues relating to a balance between the need for individual freedom and the need to allay the fears of the community.

National Committee on Violence and the Australian Institute of Criminology

National Conference on Violence
Canberra, 10–13 October 1989
This conference comes towards the end of a year's work by the National Committee on Violence, which was established following the Prime Minister's Summit on Gun Control. It will be an opportunity for the Committee to hear the results of researchers' work and encourage discussion, particularly in regard to practical moves that may be possible for dealing with violence.
For further information relating to any of the above seminars, please contact:

Mr Dennis Challinger
Assistant Director (Information & Training)
Australian Institute of Criminology
PO Box 28, Woden, ACT 2606.
Tel: (062) 83 3807

Centre for Commercial Law & Applied Legal Research, Faculty of Law, Monash University

Expert Evidence Seminar
Sydney/Melbourne, July/August 1989
For more information about this seminar contact:

The Director
Centre for Commercial Law & Applied Legal Research
Faculty of Law, Monash University,
Clayton, Vic 3168.

International

Fifth World Congress of Victimology
Acapulco Princess Resort, Mexico
July 26–30 1989
The objective of this annual Congress is to provide medical, legal, mental health, justice and social service professionals and other intervenors with the tools and information needed to understand the dynamics of victimisation and the consequences of abuse, disaster, and loss; with the strategies for short- and long-term intervention and treatment; with an update of current research in the field; and with an agenda for reform.
Registration from July 1

Participants	US$300
Presenters	US$250
Social functions for spouses	US$200

For more information contact:

World Congress
2333 North Vernon Street
Arlington VA 22207 USA
Tel: (703) 536 1750.

Criminology '89, including 7th International Congress of Criminologists from Socialist Countries, and 1st Cuban Meeting on Criminology
Cuba, 21–24 November 1989
During the 7th International Congress the following topics will be discussed:

- ☐ Application and Prospections of Criminological Research in the Struggle against Crime
- ☐ Crime Prevention. Systemic Approach
- ☐ Urbanization and Criminality
- ☐ Community Participation in Preventive Crime
- ☐ Non-Conventional Crime
- ☐ Crime against the Economic System
- ☐ Crime against the Environment
- ☐ Crime against the Cultural Heritage
- ☐ Minors and Youth Crime

The main criminological research carried out in Cuba in recent years will be dealt with at the 1st Cuban Meeting on Criminology. Scientists will deliver special lectures on major aspects of their work, and visits to penitentiaries and other institutions are also scheduled. Criminology '89 (the main topic is Delinquency Problems in Socialist and Socialist-Oriented Countries) will carry out its work in plenary sessions.
Registration fees:

Delegates	US$100.00
Accompanying persons	US$50.00

For additional information contact:

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