secure his release he may be waiting a lot longer. That is, unless he can raise a few hundred dollars. Then he can buy his way out.

Brett Mason worked until recently as a human rights educator with the United Nations Transitional Authority in Cambodia. He now works at the Justice Studies Unit, Faculty of Law, Queensland University of Technology.

POLICING

Naked abuse

Strip searches by police in Melbourne. JUDE McCULLOCH and GREG CONNELLAN report.

For most Victorians, the news of the Tasty Nightclub raid by police in August this year probably came as a shock. Prior to the raid, most people never imagined that if they were out at a night spot having a dance, a drink, or something to eat, that it was possible that dozens of armed police officers would arrive, stand everybody in the venue up against a wall, and demand that they strip naked. This is exactly what happened to more than 400 people in August this year at a nightclub in the city.

Unfortunately for legal centre workers and some of the people we see, the behaviour of the police came as less of surprise. For years legal centres have been seeing people who have been made to strip by police. Apart from the people we see in legal centres, sex workers and Aboriginal women have long complained that the police make them strip as a way of sexually harassing them. In addition, visitors to prisons are frequently made to strip as a condition of their visit, and prisoners are routinely required to strip naked.

In October 1992, a legal centre worker presented a paper titled 'Sexual Assault at the Hands of the State' at a conference on sexual assault, which pointed out that strip searches are frequently carried out by police and prison officers and that these searches are experienced as sexual assault by those suffering them and would be considered sexual assault if engaged in by civilians. The paper also pointed out that the police and prison authorities were virtually unaccountable in their use of this power.[1]

In October 1992, legal centres wrote to the police and requested, under freedom of information legislation, police statistics relating to strip searches. Legal centres were trying to find out how often police strip searched people, who they strip searched, and with what result. When the answer came back that no records were available in relation to police strip searches, legal centres wrote to the Ombudsman complaining that as no records were kept it was impossible to judge whether the procedure was being abused, and that given the invasive nature of the searches police should at least be required to keep records. The Ombudsman wrote back saying he could not see any problem with the police not keeping records and that people who thought the police were abusing the procedure could complain.

Over the past few years, a number of people have lodged formal complaints about police strip searches. These complaints have been investigated by police. The Deputy Ombudsman (Police Complaints) oversees the complaints. None of these complaints has led to changes in police behaviour or guidelines.

Several months prior to the nightclub raid, legal centres and other concerned community organisations wrote an eight-page letter to the Attorney-General, Jan Wade, pointing out that the police were carrying out strip searches, that people experiencing the searches were extremely traumatised by them and that the police in some cases appeared to be using the procedure to intimidate and sexually harass people, rather than for any investigative purpose. Legal centres suggested that a law needed to be put in place which required police to get a Magistrates' Court order prior to conducting strip searches. The letter also predicted that the police and government would be sued if police continued to strip search people without any checks on their use of the procedure. The Attorney-General did not reply to the letter until after the nightclub raid, and after some publicity which pointed out her tardiness in replying.

Since the publicity surrounding the night club raid, more and more people are coming forward, who have suffered these searches at the hands of police. Legal centres and the Legal Aid Commission are acting for a number of people who are suing the police for their behaviour. In addition, about 150 people from the Tasty Nightclub raid are taking action against the police, and six actions have already been issued in the County Court.

Despite the fact that police have been strip searching people for years, the research about the legal status of strip searches carried out since the nightclub raid seems to indicate that the police have no, or only very limited, power to conduct these searches, and that probably thousands of people have been illegally searched in a fashion that makes the conduct by police a sexual assault or indecent act. The research also indicates that the prison authorities may be acting illegally in routinely strip searching prisoners.

At common law, the police have very limited powers of search. It is worth noting the words of Donaldson LJ in the English case *Ludley v Turner* (1981) 1 QB at 134 and 135. After citing Halsbury's Laws of England 'There is no general common law right to search a person who has been arrested', Donaldson LJ held:

> It is the duty of the courts to be ever zealous to protect the personal freedom, privacy and dignity of all [persons] . . . such rights are not absolute. They have to be weighted against the rights and duties of police officers, acting on behalf of society as a whole . . . what can never be justified is the adoption [by police] of any particular measures without regard to all the circumstances of the particular case . . . the officer having custody of the prisoner must always consider . . . whether the special circumstances of the particular case justify [a search] . . . he should appreciate that they [searches] involve an affront to the dignity and privacy of the individual . . . in every case a police officer ordering a search or depriving a prisoner of property should have very good reasons for doing so.

The new *Crimes Act 1958* (Vic.) provisions with respect to forensic procedures (ss.464(2), 464 R,S,T,U,V and W) clearly include strip searches within the definition of forensic procedure. There is a very strong argument to be put that the *Crimes Act* now covers the field so far as strip searches are concerned in Victoria. If this view is adopted by the courts, then strip searches will only be able to be carried out within the terms of the *Crimes Act*.

This would mean strip searches may only be requested by police (and only police) if there are reasonable grounds to believe the strip search would tend to confirm or disprove the involvement of the suspect in an indictable offence. The police may only act on their request if the suspect gives his or her informed consent or the Magistrates' Court makes an order in response to a police application.

Even if the courts adopted the view that the common law as set out by Donaldson LJ survived the *Crimes Act* provisions, it is doubtful that they could conclude the word 'search' in other statutory provisions (such as the *Drugs, Poisons and Controlled Substances Act 1981 and Control of Weapons Act 1990)* includes any reference to 'searches involving the removal of clothing or the examination of the body' which is clearly dealt with in the *Crimes Act* definitions of 'Forensic Procedure' and 'Physical Examination'. Further, the *Crimes Act* definition specifically excludes the taking of finger prints from the definition of forensic procedure. By inference, the failure to exclude other physical examinations of the body, and removal of clothing type searches, strongly suggests that the *Crimes Act* provisions cover the field as far as statutory strip searches are concerned.

Given that the dignity, privacy and sanctity of our bodies is our most fundamental and basic human right, then it cannot be presumed that Parliament intended to grant police a power to strip away that human right at their absolute discretion. When it did address the issue in the *Crimes Act,* the Parliament saw fit to provide the power on the basis of a determination by a magistrate in the absence of the informed consent of the suspected citizen.

It is a nonsense to suggest that in relation to trivial offences, Parliament intended police officers to be able to order citizens to strip naked at the absolute and unfettered discretion of the police officer acting on his or her subjective 'reasonable belief'.

The naked abuse of power by Victoria Police at the Tasty Nightclub served to focus attention on the issue of strip searches. The Attorney-General has been quoted as saying she believes that police do not have the power to undertake such searches; the Deputy Ombudsman (Police Complaints) is looking into police procedures pertaining to strip searches;and the police have announced that they are reviewing their procedures. Action should have been taken prior to the Tasty Nightclub raid. That it required the mass abuse of citizens and a great deal of publicity for this issue to be taken seriously by those in authority, demonstrates the extent to which police are a law unto themselves.

Jude McCulloch is a lawyer with the Western Suburbs Legal Service and Greg Connellan is a lawyer with Fitzroy Legal Service.

Reference

1. A version of this paper was published in (1993) 18(1) *Alt.LJ* 31.

JUVENILE JUSTICE

Policies of prevention

AMANDA GRAHAM examines implications of proposed new measures in New South Wales.

The New South Wales Government recently announced a series of new crime prevention measures aimed at juvenile offenders. These include a Juvenile Crime Prevention Advisory Committee, a Juvenile Crime Prevention Division within the NSW Attorney-General's Department, a Taskforce on Persistent Juvenile Offenders and a Local Offender Program.

These are consistent with similar initiatives in other Australian States, and reflect a significant shift in attitudes to crime control. There is a growing, worldwide acknowledgment that a reliance on traditional law enforcement mechanisms, such as the detection, prosecution and punishment/rehabilitation of offenders is of limited effect, especially in relation to those categories of crime where police apprehension of offenders is unlikely.

Where law enforcement is of limited utility, attempts to reduce or control crime rates need to considers those factors which are likely to motivate or influence potential offenders. Identifying such factors and introducing strategies to address them, in the expectation that levels of crime will be reduced is the central objective of 'crime prevention' schemes. Crime prevention strategies generally address opportunities for the commission of crimes, and individual offender motivation, encompassing theories of social disadvantage, situational opportunities and individual behaviours and risk factors.

Evaluation

Many countries have introduced programs with crime prevention potential, but there have been major difficulties in assessing their effectiveness. First, attempts to evaluate their impact have been limited, and there has been a failure to attempt any form of evaluation in many cases. Second, attempts at evaluation have been characterised by poor methodology such as a failure to define program goals adequately or establish control mechanisms. Third, evaluation has been complicated by unintended consequences, including the displacement of criminal activity, a heightened fear of victimisation, and the stigmatising of those participating in some programs as latent criminals. There are also circumstances in which crime prevention programs result in a higher crime rate, at least in the short term, due to an increased public awareness and willingness to report incidents to the police.

Research

In view of the inconclusive results of attempts to evaluate crime prevention programs, it is not surprising that Australian governments have been reluctant to commit funds to such initiatives. This reluctance has been justified by research such as that undertaken by the NSW Bureau of Statistics, which examines criminal career data and suggests that programs which are targeted at more serious recidivist offenders are likely to be more cost-effective. This research highlights the fact that a very small proportion of criminal offenders are apparently responsible for a disproportionately large percentage of criminal offences.

However, the implications of this research for the cost-effectiveness of interventions designed to reduce crime must be contrasted with US research. Long-term studies indicate that effective early intervention programs have a considerable flow-on effect, producing impressive cost savings in criminal justice, health, welfare and education services at a later stage. Such programs are aimed at the well-documented links between social disadvantage and crime, including initiatives such as providing assistance to 'at risk' pre-school children.

Despite the contradictory implications of such research for crime prevention efforts, it is clear that there must be an emphasis on evaluation and the establishment of clear targets and strategies, to ensure that interventions are cost-effective. While this seems somewhat self-evident, the practical implications raise a series of moral and political dilemmas for public policy makers.