

Action for Children & Youth Aotearoa

Submission on the Police Act Review Discussion Document: Policing Directions in New Zealand for the 21st Century

July 2007

Organisation Profile

ACYA is a coalition of non-governmental organizations, families and individuals whose purpose is to promote the well-being of children and young people in Aotearoa New Zealand through;

1. education and advocacy on the rights of children and young people;
2. encouraging the government to act on the recommendations of the United Nations Committee on the Rights of the Child; and
3. promoting opportunities for the voice and participation of children and young people.

In 2003, ACYA produced and published Children and Youth in Aotearoa 2003, the New Zealand NGO Report on New Zealand's implementation of the UN Convention on the Rights of the Child (NGO Report). The NGO Report was presented to the UN Committee on the Rights of the Child in Geneva in June 2003, accompanied by a video funded by ACYA and produced by New Zealand children called Whakarongo Mai / Listen Up.

ACYA has 100 or so members, both individual and child related organizations. These organizations are the leading child interest groups.

ACYA is indebted to Nessa Lynch who carried out research for this submission.

Introduction

- It is noted that the Discussion Document does not make specific mention of the policing needs of children and young people.
- As such this submission is necessarily general in its focus. ACYA will be in a position to make a more substantive submission once the review process is advanced to the Policing Bill stage.

1. Guiding Principles

The Discussion Document proposes that the Policing Bill contain a number of broad principles that would guide policing in New Zealand. In particular Paragraph 2.13 proposes that the principle of respect for human rights and diversity would be enshrined in the Act. As well as the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990, ACYA notes that New Zealand is bound by the UN Convention on the Rights of the Child.

2. Consistency with Children, Young Persons and Their Families Act

ACYA notes that there are already comprehensive legislative provisions dealing with the apprehension, investigation and disposition of criminal offending by children and young people contained in the Children, Young Persons and Their Families Act 1989 (CYPF Act).

ACYA notes the principle of the vulnerability of the child or young person:

S 208 (h) The principle that the vulnerability of children and young persons entitles a child or young person to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person.

ACYA also draws attention to the special protections afforded to children and young people when being investigated or questioned about a criminal offence (s 215-220 CYPF Act)

ACYA emphasises that any provisions relating to the policing of children and young people in the Policing Bill must be consistent with the special protections afforded to children and young people in the CYPF Act.

3. Consistency with Human Rights Instruments

ACYA notes the importance of policing legislation being in compliance with the international children's rights instruments to which New Zealand has committed.

A. *The UN Convention on the Rights of the Child*

The UN Convention on the Rights of the Child (UNCRC) is a binding treaty based instrument which New Zealand has agreed to be bound. There are a number of provisions relevant to the relationship between the Police and children/young people.

Article 40 of UNCRC states that:

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2 (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

ACYA stresses that any provisions of the Policing Bill dealing with children and young people should be in compliance with the principles contained in UNCRC.

In particular, the discretionary decisions made by Youth Aid officers and other Police officers in the Police Youth Diversion Scheme should always be cognisant of the rights of children and young people.

B. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice "The Beijing Rules"*

These Rules are not binding of themselves but provide valuable guidance on international best practice for youth justice. Rule 10.3 states:

Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

New Zealand has of course already established a Youth Aid section of New Zealand Police. The restorative and diversionary philosophy of the Youth Aid section has been praised in evaluations (eg Maxwell et al 2004).

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

These provisions emphasise the importance of the selection and training of specialised youth aid personnel. In the New Zealand context, it is important that Maori and Pacific peoples are represented.

Reasonable Force/Move on Powers

Paragraph 3.13 proposes that the Police be given the statutory power to ‘move on’ persons. The Discussion Document states:

This could strengthen the ability of officers to deal more efficiently with loitering that could impact on public safety and order. It could also be useful in cases where people interfere with Police investigations in public places. This includes vehicle crashes, brawls, crime scenes and other incidents where interference could hinder the way an investigation is conducted, or where the interference may impact on the safety of victims or other innocent people in the vicinity.

ACYA questions whether the power to move on might be used disproportionately against ‘loitering’ young people. There would be a need for safeguards to ensure that this power would not be used to move young people who are simply congregating without causing trouble.

ACYA is of the view that there is little purpose in giving the Police any additional powers to move people on as the Police can already arrest persons for obstruction under s22 of the Summary Offences Act 1981, if they are obstructing a public way and do not move upon police instruction. ACYA views this existing power as sufficient to get people to ‘move on’ as it arguably already gets used more liberally than perhaps it was intended. ACYA notes that it is also an offence under the s23 of the same Act to resist or obstruct, or incite anyone else to resist or obstruct, a police officer in the execution of his or her duty.

Paragraph 3.35 proposes that the use of handcuffs be deemed reasonable force for police officers. ACYA questions whether the use of handcuffs is reasonable force for children and young people. ACYA notes again the principle of children and young people’s vulnerability as enshrined in s 208 of the CYPF Act. ACYA would oppose any move that intends to define the use of handcuffs, or any prescribed form of force used by the police, as

'reasonable force' - the 'reasonableness' of force should always be measured against the circumstances in which it was used.

Liquor Infringement Notices

Paragraph 6.10 proposes that the Police be given the power to issue on the spot infringement notices for 'fake ID' offences (that is when a minor uses false identification in an attempt to purchase liquor).

Should this power be introduced, it is important that the particular vulnerability of children and young people during the investigation of offences (s 208 Children, Young Persons and Their Families Act 1989) be recognised. As the consultation paper *Perspectives on policing: An analysis of responses received on the Police Act Review Issues Papers* notes, the principles of natural justice should be emphasised at all times.

Consultation with Young People

- The New Zealand Police are to be commended for facilitating the participation of young people in the consultation process.
- The Police Act Review website gives a number of examples where children and young people have been encouraged and facilitated to participate in the consultation process. This includes policing related debating competitions at secondary school and university level as well as through the Ministry of Social Development Youth Voices programme.
- These initiatives are a positive development and are in line with New Zealand's obligations under Article 12 of UNCRC to facilitate meaningful participation of children and young people in matters affecting them.