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**‘When the stars align’: decision-making in the NSW
juvenile justice system 1990-2005**

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A thesis submitted in fulfilment of the requirements for the degree of Doctor of
Philosophy

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Abstract

This thesis examines decision-making in the New South Wales *juvenile justice system*. It investigates what factors and which people influenced the setting of policy agendas and the choice of policy options during the period 1990 – 2005. Using data from in-depth interviews with key policy actors and from documentary analysis, it aims to identify the dynamic interplay of historical, institutional, legal, professional, pragmatic and political factors within wider economic, social and public policy contexts to explore how and why juvenile justice policy developed in the way that it did during this period.

The time frame for the study begins with the publication of the report *Kids In Justice: A Blueprint for the Nineties* by the NSW Youth Justice Coalition, and continues to 2005, a year marked by the publication of the NSW Law Reform Commission's Report on Young Offenders, public street disturbances in suburbs of Sydney and the resignation of the Labor Premier the Hon. Bob Carr on August 6th. This time frame is significant as it epitomizes what appears to be a gradual, although not complete shift in approaches to juvenile justice policy: from the promise of potentially progressive diversionary strategies envisaged in the *Kids in Justice Report* to an approach which increasingly appeared to be concerned with control and punishment and with appeasing media demands.

The thesis is a trans disciplinary study. It draws on insights from law; policy studies, media studies and criminology, and pulls them together to develop a unique analytical approach to juvenile justice. It adopts a blended theoretical perspective by combining key elements of critical social sciences with complexity theory together, in an approach, which has been termed by Byrne (1998, 2011) as 'complex realism' and by Carroll (2009) as 'critical complexity'.

The thesis concludes that decision takes place within an historically contingent context of what can be termed 'negotiated order'. There are elements of certainty in the decision-making process but it is also characterised by serendipity and change. Policy processes are dynamic and change can be at times minimal and incremental and at other times monumental. It is argued that people and their ambitions,

emotions, skills and experiences are absolutely fundamental to any understanding of policy and this thesis emphasises their role in decision-making.

It is anticipated that the insights gathered from looking at this moment in the history of juvenile justice and the influences on decision-making will not only contribute to a more detailed understanding of the policy process in criminology and related disciplines, but might also provide those engaged in advocacy and reform with some tools for even more effective action.

Table of Contents

Abstract	ii
Acknowledgments	viii
Chapter 1. Introduction	1
1.1 Overview	1
1.2 Background	2
1.3 Gaps in understanding	5
1.4 A trans disciplinary approach	8
1.5 Theoretical perspectives and methodology	10
1.6 Research design	17
1.7 Juvenile justice or youth justice, system or process?	18
1.8 Thesis Structure	20
Chapter 2. Understanding the policy process	22
2.1 Introduction	22
2.2 Defining policy	22
2.3 The policy process: opportunities for decision-making	24
2.4 Policy streams, agendas and alternatives	26
2.5 Policy decisions in a complex system	30
2.6 Concluding remarks: a complex dynamic policy approach	42
Chapter 3. Understanding juvenile/youth justice: models, discourses, strategies and rationales	44
3.1 Introduction	44
3.2 Models and governmentality	45
3.3 Welfare, justice and punishment	49
3.4 Corporatism – the ‘third model of juvenile justice’	54
3.5 Radical critiques: A focus on the agents of social control	55
3.6 Risk management, actuarial justice and responsabilisation	58
3.7 Risk pre-crime, security and contractualism	60
3.8 Restorative justice	62
3.9 Human rights	64
3.10 A neo-colonial perspective	65
3.11 Conclusions	68
Chapter 4. The media and the policy process	71
4.1 Introduction	71
4.2 Defining media	72
4.3 The role of the media from a policy perspective	72
4.4 Media and policy in sociology and criminology	73
4.5 Media as a contested political and policy domain	82
4.6 A symbiotic relationship	83
4.7 Media management	84
4.8 Inside the media: setting the news and policy agendas	89

4.9 Concluding remarks	90
Chapter 5. The research	92
5.1 Introduction	92
5.2 Critical complexity and research	92
5.3 Research aims and questions	94
5.4 The research strategy	95
5.5 Research methods	96
5.6 Data collection and analysis	100
5.7 Ethical considerations	112
5.8 Concluding remarks	114
Chapter 6. A tale of two policy streams	115
6.1 Introduction	115
6.2 Historical context	116
6.3 The early impact of the Kids in Justice Report	120
6.4 Government initiatives	123
6.5 Bipartisan support for diversion and rights	130
6.6 Beyond the YOA	133
6.7 Whatever happened to human rights?	146
6.8 Discussion	147
Chapter 7. Knowledge, evidence and decision- making	149
7.1 Introduction	149
7.2 Setting the scene: patterns of NSW juvenile crime 1990 - 2005	150
7.3 Deliberative decision-making	153
7.4 Research and evidence and the public service	163
7.5 Academic research and writing	172
7.6 Research & evidence as a moderating influence	173
7.7 Discussion	174
Chapter 8. 'In the court of Carr': media, politics and policy	177
8.1 Introduction	177
8.2 NSW a PR state?	178
8.3 Shock jocks and tabloids	187
8.4 A journalist's perspective	191
8.5 The public service and the media	192
8.6 Framing youth and crime in the news	195
8.7 Leaks to the media	197
8.8 Selling policies and politicians at elections	199
8.9 Playing the game: non-government organisations and media	202
8.10 Discussion	204
Chapter 9. The rules of the game: government, politics, administration and the work of non-government organisations	207
9.1 Introduction	207
9.2 Politics and governments	208
9.3 The electoral cycle	210

9.4 The distinctions of politics and administration	212
9.5 Budgets, funding, resources	215
9.6 The administration of the Juvenile Justice Department	216
9.7 The police – gatekeepers and lobbyists	222
9.8 Investing in training and education to influence outcomes	226
9.9 Courts/Judicial officers	228
9.10. Networking and lobbying: the world of non-government organisations	229
9.11 Discussion	234
Chapter 10. Individuals, emotions and relationships	236
10.1 Introduction	236
10.2 Subjectivity and decision-making	237
10.3 Limits on decision-making	238
10.4 Individuals	238
10.5 Charisma, seniority and the NSW Police	253
10.6 Individual entrepreneurs and the non-government sector	257
10.7 Dynamics of individuals working together	260
10.8 Creating opportunities: ensuring serendipity happens	261
10.9 Discussion	262
Chapter 11. ...when the stars align	264
11.1 Overview	264
11.2 Key chapter findings	265
11.3 Critical complexity, policy and decision-making	270
11.4 Implications for advocacy	271
11.5 Concluding thoughts	276
References	278
Appendices	307
Appendix 1: List of key legislative reforms	308
Appendix 2: Interview Guide	309
Appendix 3: Original permission letter from Sydney University Human Research Ethics Committee to proceed with research	312
Appendix 4: Participant information sheet	314
Appendix 5: Participant Consent Form	316
Appendix 6: Details of the Children’s Court Proceedings Act (NSW) 1987	318
Appendix 7: History of Kariang Detention Centre and administrative transfer to Adult Corrective Services	320

Dedication

This thesis is dedicated to my mum Betty Fishwick and to the memory of my dad Frank Fishwick. They both had to leave school at fourteen to go to work and although they negotiated tough times, there was always laughter, singing and dancing in our house. Without their love and support and belief in education as the way to get on, my sister and I would have found it so much harder to break through the British class barriers and to achieve what we have. Thank you so much.

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Chapter 1. Introduction

Analyse the conjuncture that you're in. Then you can be an optimist of the will, and say, I believe that things can be different. But don't go to optimism of the will first. Because that's just utopianism (Zoe Williams 'Stuart Hall - The Saturday Interview' *The Guardian Online* 17th March 2012).

1.1 Overview

This thesis examines the constellation of influences that shaped juvenile justice policy decision-making in New South Wales from 1990 until 2005. It traces the development and introduction of the NSW Young Offender's Act 1997 from the publication of the NSW Youth Justice Coalition's *Kid's In Justice Report* (KIJ) in 1990, to its implementation in 1998. It also examines other key legislative policy reforms through until 2005, when a number of key policy events can be seen to mark the end of a particular phase of policy development in the state. Using data from in depth interviews with policy makers, documentary and media materials from the time and to a limited extent autobiographical insights, it analyses the dynamics that shaped decision-making over the fifteen years of the study period.

The thesis is also exploratory in that it adopts elements of complexity theory in its examination of decision-making in juvenile justice policy and although there is an emerging literature in criminology¹ it is only in its early stages and certainly did not exist when the research for this study began. A recent edition of *Criminology and Criminal Justice* is dedicated to a discussion of some of the key concepts of complexity theory and envisages that complexity theory may offer important conceptual tools for criminology (see McAra 2012; Henry & McAra 2012; Edwards & Hughes 2012). The reading of complexity theory adopted in the thesis is explained in more detail in section 1.5 of this chapter. Essentially, it is an approach that integrates the concepts and tools of complexity theory with a critical realist understanding of social phenomena and a commitment to research praxis, underpinning a research agenda that is concerned with 'real world' problems. Complexity theory provides a way of explaining how conflicts and contradictions can co-exist in decision-making. It allows for an understanding of the policy process

¹ There is an early collection of essays on complexity and criminology (see Milovanovic (2007a and 2007b). However, the essays are inspired by post-structuralist and post-modernist frameworks and do not fit with the approach to complexity taken here.

that accepts that both order and disorder can shape the policy landscape at the same time and provides the tools for examining the intersections of structure and agency in shaping social phenomena (see Byrne 1998, 2011; Callaghan 2005, 2008; Carroll 2009; Geyer & Rihani 2010; Walby 2007).

1.2 Background

The research idea for the thesis was inspired by my membership of a non-government organisation involved in youth advocacy work and by my research and teaching experiences in law, criminology and social policy.

In 1988, shortly after it was established, I became a member of the NSW Youth Justice Coalition (YJC)². The YJC is a community based voluntary advocacy group in New South Wales. It is recognised in the youth sector and in government circles as an important non-government organisation with experience in policy development. The YJC is made up of volunteers from a range of backgrounds including solicitors, youth workers and academics and it has been, and still is, involved in advocating for rights based youth justice policy reforms.

In the late 1980s the YJC embarked on a major review of NSW juvenile justice legislation, policy and procedures. The review was partly inspired by Australia's decision to become a signatory to the UN Convention on the Rights of the Child, as well as recurrent observations by agencies and individuals involved in YJC that juvenile justice policies were in a mess and were in fact failing the children and young people of NSW (YJC 1990). With funding support from the NSW Law and Justice Foundation³, the review integrated action research with young people; interviews and focus groups with young people and policy actors; consultation with key players in the juvenile justice and youth sectors including government representatives, non-government organisations, inter-agency representatives, youth workers, magistrates, lawyers and academics; an examination of Australian and international policies; and an extensive literature review to provide a comprehensive in-depth exploration of existing juvenile justice legislation, policies and practices. The Kids In Justice Project culminated in a final report that lay out a blueprint of

² <http://www.yjconline.net/>

³ <http://www.lawfoundation.net.au/>

future progressive reform for the state (YJC 1990). Throughout the lifetime of the project, members of the YJC lobbied politicians and public servants to advocate for change; they built up networks across the community sector and at the same time embarked on an active media campaign. As an outcome of all these activities coupled with the commitment of influential politicians and key government representations to juvenile justice reform, a review of juvenile justice became part of the government's policy agenda (see chapters 6 and 7).

From 1991 successive NSW governments embarked on a series of juvenile justice inquiries and legislative reviews coupled with community consultation and in 1997 the *Young Offenders Act 1997* (YOA) was introduced (Chan 2005; Hennessy N 1999). The Act integrated strong diversionary principles and practices and elements of restorative justice with the intention of keeping children and young people out of the formal criminal justice system and reducing the numbers of young people in detention (Chan 2005). From the position of the YJC the process for the development of the YOA appeared to be deliberative, orderly, well researched and considered.

Yet, despite the initial indications of a progressive future for juvenile justice in NSW and the benefits that came with the diversionary and restorative practices of the YOA (see Chan 2005), there were a number of contemporaneous and later legislative changes that appeared to completely contradict the ethos of the YOA and not only extended police powers but also contravened both the spirit and the content of the articles of the Convention on the Rights of the Child. It became clear from 1998 onwards that the overall situation for young people and especially indigenous young people had not improved in the ways that the YJC had hoped. In fact the numbers of young people in detention began to rise, mainly due to a growing percentage being denied bail and placed on remand in custody (Stubbs 2010; Wong et al. 2010). By the mid to late 2000s NSW had one of the largest proportions of young people per head of population in detention in Australia and an increasing overrepresentation of indigenous young people in court and in custody (Taylor 2009). By the mid to late 2000s juvenile justice policy appeared to have become fractured - it appeared to have become an assemblage of policies and legislation without a clear purpose. A later review of the juvenile justice system conducted by

consultancy firm Noetic Solutions (2010), found that it was in a mess and had lost any strategic vision. The one constant seemed to be the attention that governments paid to sections of the media in their calls for ‘get tough’ types of law and policy reform and to the politics of ‘law and order’ (see Hogg and Brown 1998; Weatherburn 2004).

New South Wales was not alone in this. Stan Cohen in the 2002 edition of *Folk Devils and Moral Panics* observed a similar policy dilemma in the UK and commented:

The intellectual poverty and total lack of imagination of our society’s response to its adolescent trouble-makers during the last twenty years, is manifest in the way this response compulsively repeats itself and fails to come to terms with the ‘problem’ that confronts it’ (2002, p.232).⁴

The situation in New South Wales presented a policy conundrum. There were individuals I knew who were working in government departments, in youth advocacy networks or in politics who were very committed to policies informed by human rights and social justice principles and by diversion. They worked hard to implement policies and programs that benefited young people and were engaged in the kinds of ‘behind the scenes’ policy development and implementation that often remained unrecognised by those on the outside. The YJC were actively involved in the policy process and, at moments their voices were heard and submissions to government acted upon, but at other times the voices of non-government representatives on joint consultative committees were marginalised or ignored. The rationale for changes and the procedures for policy decision-making seemed to be somewhat incoherent and built on shifting sands. I wanted to make sense of this juvenile justice policy puzzle.

Due to my involvement in youth advocacy and especially the research and writing that underpinned many policy campaigns⁵, I have chosen to write sections of this thesis in the first person, especially those which involve some reflection on the policy process. Consequently at points the writing adopts a more narrative style than is probably the custom in the majority of PhD theses. As Byrne (1998, 2011)

⁴ A collection of essays critiquing the UK Labour Party’s youth justice policies outlines the incoherence of the avalanche of policies and programs introduced (Solomon, Eales, Garside & Rutherford 2007).

⁵ However, I very rarely became involved in direct negotiations, and meetings with government.

argues, research is inevitably an engagement in personal as well as professional praxis and I consider that this acknowledgment of researcher/ writer as an active subject in the research process is an honest one. This point is explored more in s1.5 of this chapter and in chapter five on research.

1.3 Gaps in understanding

Another rationale for undertaking this research was that by the mid 2000s there still appeared to be gaps in the existing criminological literature on policy making processes both in Australia and worldwide. In addition, explanations of the role of the media in criminal justice and juvenile justice policy seemed to be underdeveloped. For someone like myself who has a background in legal and social policy, criminology, as well as journalism these seemed to be significant weaknesses. Of course, I was not the only person thinking this. In 2004 Jones and Newburn had highlighted how criminology was limited in its capacity to undertake policy analysis. As they state:

Criminologists to date have tended to take the notion of ‘policy’ for granted in so far as their empirical research has concentrated on its impacts rather than its origins...political scientists while having a more sophisticated notion of what policy is and what are the processes via which it comes about have tended to focus upon areas other than crime control (2004, p.127).

In fact Jones and Newburn (2004) were able to list only a handful of studies that critically analysed the criminal justice/ juvenile justice policy decision-making process. This point was re-iterated during a British Criminology Conference panel in 2008, in a discussion entitled *Influencing Policy* Frances Heidensohn remarked, “I think we as criminologists have fallen down...we have done very little work on examining the policy process” (Garside 2008, p.5). Paul Rock was identified at the time as ‘one of the few criminologists who has looked in detail at policy processes’ (ibid).

More recently, Barton and Johns (2013) have commented that:

Despite the reality that criminology, but more so criminal justice studies, is arguably a specific branch of social policy⁶, in many areas and in many

⁶ Although I would take issue with their description of criminology as a subset of social policy, I agree with the sentiment that lies behind their statement.

programmes we found that the *process* of policy making is an underdeveloped aspect of the curriculum' (and as an aside, we would suggest it is a neglected aspect in some types of criminological justice and criminological research). (p.1).

Barton and Johns (2013) also state that, in their opinion, criminology students tend to demonstrate 'a fundamental lack of understanding about how policy is made, for whom, by whom, and the constraints that policy does operate under' (2013, p.1).

The lack of engagement of criminology with policy analysis has been seen by Newburn and Sparks (2004) to lead to a situation where too much credit is given to a rational choice model of policy. Subsequently, they encourage criminologists to accept that policy has a 'greater degree of disorder, disharmony and incompatibility of explanation than is often allowed for, in this particular social scientific terrain' (p. 12). Their suggestion has been integrated into this thesis.

In the UK, Ros Fergusson's (2007) discussion of youth justice during the period of the Thatcher, Major and Blair governments is one of the few studies that has developed an integrated and detailed account of the vicissitudes and dynamics of the policy process. Fergusson argues that UK youth justice policies were during the period a 'melting-pot of contradictions, ideas and ideologies' (2007, p.179). This, he believes, was due mainly to the tensions in political discourses and the disjunctures between political rhetoric and the codification of discourse into policies and programs, plus their intersections with the role of frontline staff in implementing policy in practice. In the same vein, John Muncie's work on strategies of youth governance in the UK also looks at the gaps, conflicts and contradictions in policy development and the impact this has on policy outcomes (2009). The work of these two authors is discussed in detail in chapter three.

In Australia, criminological and sociological studies of juvenile justice have not yet embraced the kinds of policy analysis proposed by Fergusson. There have been a number of important historical and contemporary studies of juvenile justice/youth justice policies and practices, which have discussed the introduction of individual youth justice and juvenile justice policies or have evaluated the impact of those policies on specific populations. These include Fay Gale, Joy Wundersitz's and Rebecca Harris's (1990) work on South Australia; John Seymour's (1985) and

Terry Carney's (1985) work on juvenile justice legislation and courts; Borowski and Murray's (1985) edited collection on aspects of juvenile justice in Australia; Chris Cunneen and Rob White's (2011) series of books on juvenile justice, Chris Cunneen's pioneering work on indigenous juvenile justice (see for example 1998, 2001, 2006), Rob White's (1990, 1998, 2007) series of studies of young people, public space and gangs; Rob White and Joanna Wyn's analysis of youth justice (2005, 2008); Christine Alder's (2000) work on young girls and crime as well as Kerry Carrington's (1993, 2006, 2009) work on girls and young women and Paul Omaji's 2003 study of policies in practice. Numerous conference proceedings, research and evaluation reports developed for the NSW Bureau of Crime and Statistics, Australian Institute of Criminology, Australian Institute of Health and Welfare and the Australian Youth Affairs Coalition amongst others have all contributed to rich resource materials on juvenile justice. However, they do not fully investigate the kinds of issues that are routinely found in broader policy analytical literature.

Chan's edited collection of essays *Reshaping Juvenile Justice* (2005) does provide an overview of the background to and impact of the NSW *Young Offenders Act 1997* (YOA). The NSW Department of Juvenile Justice initially commissioned the research and this forms the basis of the edited collection evaluating the impact of the restorative justice and diversionary strategies encompassed by the YOA (see the evaluation questions detailed by Chan 2005, at p.13). The book includes statistical analyses of a number of databases, interviews and focus group discussions with policy makers, practitioners and other stakeholders, and interviews with young people and their families to build up a picture of the impact of the legislation and associated procedures. One of the chapters, by Jenny Barga, Garner Clancy and Janet Chan, provides background information on the period leading up to the introduction of the legislation but it is very brief. It does point out that the path of reform was not smooth and was sometimes controversial and offers brief insights into the attitudes of the police and magistrates (Barga, Clancy & Chan 2005, p.20), but it does not engage in a detailed analysis of the enabling and constraining factors in the policy process.

Fergusson's discussion of the dynamics of youth justice policy, Muncie's analysis of strategies of governance and the insights from Chan's study of the development of the YOA have provided me with some of the core elements for developing the analysis of decision-making in this thesis. But, as will be discussed in the next section and in chapters two and four, I have had to reach beyond the disciplinary boundaries of criminology to find the theoretical and conceptual tools that I needed to explore policy decision-making. This is a point discussed in the following section.

1.4 A trans disciplinary approach

Another feature of this thesis is that it offers a trans disciplinary analysis of juvenile justice policy decision-making. It combines theoretical and analytical insights from a number of disciplines; these include criminology, law, policy studies and media studies. The adoption of a trans disciplinary approach was prompted not only by the limitations of criminological perspectives on the policy process (discussed above), but also by the fact that policy studies in general do not deal that well with aspects of criminal justice policy including juvenile justice. It is also contested throughout this thesis that juvenile justice can only be understood in the context of broader social, economic, political and policy trends.

According to Albrecht, Freeman and Higginbotham (1998) a trans disciplinary approach draws together theories, concepts and approaches from a number of disciplines and allows the researcher to think in a way that Albrecht et al. call 'associationally' rather than in a 'narrow and reductionistic fashion' (1998, p.60). A trans disciplinary approach also recognises that understanding can come from fields outside of the academy, learning from people working in the field. In order to understand this complex interplay of policy arenas Albrecht et al. argue that we need the 'non discipline' of being able to work across disciplines (ibid).

One example of the benefits of adopting a trans disciplinary approach can be seen in relation to analyses of the influence of the media on policy. Criminologists have consistently argued that the media have a highly influential role in criminal justice policy formation. Jewkes (2004) argues that there needs to be a more systematic and

integrated investigation of the role that the media plays in the policy process which combines the insights from a variety of approaches. She states:

It's interesting to note that, although rarely working together, striking parallels can be found between the efforts of criminologists and media theorists to understand and 'unpack' the relationships between crime, deviance and criminal justice on the one hand and media and popular culture on the other. (Jewkes 2004, p.3).

In this thesis, the focus on the role of the media reflects in part a response to the ways in which criminology foregrounds the links between the media, the politics of law and order and policy outcomes (Hogg and Brown 1998; Weatherburn 2004). But, it is also an attempt to integrate this perspective on the role of the media with insights gained from policy studies, where in contrast, the media are seen to be only a small part of the range of factors influencing policy development (see for example Vromer, Gelber and Gauja 2011). And, as the discussion of the media reveals in chapter three, critical media studies literature in turn offers another distinct view on the role of the media in policy and politics.

The application of a range of disciplinary approaches in the thesis also reflects the ways in which the boundaries of discrete disciplines have been subverted by shared conceptual frameworks of analysis. Criminology has only developed recently as a discrete discipline (Garland 1985, Garland and Sparks 2000) and many critics have argued it cannot be bounded by its relationship to crime and crime reduction alone (see for example Dorling, Gordon, Hillyard, Pantazis, Pemberton and Tombs 2008; Knepper 2007; Smart 1989). From my own experience of studying, researching, teaching and practice in the fields of social policy, criminology and media studies there are currently shared concerns with the following:

- The retreat of the welfare state
- The impact of new managerialism and neo-liberalism
- Governmentality
- Exclusion and inclusion of populations and individuals
- Citizenship, rights and justice

- Crime and social harm
- Globalisation, risk and security
- National and local state relationships.

There is also a final rationale for adopting a trans disciplinary position, which stems from the fact that policy and practice do not develop in isolation. For example shifts and changes in policy areas such as care and protection, education, income support, mental health services, debt recovery, transport and many others can have significant impacts on the incidence of juvenile crime, on societal response to young people's behaviour and on juvenile justice policy and practice (see for example Muncie 2009; White and Wyn 2008). Indeed Garland's seminal criminological text *The Culture of Control* (2001) is based on the premise that the retreat from welfare has been met with an expansion of control and especially crime control by nation states around the world. In this sense juvenile justice is not a discrete, homogenous system, which can be analysed in isolation from 'the wider social relations that surround and implicate themselves in it' (Hogg and Brown 1985, p. 400). The ways in which young people are viewed and their behaviour problematized affects how related policies are formulated and in consequence have a material impact on their lives (White and Wyn 2005, 2008; Bacchi 2009). The criminalization of welfare related issues brings some children and young people into the field of juvenile justice and in turn has major repercussions for individual freedoms and children and young people's immediate and long-term futures.

On a broader level, major trends in public policy such as New Public Managerialism and risk management have had a significant but variable impact in the criminal and juvenile justice arenas and on decision-making and policy formulation (see for example Newburn 2003; O'Malley 2004; McLaughlin & Muncie 1994; Freiberg 2005; Muncie 2009). The thesis integrates an examination of these aspects of the governance trends on juvenile justice policy and practice.

1.5 Theoretical perspectives and methodology

This thesis has been informed by critical social science and critical criminology in particular, coupled with insights from the writing of social scientists working with

complexity theory (see in particular Byrne 1998, 2011; Callaghan 2005, 2008; Carroll 2009; Geyer and Rihani 2010; Walby 2007). Complexity theory initially emerged from mathematics and the physical and biotic sciences and has been slowly and only partially adopted into the social sciences (see Byrne 1998, 2011 and Geyer and Rihani 2010 for a more detailed explanation of the links to the physical and natural sciences). In essence, Walby argues, complexity offers a ‘loose connection of work’ that addresses systems and change (2007, p.449). She highlights how complexity is not a unified theory but is an emerging ‘set of theoretical and conceptual tools’ (2007, p.456).

In relation to social science Walby (2007) sees that complexity has two significant strands: one that pushes towards post-modernity and is typified by the work of Cilliers (1998) and the other which she places within the realist tradition and is exemplified by the work of Byrne (1998). From my own reading I would also add the work of Callaghan (2005, 2008), Carroll (2009), Geyer and Rihani (2010) and Walby (2007), to the realist strand. Byrne has described his own synthesis of critical social science and complexity as ‘complex realism’ (1998; 2011), whereas Carroll (2009) uses the term critical complexity. I have chosen to use the latter term since I think it most accurately describes the theoretical position of this thesis, however my use of the term does not deny the realist focus of Byrne’s work, but embraces it.

I do recognise that the adoption of ‘critical complexity’ is ambitious, especially since it is in itself an emerging project, but it has been prompted by two major factors. The first stems from my pre-existing ontological position which I would describe as a critical social science position and the second emerged as the research for the thesis progressed where I found that it was only by adopting a complexity approach that I could truly make sense of the findings from the data and the need to explain the coexistence of order and chaos, of structure and agency and of the significance of the macro and the micro in the decision-making process (Geyer and Rihani 2010). In this section I will provide an overview of some of the key concepts from both a critical and a complexity approach, which have informed the theoretical perspective and methodological approach of this thesis.

A 'critical' approach is one that considers that at the same time that the social world is seen to be something 'out there' to be observed, it also recognises that social phenomena are socially constructed (Callaghan 2008; see also Bryman 2008 and Neuman 2006). So, for example, critical criminologists would argue there is no ontological independent 'reality' of crime, it is the product of a social process (Stubbs 2008). Crime, criminalisation and societal responses to crime are socially constructed and imbued with historical, moral, social and political meaning, and consequently need to be understood in their broader social, political and economic contexts (see also the collections by Anthony & Cunneen (eds.) 2008; Carrington and Hogg (eds.) 2002). A complex realist approach also recognises that knowledge of the social world is socially constructed and, although there is an iterative relationship between the actions of the observer and knowledge of the social world, knowledge is based 'in reality' on something that exists independently from the observer. As Byrne argues for those social scientists wishing to engage in social action, adopting social constructionism within a realist frame 'is essential' (2011 p.43).

A critical stance also rejects the claims to 'scientific neutrality' of empiricism. For example, Stubbs (2008) argues that an 'evidence led' crime policy that claims to be scientifically and technologically neutral is simply failing to articulate its own ethics and politics. A researcher who adopts a critical stance therefore needs to engage in a reflexive research process, acknowledging their own values and intentions. This approach Bryman (2008) describes as a 'critical hermeneutic position' (p. 533). In this context a critical approach argues that social research is by its very nature a political enterprise and this is particularly true of studies of criminal and juvenile justice (Hudson 2000). For example, Hughes argues that 'criminological research does not take place in a political and moral vacuum but is a deeply political process' (Hughes 2000: 235). A critical approach goes beyond the simple development of an explanatory theoretical position, it also embodies a normative stance seeking 'a rational and principled explanation of the moral/political justifications for a given course of action (Bottoms 2000: 48 cited in Stubbs 2008 at page 12). It embraces a theory of knowledge that has also come to be known as standpoint epistemology (Neuman 2006). As Barbara Hudson explains, 'for critical research, since standpoint is inevitable, it had better be overt' (2000, p.184). Critical criminology

for example often incorporates an explicit commitment to the values of social justice and human rights (Hudson 2000:189). Stubbs also sees that critical criminology is politically engaged, developing allegiances with social movements and ‘turning cases into issues’ as well as valuing the ‘view from below’ (Stubbs J. 2008a, p. 8). Kincheloe and McLaren state:

Research thus becomes a transformative endeavour unembarrassed by the label ‘political’ and unafraid to consummate a relationship with an emancipatory consciousness (1994, p.140 cited in Neuman 2006, at p.95).

According to Neuman, ‘the purpose of critical social research is not simply to study the social world but to change it’ (Neuman 2006, p. 95). Byrne also considers that social research that has claims to complex realism should have an applied component and should engage in dealing with ‘real world’ problems. He is fairly explicit in his writing in putting forward his political and philosophical position. In the light of this it is important to acknowledge that the approach of the thesis is ultimately ‘normative’ in the sense that it is informed by the author’s personal commitment to illuminating the ways in which juvenile justice policy decision-making could become more reflective of legal and social justice principles and of human rights standards.

Complex realism and critical complexity, like critical theory, adopt an epistemological position that rejects what Neuman terms the ‘voluntarist approaches of interpretive social sciences’ (2006, p.94). Unlike a purely interpretive social science, a critical approach considers that broader relations of power underpin all aspects of social life and that one of the roles of the critical researcher is to engage with a wider theoretical enterprise to identify the expression of power relations in social phenomena being studied (Neuman 2006). According to C. Wright- Mills a sociological imagination requires us to grasp history and biography and the relationship between the two within society (Wright-Mills 1959: 6 cited in Barton, Corteen, Scott & Whyte 2007 at p.3). Byrne (1998, 2011), Callaghan (2005, 2008) Geyer and Rihani (2010) similarly argue that a complexity approach is positioned to integrate both structure and agency in social scientific explanations. Callaghan argues that we live in a social world that is the product of historical forces, of broad relations of power that intertwine and intersect with systems, organisations and individuals so that structure and agency are bound together (Callaghan 2004, 2008).

Walby (2007) outlines how structured relations of power have their expression in systems, some of which are manifested in an institutional form such as the economy and the polity, and others like gender relations permeate all aspects of social and economic life and intersect with and are shaped by institutionalised systems. Complexity theory sees that individuals live within structures and systems, and are shaped by them but also engage in, interpret and contribute to them and in turn reshape the social world (Byrne 1998, 2005, 2011; Cilliers 2001; Walby 2007; Callaghan 2005, 2008; Carroll 2009). Callaghan cites Karl Marx as a way of illustrating this:

Man makes his own history, but he does not make it out of the whole cloth; he does not make it out of conditions chosen by himself, but out of such as he finds close at hand. The tradition of all past generations weighs like an alp on the brain of the living (Marx 2005, p.1 cited in Callaghan 2008 at 405).

A complexity approach can explain ‘how people work within relatively permanent structures in the daily processes of making and remaking the social world’ (2008: 408). Henry and McAra (2012) for example, explore the concepts of emergence and negotiated order and argue that that they have the capacity to revitalise debates about structure and agency. They argue that ‘the interconnectedness of individuals, communities, institutions, regimes and politics’ (p.342), create the conditions for emergence and facilitates how we can understand change.

According to Callaghan ‘structure is important because it sets the positions from which individuals negotiate and, in turn, which gives these negotiations their patterned quality, but these products are historically and temporally shaped, always open to review and revision’ (2008, p.45). Callaghan refers to this as ‘negotiated order’, where systems their culture, relations and procedures are in the process of constant renegotiation by the policy actors that inhabit them on a daily basis (Callaghan 2008, p.83). Carroll (2009) in her study of hospital intensive care units (ICU) in New South Wales engages with this understanding of the ICU as a complex system, as she says:

Through emergence and its order inducing response, self-organisation certainty and order, unpredictability and disorder co-exist in complex systems, rather than being separate, are actually united by the agency enacted by the human and non-human agents in the complex system (Carroll 2009, p.42).

Both Callaghan (2005, 2008) and Byrne (1998, 2011) look to the work of critical theorist Pierre Bourdieu to provide them with a way of conceptualising the interrelationship between the individual, organisations, systems and change utilising the concepts of habitus, doxa and capital (see Benson & Neveu 2005; Bourdieu 2001; Bourdieu & Wacquant 1992; Wacquant 2011; Webb, Schirato and Danaher 2002). This thesis also engages with the work of Bourdieu in examining the impact of the media on policy and in exploring the ways in which policy actors shape decision-making.

As Walby asserts, complexity provides a toolkit for re-inserting systems into sociological theory (2007, p.449). A system in a complexity approach contains diverse, interrelated but relatively autonomous parts, it can only be understood by recognising that it is more than the sum of its parts and that it takes on a life of its own. A complexity approach is interested in systems as a whole and the components of systems and sub-systems and how they interact with each other (Walby 2007, p.258). A complexity approach also proposes that complex systems are characterised by dynamism and emergence, and can only really be understood in the context of their relationship with other systems, ie they are not 'closed' (Byrne 2011, p.23). As Walby states, 'each system takes all other systems as its environment' (2007, p.258).

Systems are overlapping; some are sub-sets of others, although systems are not necessarily wholly contained by one another (Walby 2007, p. 459). Complexity theory sees that when change occurs in one system it may or may not cause change in another, since there is no necessary linear change of causation. Byrnes (2011) sees causality running in all 'possible directions' (p.83).

However, drawing on the scientific understanding of chaos theory, a complexity approach argues that change is not infinite and completely random or unpredictable (Byrne 2011, p.26). As discussed above, in relation to 'negotiated order', systems are bounded to some extent by their tradition, that is, they are path dependant but they are also contained by the broader conditions of the particular 'phase' of history (Byrne 2011). Most systems are robust and relatively stable, like an orbiting planet they are in motion but drawn along within the trajectory of what complexity theorists call an 'attractor', a dominant force (Byrne 2011, p.23). It could be

argued for example at a global level, international capitalism is one such attractor. The thesis explores whether such an attractor exists in relation to juvenile justice.

In a complexity approach when change occurs it can be both incremental and adaptive to new circumstances, but on occasions it can also be affected by a cataclysmic external event, or radical transformation from within (Byrne 2011, p.24). The effects of such radical transformations are described by complexity theorists as ‘phase shifts’ such as the emergence and decline of the welfare state after the Second World War (Byrne 2011, p. 24), or in Australia the colonising occupation of the lands of indigenous peoples by the English. It is argued that through research we can identify ‘tipping points’ for phase shifts, some of these maybe easily identified as Geyer and Rihani (2010) explain by ‘gateway events’ but they maybe also be caused by relatively minor incidents, or one individual and the indirect ripple effect can reach out to broader systems (Byrne 1998, 2011).

This intersection of multiple factors and systems, order and chaos, direct and indirect influences, structure and agency, the micro and the macro means that in a complex system it is not possible to predict with absolute certainty that one action will result in one particular outcome. In the policy sphere one policy action might not necessarily result in the same policy effect at another time. As Byrne explains this is ‘because they may not coalesce in the same way and may have a whole range of multiple intervening factors’ (Byrne 2011 p. 22).

There is in critical complexity a search for causal explanations in social research in order to engage in social action. In this sense it is an applied approach. Although as Byrne argues social research can never be completely predictive⁷ its observations can provide the data from which informed social action can occur (2011, p.24). The complex case studies on public, social and health policies provided by Byrne (1998, 2011), Callaghan (2008), Carroll (2009), Geyer and Rihani (2010) and others, have provided me with detailed and inspirational examples of the ways in which critical complexity can provide the theoretical and methodological framework for this thesis.

⁷ Byrne’s discussion of research methods in *Applying Social Science* (2011) and the need for a complex approach to statistics, and statistical modeling provides a trenchant critique of the ‘scientisation’ of policy analysis. Also, see Silver on the limits of statistical predictive projections.

1.6 Research design

As will be discussed in more detail in chapter five, critical social science and complexity theory embrace both quantitative and qualitative research methods; consequently the approach to research taken in this thesis was not directed solely by my theoretical outlook. As the research chapter explains I chose to adopt a qualitative research strategy, which involved the collection and analysis of historical documents, as well as seventeen in-depth interviews with individuals who were identified as key policy actors during the fifteen years of the study period. I also integrated my own knowledge and experience of the policy process to produce an iterative research project where knowledge, discovery and analysis of the three sources of information were interrelated.

In order to achieve all that I wanted to in the research process I developed the following research questions, which are discussed in more detail in chapter five.

- What were the key legislative and policy reforms during the identified period?
- Who influenced the development of juvenile justice policy agendas and policy decisions in NSW from 1990-2005?
- Which historical institutional, discursive, professional factors if any set the parameters/constrained the development of juvenile justice policy reform in NSW?
- Who were the key international, national and State actors, agencies involved in juvenile justice agenda setting and policy decision-making?
- What were the key international, national and State discourses and practices shaping juvenile justice agenda setting and policy decision-making during the set period?
- What were the key international, national and State discourses and practices shaping juvenile justice agenda setting and policy decision-making during the set period?
- In what ways if any did the media interact with agenda setting and policy decision-making?

- To what extent did ‘one-off’ events, or anticipated political or policy events
- Prompt policy change? Why? How did they do so?

Before beginning my research I also needed to clarify the subject and object of my inquiry, especially since there had been an intensive debate in international youth justice and criminal justice literature about fundamental language and concepts. My position on these is discussed in the following section.

1.7 Juvenile justice or youth justice, system or process?

Although it may seem to be axiomatic that a thesis on decision-making in the *juvenile justice system* refers to the legislation, policy, agencies and individuals dealing with young people who have broken or are in danger of breaking the criminal law, there are aspects of each of the terms that require clarification.

As we have seen already in this opening chapter the literature on the relationship between young people, deviancy and crime often uses the term *youth justice* rather than juvenile justice (see for example the name of the NSW advocacy group the Youth Justice Coalition). Youth justice as a term not only incorporates the specific agencies and institutions involved in dealing with defining and responding to the criminal activity of children and young people but also encompasses the broader regulation, policing and governance of children and young people in other areas of social, education, health, care and protection, economic and public policy. Youth justice locates criminal matters within broader arenas of social justice and citizenship (see for example Muncie and Goldson 2006; Muncie 2009). Adopting a sociological framework for understanding youth justice also fits with the kinds of analyses that were developed by writers like Stan Cohen in explaining patterns and processes of the social control of deviance (Cohen 1985). And, as Ashworth and Redmayne (2005) remind us, dealing with behaviour by criminal sanction is only one strategy of many by which a state can respond to crime and deviant behaviour, yet as they continue it is more often than not presented as if it were the only and most vital tool of crime control in society. Although this thesis consistently recognises the location of juvenile justice within these broader youth justice

relations and accepts the fluidity of the boundaries of what is defined as criminal, deviant and normal adolescent behaviour, it is particularly concerned with policy decisions that have been introduced to manage the actions of children and young people who are seen to come into conflict with the law and the criminal law in particular and with those agencies and individuals who from 1990-2005 have been understood to be part of juvenile justice system and indeed would probably identify themselves as such. In consideration of these factors, this thesis will use both juvenile justice and youth justice. Juvenile justice will specifically refer to the particular sets of legislation, agencies and strategies that during the period deal directly with criminalising and sentencing the actions of children and young people under the age of 18. It will also use the term youth justice to refer to policies and governance matters that are administratively external to, but linked with the criminal domain. In doing so it is worth bearing in mind as Zedner (2004) points out, that juvenile justice is in itself a variable feast. Internationally the age at which children are deemed to be criminally responsible varies (Goldson 2009; Jensen & Jepsen 2006; Telford 2010) and the circumstances under which children and young people are transferred into the adult system also varies according to age and, in some jurisdictions, according to the seriousness of the offence (Jepsen & Jensen 2006; Weber, Fishwick and Malmo 2014). There is also some fluidity historically and from jurisdiction to jurisdiction in the way that children and young people's behaviour is problematized as being either a welfare or criminal matter, or both. This thesis recognises the fluidity in our understanding and definition of criminal and deviant behaviour and chapter three addresses how the ways in which we talk about youth justice and juvenile justice influences both policy decision-making and practice.

There has been some debate in the criminal justice literature about the appropriateness of the use of the term 'system' and whether it is an accurate representation of the multiple agencies, discourses and the policies and procedures of that are involved in criminal procedures. Ashworth and Redmayne (2005) for example, argue that the term criminal justice system should instead be referred to as criminal justice process. In offering their reasons for this they state:

It will be evident we refer to the criminal process, rather than to 'the criminal justice system.' This is because it is not a 'system' in the sense of a set of co-

ordinated decision-making bodies. ...it will be apparent that many groups working within criminal justice are relatively autonomous and enjoy considerable discretion. None the less, the inappropriateness of the term 'system' should not be allowed to obscure the practical interdependence of the various agencies (2005, p.17).

There is no doubt that Ashworth and Redmayne (2005) are correct in that criminal justice and juvenile justice agencies do not necessarily work with one common purpose, nor do they always operate in a coherent or coordinated way. However, in 1990 the YJC in the *Kids In Justice Report* described the juvenile justice system, but with the qualification that it is a system in a loose sense of the word. They argued that it was comprised of a number of departments, it wasn't regulated by one piece of legislation, yet 'the agencies act together to deal with young offenders so must be seen as a part of a system' but not a closed one (1990, p. 60). In keeping with the YJC's approach I too have chosen to use the word 'system' to describe the agencies, procedures, policies and processes relating to juvenile justice but from using the understanding of the term from complexity theory. As we have seen in a complexity approach a system is not closed, it is porous and open, intersecting with other systems and is characterised by dynamism, change and emergence. The organisations, individuals, procedures and processes of the juvenile justice system have emerged in history, tradition and culture to inhabit a particular position in the policy landscape. And, as chapter six demonstrates, since the late nineteenth century New South Wales has maintained a more or less separate set of laws, legal procedures and policies for children and young people whose behaviour is deemed to be deviant and criminal.

1.8 Thesis Structure

This thesis is divided into two parts. The first part, which consists of chapters one to four, brings together insights from existing literature and knowledge to clarify key concepts and develop a framework for understanding. Part two of the thesis focuses on the research undertaken and integrates findings from the interviews, documentary analysis and to a limited extent autobiographical material to develop an account of the range of influences shaping NSW policy decisions during the study period.

Following on from this introductory chapter, *chapter two* provides an overview of selected policy literature and defines what is meant by policy and also establishes a dynamic framework for understanding the context for analysing policy decision-making processes. *Chapter three* provides an overview of the kinds of knowledge/discourses that have been identified as underpinning policy responses to youth deviance and crime and *chapter four* focuses on literature that addresses the media's influence on politics and policy. *Chapter five* examines the research strategy and methods adopted for the thesis and highlights the iterative nature of the research process.

Chapter six begins with a brief overview of juvenile justice history and then moves on to chart the two main strands of law reform and related policy developments that were found in the data to characterise decisions during the study period and chapter seven demonstrates the ways in which different kinds of research, evidence and knowledge informed the policy process and shaped reforms. *Chapter eight* reveals the impact that successive Labor governments' media management strategies had on policy agenda setting and on the policy options pursued. *Chapter nine* explores the everyday world of the policy process, it examines the 'rules of the game,' the constraints that provide the boundaries within which agendas are set and options negotiated and the work of lobby and interest groups. *Chapter ten* establishes that it is only by examining the affective and subjective aspects of policy that we can really grasp the dynamics of the policy process and demonstrates how people's emotions, ambitions, skills and experience affect decision-making.

The thesis concludes by proposing that it is only by adopting a critical complex reading of policy that we can fully understand the constellation of factors that variously influence the decision-making process. The final chapter also provides an overview of the ways in which the findings from the thesis might contribute to the wealth of knowledge that already exists in the community on effective policy advocacy.

Chapter 2. Understanding the policy process

2.1 Introduction

In his overview of policy analysis literature John (1998) argues that it is difficult to explain why and how policy decisions happen in the way that they do, not only because of the nature of policy itself, but also because of the potentially wide scope of factors that need to be taken into consideration. John points out that policy in reality is messy and that a multi-level synthesised approach is the only way to provide a coherent explanation of both change and stability (p. 194).

Bearing in mind John's cautionary words, this chapter provides an overview of some of the key concepts and debates about policy and the policy process in order to establish the possible range of factors that could influence decision-making. In doing so it draws from policy literature as well as from insights from the available criminological literature on the policy process.

The chapter begins by developing a working definition of policy and then goes on to examine how the policy process has been conceptualised. The chapter then moves on to explore how global and national economic, political and social factors shape the parameters in which decisions are made and how institutions and policy networks impact on the policy process. Finally, it looks more closely at the ways in which individuals are considered to play a significant role in determining policy agendas, options and outcomes.

2.2 Defining policy

For social and public policy analysts, policy can be seen to be a fairly nebulous concept (Colebatch 2002, 2006; Howlett and Ramesh 2003; Hill 2013; Kingdon 1984, 2003). As Michael Hill explains:

...it is difficult to treat it as a very specific and concrete phenomenon. Policy maybe identifiable in terms of a decision, but very often it involves either groups of decisions, or what maybe seen as little more than an orientation (2013, p. 15).

Policy is often seen to be the embodiment of authoritative decision-making where state power is brought to bear on particular problems and actions are taken to provide solutions to those problems (Colebatch 2002, p.2; see also Bridgman and Davis 2004). According to Colebatch policy can also be viewed as a statement of routine practices; such as the procedural guidelines and organisational principles and values, which underpin the ways in which agencies work (Colebatch 2002, p. 7). In addition, it can be understood to be a statement about organisational goals, or a strategic planning document, or a mission statement (Colebatch 2002, p. 39). Finally, Colebatch argues policy statements and engagement in policy can be viewed as a means ‘to challenge the existing order and asserting a right to participate’ that is they become ‘statements of claim’ (Colebatch 2002, p.2).

Hill (2013) points out that policy does not necessarily have to be the result of an action it can also be articulated in a non-decision, in the sense that if no formal decision is taken there may still be a policy outcome whether it is direct or indirect. Non-decision-making is not necessarily about declining to choose, it can be also be a way of keeping issues out of a discussion altogether a reflection of the power of the agency or individual to exclude an issue for consideration (Davis, Wanna, Warhurst and Weller 1988; Hill 2013). Non-decisions are also viewed as a means to maintaining the policy status quo (Howlett and Ramesh 2003, p.5; see also Hill 2013). In this light Howlett and Ramesh (2003) also argue that a full understanding of policy ‘needs to extend beyond the record of concrete choices to encompass the realm of potential choices, choices not made’, in essence looking at what could have been (p. 5).

According to Bacchi (2009), most conventional analyses of policy presume that the ‘purpose of policy is to *solve* social problems’ (p.x). Whereas, she argues, a more reflexive approach that incorporates an understanding of discourse should also see that problems are **endogenous** rather than **exogenous**. That is, policies give *shape* to ‘problems’ they do not simply *address* them (original emphasis p.x). Consequently, she argues, it is important to analyse the language, knowledge and ideas brought to a policy issue (Bacchi 2009). In this way as Considine (2005) argues policy can also be viewed as a public statement about a government’s ideas and values. These are points that will be returned to in the next two chapters but it is

worth noting here that criminological discussions of policy have highlighted the symbolic value of policy statements concerning crime and criminal justice. For example, in their analysis of comparative criminal justice policy, Newburn and Sparks (2004) contend that policy is not simply about doing it is also about the meanings ascribed to what is said. In this context, political policy statements are often aired in order to denounce crime and to reassure the public that the state is acting strongly, but the policies implemented may not match the rhetoric. This is a point echoed by Barton & Johns (2013) who argue that policy statements become the vehicle by which politicians and representatives of criminal justice agencies can be seen to make an impression that they are in control, even if the policy is later found to have little impact (p.50). In his analysis of youth justice discourse Fergusson (2007) also asserts that these kind of symbolic, rhetorical statements constitute a mode of policy, alongside the process of codification into formal policies and legislation, and consequent implementation (p.182).

In summary, as Goodwin (2011) states and the preceding discussion has revealed, policy can be seen to have a broad definition which can be vague at times but it is also expansive and can include 'laws, policy statements, programs, statements of principles, processes and performances' (p.168). And, it is this understanding of policy that permeates the thesis.

2.3 The policy process: opportunities for decision-making

As we have seen the policy process has been described as complex and at times messy. As this next section of the chapter reveals it also offers a range of opportunities for policy actions to take place, involving different sets of policy actors.

Bridgman and Davis (2004) have developed the explanatory tool of the policy cycle as a simple way of identifying elements of the Australian policy process. The policy cycle provides a way of demonstrating how different stages in policy development feed into each other and the kinds of decisions that are taken at moments in the policy cycle. Bridgman and Davis (2004) argue most, but not all, policies begin with *identifying issues* and, as new problems emerge they then proceed to a *policy analysis* stage where options are developed; work which they argue is on the whole,

but not always conducted by the public service. At this point decisions are made about the appropriate *policy instrument* to be chosen to implement change this maybe administrative or legislative. *Consultation* may be sought with other key policy actors about the proposed policy before it proceeds. The next stage in the process is that of coordination, where government agencies including Treasury and other non-government agencies involved in the policy field are engaged in refining decisions and preparing the ground for formal *implementation* (Bridgman & Davis 2004, p. 28). Bridgman and Davis argue that in the Australian setting it is Cabinet who ultimately have the authority to make policy decisions. In an ideal policy process implementation should then be followed up by *evaluation* of the policy after a period of time (Bridgman & Davis 2004, p.28).

Although the policy cycle provides a useful illustrative guide there are other analyses that add extra dimensions to a more complex understanding of the policy process. For example, Colebatch (2002, 2006) proposes that policies are not necessarily the result of an authoritative decision taken by government, which flows from the top to the bottom that is, a *vertical* flow of power. As Colebatch (2002, 2006) states, policy decisions can be a combination of *vertical* and *horizontal* policy flows. In the *horizontal* perspective, policy is seen to be a process of ‘structured interaction’, which includes negotiation between interested agencies and individuals, experts and entrepreneurs from both inside and outside of government at different stages in the policy process (see Colebatch 2002, 2006; Kingdon 1984, 2003; Sabatier & Jenkins-Smith 1999). Colebatch refers to these continued patterns of interaction as being characterised by ‘negotiated order’ (2006, p.8); a concept that we have seen is integral to critical complexity. Hill (2013) also reminds us that it is fundamental to any analysis of the policy process to comprehend ‘the exercise of power in the making of policy’ (p.25)⁸. In policy systems some positions and organisations are accorded more authority and power to act than others; they have what Considine calls the legal right to use public and state power, and it is important to recognise these formal powers in developing an account of decision-making (2005, p.31). In the horizontal perspective, power and authority in many instances lies informally with experts such as the members of the public service, or with entrepreneurs or other stakeholder groups (Colebatch 2006).

⁸ See Hill’s discussion of pluralism, modified pluralism, power elites, capital, class and gender (2013).

Practitioners, whose interpretation and delivery of policy on the ground has been described by Lipsky and others as the work of ‘street level bureaucrats’, also play a key role in the policy process (Lipsky 1980 cited by Hill 2013, at p.17; see also Colebatch 2002, 2006). In his discussion of criminal justice policy Paul Rock (1995) also highlights how ‘bottom-up’ policy making operates. He argues that policies acquire their identity in the ‘aspirations, imaginations, relations and activities of perhaps three or four officials’ whose role it is then to convince others including politicians (1995, p. 2).

The *horizontal* and upward trajectory to policy flow can be seen to be particularly relevant in legal policy where the doctrine of the *separation of powers* embeds the horizontal dimension in tradition and in the constitutional delegation of powers. Parliament may pass the law in books (statutes, regulations), with the executive having responsibility and authority for decision-making but the courts are given responsibility for interpreting legislation in the Westminster system. Subordinate and delegated legislation provides Ministers and designated authorities with the power to make legislation and executive decisions (Duffy 2003). Important policy decisions are made through case law and in the interpretation and practice of policy in pre-trial processes and administrative regulation. In addition, the discretion built in to the operation of the criminal law provides individuals such as police officers in their role of ‘gatekeepers to the criminal justice system’, with the power to apply and interpret policy on the spot (Ashworth & Redmayne 2005; Brown, Farrier, Egger, McNamara, Steel, Grewcock, & Spears 2011; Newburn (ed.) 2003; Reiner 2000). In their study of practitioner networks in the UK, Telford and Santatzoglou (2012) provide a detailed examination of how networks of police, social workers, youth workers and magistrates worked together to initiate adaptations to government legislation in order to make it more workable and less punitive, the changes then permeate upwards and across the criminal justice system.

2.4 Policy streams, agendas and alternatives

John Kingdon’s (2003) analysis of the policy process adds a number of extra dimensions to our understanding of policy development and decision-making. Developed from his research on health policy in the USA Kingdon established that

the policy process is characterised by the intersection of what he what he calls policy streams. These include the following:

- The setting of the agenda.
- The specification of alternatives from which a choice is to be made.
- The authoritative choice from among those specified alternatives.
- The implementation of the decision (Kingdon 2003, p. 2).

According to Kingdon (2003), agenda setting, establishing alternatives, choice and implementation are not neat, staged sequential parts of a rational process. He describes them as streams that can develop independently; they have their own dynamics and characteristics and success in one does not necessarily imply success in others (Kingdon 2003, p.3). He also argues that agenda setting and the specification of alternatives remain relatively uncharted territory in policy studies and, as he states, ‘ we know more about how issues are disposed of than how they came to be on the government agenda in the first place’ (2003, p. 1). For Kingdon, a *policy agenda* incorporates the governmental agenda, which he describes as ‘the list of subjects or problems to which officials are paying some serious attention at any given time’ (Kingdon 2003, p.196). An agenda setting process narrows the focus of these subjects and different agencies and departments within government may be considering a variety of specialised agendas at the same time. On the whole, he argues that agenda setting is a political activity, driven by governments and heads of government departments whereas bureaucrats, planners, academics and researchers have more input in the development of policy alternatives (Kingdon 2003, p.87).

Issues are seen by Kingdon to arrive and fade from the agenda as the intersection of problems; policies and politics come together at different moments and issues can also emerge as problems on the agenda in a range of ways. For example, they may be revealed through a significant shift in a statistical indicator; through research, feedback evaluation or review of existing policies; as a result of the development of accumulated knowledge; or from the floating of ideas among specialists in any given area. Kingdon argues that the very business of politics itself can draw attention to an issue. For example, elections, ministerial change, perceived shifts in

public opinion, or emerging resource constraints/ economic shifts which necessitate focus on particular problems, consequently placing them on the political agenda. Policy decisions are not generated randomly there are a number of predictable event based opportunities or structured policy moments that can prompt policy shifts, these include elections, budget cycles, regular reports and speeches, expiry of a program and legislative review amongst others (Kingdon 2003, p.196 - 199). The chance of something appearing on the political agenda is enhanced, Kingdon argues, if there is a visible participant pushing the issue, or a determined policy entrepreneur (Kingdon 2003). However policies can also appear on agendas as the result of unpredictable one-off events such as disasters, crises or personal initiatives (Kingdon 2003, pp.197/98). Yet, responses to crises are not developed in a vacuum. Kingdon argues that in these circumstances the crisis acts as a catalyst for the emergence of safe policy alternatives that reinforce pre-existing views or are selected from pre-existing policy alternatives that may have been waiting for their moment to come. Policy alternatives do not just appear out of nowhere, policy makers have a repository of ideas – ‘a primaevial soup’ of policy alternatives as well as possible solutions, and these he argues ‘float together and sometimes coalesce and emerge as decisions’ (2003, p.116). What may appear on the surface as an instantaneous policy response, might have been brewing for a while. According to Kingdon then the way in which an issue arrives on the policy agenda can actually create the conditions for the adoption of some policy alternatives rather than others (see pp.198/199).

Kingdon also proposes that just because something appears on the policy agenda it doesn’t necessarily mean that it is automatically translated into a policy choice. For policies to be taken up and then implemented there needs to be what Kingdon calls the ‘opening of a policy window’ where participants, politics, problems and policy alternatives and solutions are coupled together. Policy windows only open for a very short time and participants need to be ready to push selected policy alternatives through at the right moment. Skilled entrepreneurs develop their proposals and then wait for the solutions, or for developments in the political stream, like a change in the administration, which makes their proposals more likely to be adopted. Alternatively, entrepreneurs work hard to push policy windows open (Kingdon 2003). Policy entrepreneurs are to be found both inside and outside of government

and they are deemed to be those policy actors who are willing to invest resources in pushing their pet proposals or problems forward. They are responsible not only for prompting important people to pay attention as Kingdon says ‘but also for coupling solutions to problems and for coupling both problems and solutions to politics’ (Kingdon 2003, pp. 203/4). As one of Kingdon’s interviewees explains:

As I see it, people who are trying to advocate for change are like surfers waiting for the big wave. You get out there, you have to be ready to go, you have to be ready to paddle. If you’re not ready to paddle when the big wave comes along, you’re not going to ride it in (An analyst for an interest group cited in Kingdon 2003, p.165).

As we have seen Kingdon’s model accommodates an explanation of the ways in which policy reforms can seem to appear out of nowhere. There maybe some causal explanations for these but Kingdon (2003) also accepts that others are not easy to explain and can baffle even experienced participants in the policy process. As one of his interviewees says:

Which idea gets struck by lightning I can’t tell you. I’ve been watching this process for twenty years and I can’t tell you. I can’t tell you why an idea has been sitting around for five years, being pushed by somebody, and all of a sudden it catches on. Then another idea with the same kind of advocates, being pushed for those five years, won’t catch on fire. You have an element of chance” (Kingdon 2003, p.189).

As we have seen Kingdon recognises elements of residual randomness in policy development, and elements of predictability and regularity. In order for policy proposals to be successful they need to satisfy a number of criteria, which includes their technical feasibility, their fit with dominant values and the current national mood, their budget workability and the political support or opposition they may experience (Kingdon 2003). In summary change occurs when a problem is recognised, a solution is available, the political climate makes the time right for change and constraints do not prohibit action.

Paul Rock’s work (1995) on the development of criminal justice policy in Canada bears some similarities to Kingdon’s analysis. He highlights the ways in which issues, ideas and policy alternatives can co-exist and public officials might deliberately float incoherent and unfocused policy ideas as deliberate strategies. Like Kingdon’s policy entrepreneurs, public officials are seen to push selected

policy ideas and options into the policy mix until they become the object of attention from politicians and/ or those with decision-making responsibilities. This, Rock argues, is the way of the 'bureaucratic art of persuasion' where those with political authority and accountability for decisions need to feel that they own decisions and are encouraged to finalise them by public servants (1995, p.3). Rock also argues that policies can be placed on agendas under the guise of a more favourable or accepted policy position. For example, he describes how, when campaigns to advance policies for victims of crime began, it was difficult to achieve anything under the label of victim's rights and they had to be smuggled in 'under the cloak of the older, established policies of crime prevention and the promotion and dissemination of good police practice' (1995, p.3). And, as he goes on to explain the appearance of policy should be interrogated a little deeper since '... the first appearance of any new policy may then be more than a little odd, forced as it were to parade in disguise' (Rock 1995, p. 3).

There are many benefits of adopting Kingdon's approach in this research project; it offers a multi-causal framework for understanding decision-making, it accommodates the idea that order and disorder can simultaneously influence the policy process and it also accepts that policy proposals do not always have a beginning and an end. It also sees that there are many dimensions of the policy process that can operate separately - systems are not always coherent. Kingdon also sees that there is a diverse range of policy actors involved in the policy process. In summary, it is a dynamic approach that allows for the complexity of the many factors that influence the policy process to be recognised and realised in empirical research.

2.5 Policy decisions in a complex system

A critical complex approach argues that to fully understand policy processes and decisions they need to be considered in context as part of an emergent intersecting network of influences. These are seen to range from globalised trends to the actions of the individual and interplays of both structure and agency (Byrne 1998, 2011; Callaghan 2005, 2008). In a similar vein John (1998) argues that policy needs to be understood as part of the 'whole political system and its external environment' (p.

196), including global and local socio-economic relations, institutional cultures and practices, policy networks and individuals.

2.5.1 Globalisation

As John (1998) contends, policies and policy decisions can only be fully understood within the broader context of socio-economic and political relations at both global and national levels. In social theory globalisation and the rapid progress in technology and communications have been seen to cut across the boundaries of space and time to significantly alter domestic and international relations leading to a global, networked society (see Castells 1996; Giddens 1994). There has also been a shift noted in global economics where the reach of international corporations and international financial systems has been seen to have profound effects on local economies and domestic policies (Byrne 2011; Gough 2009). Likewise in criminological accounts, international criminal activity and policy responses to them are seen to reach across national borders. For example the illicit drug trade, money laundering and people trafficking (see for example the work of Bowling 2011 and of Weber & Pickering 2011).

The impact of globalisation has been seen to facilitate policy convergence and policy transfer in many fields, including criminal justice and juvenile justice (see Newburn & Sparks 2004; Jones & Newburn 2004, 2007). For example, the US has been identified as a dominant player in globalised influence on domestic penal policies (see for example Garland 2001; Jones & Newburn 2004, 2007) and since the events of 9/11 there has been a particular focus on the global impact of risk, securitisation, anti-terrorism and pre-crime measures on criminal law and procedures (see for example the work of Loader & Walker 2007; Zedner 2007, 2009 amongst many others).

There has also been a growth since the Second World War, in supra national administrative, regulation and human rights bodies such as the United Nations, the International Criminal Court, the European Commission, the European Court of Human Rights, the Association of South Eastern Nations (ASEAN) (amongst many others), all with relative powers to impose legislative and policy obligations on member states (Weber, Fishwick and Marmo 2014).

Despite the emphasis on global analyses of policy, a number of critiques of globalised theories and policy convergence have stressed the continuing importance of the nation-state and sub national political economic systems on policy (Byrne 1998, 2011) and on criminal justice systems (Egger 2004). According to Gough (2009) theorisations of globalisation have predicted ‘growing homogenisation or isomorphism across the globe’ however he observes that ‘economic globalisation pressures are usually mediated by domestic and international institutions, interests and ideas’ (2009, p.6). In this perspective the effects of globalisation need to be analysed in their articulation at the local and institutional level.

In both policy studies and criminology, comparative work has endeavoured to establish both the commonalities and differences in policy trends across nation states. For example, Esping-Anderson’s work on welfare-regimes (1997b, 1997c) has developed typologies of nation-states based on the level and mix of commodification and de-commodification of goods and services such as education, health and income support. The ratio of this mix, he argues marks the classification of welfare regimes as liberal, conservative or social-democratic (1997b). Cavadino and Dignan (2006) in their comparative work on prisons found a strong correlation between the political economy of nation states and their penal policies. Comparative studies of juvenile justice policies have also traced strong similarities across countries, but also significant national differences in the way that policies are designed and implemented (Goldson & Hughes 2010a; Jensen & Jepsen 2006; Muncie & Goldson 2006). Pat O’Malley’s work (2004) on the global influence of risk on youth justice highlights the distinct characteristics of its articulation in Australia, which he argues is the result of Australia’s specific welfare history. In addition, edited collections put together by Newburn and Sparks *Criminal Justice and Political Cultures* (2004) and Jones and Newburn’s text on *Policy Transfer and Criminal Justice* (2007) provide detailed studies of the ways in which global shifts in policy are articulated differentially revealing elements of consistency and diversity. Karstedt’s (2004) discussion of the global travel of crime policies provides an important elaboration of the intersections of global trends and local interpellations of those trends.

2.5.2 Structured relations of power and institutions

In a critical complex perspective, the intersection of international and national, social, political and economic relations are embedded in policy systems and institutions. These in turn contribute to the setting of the parameters of what is possible in relation to policy, how policies are articulated in policy choices in national and local agencies and institutions, and how practitioners and citizens experience them. A critical complex analysis also incorporates the perspective that both gendered and raced relations of power are embedded in the architecture of government and in the development, delivery and reception of policy (see Walby 2007). For example, Byrne (1998, 2011) and Callaghan (2008) analyse reforms to UK health and housing policies, and the ways that families in regional areas experience them as being the product of the intersection of European policy directives, international economic trends, national policy choices, regional economic circumstances - all of which intersect with gendered and classed labour and caring relations.

As the links between state, market and civil society shift over time, public policies reflect those shifts. So for example, as Considine (2005) explains the Keynesian economics and state welfare which dominated the immediate years after World War Two provided different conditions for the emergence of policies in comparison to contemporary conditions. Where he argues neo-liberal, deregulated, morally conservative, risk focused strategies dominate the policy landscape (2005). They also become embedded in financial and management systems for example the dominance of new public management (NPM) initiatives modelled on the private sector, the introduction of Key Performance Indicators (KPIs), corporate planning, programme budgeting, performance auditing, where senior managers are engaged on performance based contracts and it is their expertise in management that is valued not necessarily their knowledge and expertise in a subject area. These fairly fundamental social and economic transformations are described by critical complex analysts as 'phase-shifts' and mark profound transformations in society, which in turn influencing the direction of policy. Likewise, as we have seen earlier Esping Andersen's work examines the ways in which the history and architecture of states

play a role in shaping contemporary welfare related policies⁹. So for example in a social democratic welfare regime social policies would be conceptualised and delivered in relation to rights and on a public not private basis (1997). In contrast a liberal welfare model is dominated by market purchaser- provided transactions where there is a residual model of welfare. Esping-Anderson identifies Australia as an example of this kind of welfare regime (1997).

In a critical complex approach institutions provide the formal, structured backdrop in which policy interaction is located and policy decisions are taken. And, although their role was downplayed for a while ‘New Institutionalism’ (NI) has been seen to mark the revival of interest by policy analysts in the role of institutions in shaping the policy process and policy decisions (Considine 2005, Hill 2013; John 1998; Mackay, Kenny, Chapel and Donnelly 2010).

Howlett and Ramesh define institutions as structures or organisations of the state, society and the international system whose membership, rules and operating procedures principles, norms and ideas formally shape the policy process (2003, p.53). For March and Olsen institutions not only shape the actions of individuals but they are considered as political actors in themselves (1996 cited in Hill 2013, at p. 72).

According to Mackay et al. (2010), NI scholars are seen to be ‘sensitive to the way institutions shape, and are shaped by the political, economic, and social forces within which they are embedded’ and ‘the factors influencing stability and change in political life, the development and impact of laws, and policies, and the nature of the relationship between social movement actors and formal political institutions’ (p.579). Mackay et al. argue that New Institutionalism has been built around four main approaches rational choice institutionalism (RCI), historical institutionalism, organisational or sociological institutionalism, and discursive or constructivist institutionalism (2010, p.574).

Rational choice exponents are seen by Mackay et al. to focus on the micro and argue that institutions need to be understood as structures that result from negotiations undertaken by policy actors to overcome collective problems.

⁹ See also Castles and Mitchell (1992) on their typological work on ‘families of nations’.

Institutions, their structures and policies are considered to be the product of active strategic choices of individuals (see also the concept of Policy Action Coalitions - Sabatier & Jenkins-Smith 1999). Historical institutionalists are concerned with examining what McKay et al. call 'big real world' questions of politics and history, as well as the social, political and economic context, and temporal conditions for change (2010, p.575). Considine also discusses how the history of institutions provides the infrastructure for contemporary policy and practices so that despite new influences they remain to some extent 'path dependent' (2005, p.17). Mackay et al. suggest that organisational and sociological institutionalists focus on the interaction of micro and macro level interactions and on the co-constitutive relationships between actors and institutions (2010, p.575). In this understanding institutions are seen to not only constrain actors but also act as strategic resources for them (2010, p.257). Discursive or constructivist institutionalists focus on the evolution of ideas and discourse, their role in influencing policy actors and the ways in which ideas are communicated to the public (2010, p. 257).

Mackay et al. (2010) also argue that NI is not just concerned with examining continuities but also with change, which they say occurs in a number of ways, it can be incremental but also some times happens as a reaction to external or internal events, a situation they describe as 'punctuated equilibrium' (see also Hill 2013; John 1998; Sabatier & Jenkins-Smith 1999). For Mackay et al. change also occurs due to the evolution of institutions through *layering* where elements of institutions are renegotiated but others stay the same, *conversion* when existing institutions are directed to new purposes, *drift* in which arrangements are actively neglected or co-opted and *displacement* where existing rules are discredited in favour of new institutions or logics (2010, p.577). A NI understanding of the policy process involves examining the interplay of structure and agency at many levels where 'strategic actors initiate change within a context of opportunities and constraints' (2011, p. 582/583). Walby (2007) and Mackay et al. (2010) also argue that institutions incorporate gendered, raced and classed power relations into their policies and procedures and hierarchical structures as well as in formal and inter-

personal relationships. These in turn are seen to shape the ways in which the policy process operates and how decisions are made¹⁰.

Institutions have also been seen to play a significant role in establishing what are termed the 'rules of the game' for policy actors. The rules of the game are seen to exist along a formal to informal continuum the former being the formal governance and administrative procedures of an organisation and including the values and beliefs of organisations (Considine 2005; Mackay et al. 2010). Institutions can also be seen to provide the framework for the day-to-day more mundane and routine aspects of the policy process (Considine 2005, p.2). Considine argues that understanding what the routine is in a policy environment (rather than focusing on the exceptional) is important for policy analysis since, this is the arena where the majority of policy interventions take place (2005, p. 13).

Not all institutions are equal in the policy process. For example where an organisation is developed to deal with a particular policy problem, it takes on an extra significance as a key policy player (March and Olsen 1984, p.739 cited in Hill 2013, at 73). Or, as we have seen in the earlier discussion of policy, some institutions have more formal legal authority and power to make decisions, or are according more moral, or symbolic authority on a policy issue. Different institutions have different resources and capacities available to them to influence decisions, to dominate the way that ideas are developed and circulated, and to coordinate and control the policy process (John 1998, p.57). Policies often emerge from negotiations between institutions and as John states 'the policy process is permeated by ideas about what is the best course of action, and by beliefs about how to achieve goals' (1998, p.145). In a federal system such as that of Australia, the delegation of powers requires that there is cross government and institutional negotiation and consultation in the formulation and implementation of policy. This means, according to Mills, that it can be difficult to identify a 'single 'decision-making process' since choices are made at different levels by different agencies (Mills 1986, p.13 in Davis et al. 1988, p.107).

Institutional analyses appear to be widespread in both criminal justice and juvenile justice policy literature. With many studies concentrating on the history and internal

¹⁰ See for example the work of Schofield and Goodwin (2005) on 'gender regimes'.

dynamics of agencies within systems including Zedner's *Criminal Justice* (2004), Newburn's *crime and criminal justice* (2003), Findlay, Odgers and Yeo *australian criminal justice policy* (2005), Ashworth and Redmayne's examination of the English criminal justice system *the criminal process* (2005), Cunneen and White's *Juvenile Justice* and Tonry's (2009) edited collection on crime and public policy amongst many, many others. Together, they examine the different institutions and agencies of criminal justice by charting their histories: their values, cultures and practices, relevant legislation and how separate agencies do or do not work together. Policy change is often explained as being internally driven, that is, it is the product of the contest of ideas and policy actors within distinct legal fields. For example Tonry in the opening chapter to his collection examines the relationship between crime and public policy by looking at the relative influence of law enforcement, prevention, harm reduction and regulation in systems (2009). Studies of criminal justice and criminal process especially those written for law students also draw on substantive criminal law and principles of criminal law and criminal procedure as a framework for examining policy (Lacey 2012).

2.5.3 Policy communities and networks

As discussed above, policy decisions are in part shaped by the framework, values and ethos of organisations for which individuals work (Colebatch 2002,2006). However, it can also be seen that most contemporary policies are not just the outcome of the actions of one institution, they are a result of negotiation and consultation across agencies whether international, national and local; across government departments; as well as between governments and non-government agencies. As Considine reminds us 'many policy domains no longer sit comfortably within the institutional histories which once defined them' (2005, p.127). Policy actions and decisions in a networked understanding cut across a number of policy hubs. Consequently, policy actors have a number of points of leverage for influencing policy decisions and also need to engage in broader communication and information exchange strategies than in the past in order to reach across policy domains (Considine 2005). Networks can potentially cross traditional, institutional boundaries and hierarchies, and open up policy decisions to a range of players and a

range of views which it is argued can also increase the potential for conflict (Smith 1997; Considine 2005).

In order to try and provide a framework of understanding of this myriad of potential policy actors and policy hubs, and to assist them in identifying the key players and interactive nature of decision-making, policy analysts have developed the following concepts: policy or issues networks (Marsh & Smith 2000; Smith 1997); policy communities (Colebatch 2002); discourse and epistemic communities (Howlett & Ramesh 2003; Karstedt 2004) and policy advocacy coalitions (Sabatier & Jenkins-Smith 1999).

Smith argues that the terms 'networks' and 'communities' have tended to be used interchangeably in the policy literature to describe many different kinds of relationships between groups and governments (1997, p.76). Networks, he argues, tend to be seen as more loose associations of interest groups who are relatively independent from government. In comparison, policy communities are more tightly regulated closed groups with a smaller number of policy actors including government and non-government research and policy 'experts' who are bound by a set of 'rules of the game' and are tied to an institutional base (Smith 1997, p.80). The membership of the policy community is considered to be more constant than in a network and often involves a high degree of consensus amongst the group on policy aims and policy solutions, this in turn it is argued can tend to preclude alternatives being considered (Smith 1997, p.82). However, actors and groups can drift in and out the networks and communities over time and across policy issues as well as between different levels of government (Smith 1997, p.84).

Howlett and Ramesh (2003) and Karstedt (2004) respectively use terms 'discourse community' and 'epistemic communities' to describe the shared interests and outlook that agencies and individuals might have on a policy issue. A discourse/epistemic community defines its membership by its reference to a specific knowledge base a common level of understanding of a problem, its definition and causes. Its members may or may not intersect with interest networks (Howlett and Ramesh 2003, p.154).

Sabatier and Jenkins-Smith (1999) developed the concept of a policy advocacy coalition (PAC) to encapsulate their understanding of the relationships between policy actors and between institutions. PACs are formed they argue when a variety of institutions share similar beliefs, values and ideas within a policy subsystem. They form coalitions, which are seen to engage constantly in competition with other coalitions over policy issues. According to PAC advocates, networks can be broad and all can be seen to play a role in the dissemination of ideas and the development of policy (John 1998, p.169).

Howlett and Ramesh (2003) develop the idea of policy network/community further by examining the different levels at which actors and groups, institutions, discourse communities and interest networks are integrated (or not) into the policy process. Utilising the idea of a *policy universe* they describe the dynamic intersections of all the ‘possible international, state and social actors in institutions directly or indirectly affecting a specific policy area’ (p.53). From this they argue ‘a subset is drawn that encompasses the sectoral policy subsystem, which is a space where relevant actors discuss policy issues and persuade and bargain in pursuit of their interests (Howlett and Ramesh 2003, p. 53).

According to Howlett and Ramesh (2003) those involved in the policy subsystem cannot be identified *a priori*, as they are relatively fluid. It is only through research and investigation that key players can be identified and established. This concept of the policy universe and subsystems provides a useful way of understanding the intersecting layers of the policy process and the ways in which agencies and policy actors can infiltrate different aspects of the decision-making process at different moments, yet still operate as part of a system.

2.5.4 Individuals

As we have seen already in Kingdon’s analysis of the policy process individuals are seen to play a key role in influencing the policy process. Individuals are the agents of action in institutions who bring their skills, experiences and commitment to the policy process. And, according to Freiberg and Carson (2010), they often have a personal investment in a policy issue. Rock encapsulates this idea as he states:

... in the small world of the policy maker, personal character, influence and reputation count. Policies cannot and will not be anonymous there.... A new venture is then liable to become regarded as the symbolic property or adjunct of a named individual or small group of individuals, part of their material self, and it's worth and prospects will rest in part on their social and professional standing (Rock 1995, p.2).

Kingdon (2003) found that policy entrepreneurs are highly effective in directing policy decisions and are skilled at brokering the situation for policy proposals to be adopted (p.183). Entrepreneurs are those people who 'hook solutions to problems, proposals to political momentum and political events to policy problems' and in doing 'embody the link between structural/institutional process and agency (Kingdon 2003, p.182). Kingdon considers that there are particular qualities of individuals that place them in an influential position. For example, the person has to have some position or status that provides them with a claim on an issue such as expertise, an ability to speak for others, or someone who is in an authoritative decision-making position (p.180). Entrepreneurs also tend to share common attributes, they are known for their political connections, negotiating skills, or strategic capacity, they also need to be persistent and have tenacity in pursuing issues (Kingdon 2003, p.181). Kingdon considers that identifying these key individuals is important as he says 'when researching case studies, one can nearly always pinpoint a particular person, or at most a few persons who were central in moving a subject up on the agenda and into position for enactment' (2003, p.180).

In a critical complex analysis of policy the conceptual understandings developed by Bourdieu of *habitus*, *doxa* and *capital* are seen to have the capacity to convey the ideas of the dynamic intersections of structure and agency that underpin individual actions in any given policy field (See Callaghan 2005). The concept of *habitus*, can describe the nexus between the individual, their job and the organisation for which they work. It also helps to locate and cement the cultural/discursive practices of organisations and agencies, which in turn have an enormous role in shaping how decisions are made and the form that those decisions may take (Callaghan 2004, p.8). The concept of *habitus* encapsulates the intersection of organisational and personal qualities that people may bring to the policy table. So, for example, individuals are shaped by the values and culture of the organisation that they work for, but they also have allegiances to their particular job role for example what it

means to be a politician, public servant, police officer, social worker or a lawyer. Individuals may act in according to their future career aspirations and also their own personal biographies, values, family and community status, subjective and affective qualities that cannot necessarily be measured by looking at policy outcomes and indicators (See Byrne 2011, Callaghan 2005, 2008). Decision-making is not simply a rational, impassioned exercise; individuals are emotionally and cognitively invested in the policy process (Benson and Neveu 2005, p.3). Also, individual reputations, their status and future career success that is both ‘symbolic’ and social ‘capital’ can be enhanced or damaged by the way their performance in the policy process is viewed (see Benson & Neveu 2005). Greener (2002) argues that depending on the policy setting the accumulation of capital¹¹ will accord individuals and/or organisations more or less capacity to influence decisions, especially if alliances are made that enhance mutual strengths (p.692).

Stevens (2010) in his participant observation study on the UK civil service, explores in detail how these issues play out and the ways in which civil servants engage in the ‘rules of the game’ partly because they are committed to the ethos of their department, but also to enhance their reputation and further their careers. A study of the policy process also needs to examine how the dynamics of policy decisions can be affected by the particular mix of individuals involved (Colebatch 2006; Kingdon 2003; Rock 1995). It maybe that it is the interactions of the personalities involved in that brought about a particular decision and not just the mix of the organisations represented at the table (Colebatch 2006, p.8).

In summary, as Freiberg and Carson (2010) point out, it is absolutely essential to incorporate an understanding of emotions in criminal justice policy evaluation and analysis since policies are not purely evidence based and instrumental, but also ‘deal with the roles of emotions, symbols, faith belief and religion (p.1). In addition, understanding the affective qualities of policy making not only involves examining

¹¹ Social capital is the sum of the resources, actual or virtual that accrues to an individual or a group by virtue of possessing a durable network of more or less institutionalised relationships and recognition (Bourdieu *An Invitation to Reflexive Sociology*: 119 cited in Benson and Neveu 2005:n.16, p.21). On the other hand symbolic capital is ‘manifested through the ‘recognition, institutionalized or not, that [one] receives from a group’ (Benson and Neveu 2005: n.17, p. 21). Political capital is also used to describe the reputation and profile of politicians.

the values, emotions, skills of individual policy actors, but also the wider social expression of emotion and beliefs¹² (Freiberg and Carson 2010).

2.6 Concluding remarks: a complex dynamic policy approach

This review of selected policy and criminological literature has provided an overview of the complex range of direct and indirect influences that can shape decision-making in the policy process.

The definition of policy outlined in this chapter integrates an instrumental, symbolic and discursive understanding. The flows of policy decisions are seen to take place both horizontally and vertically, and different types of decisions are taken at various moments in the policy process. Kingdon's analytical framework of the coupling and uncoupling of policy streams and the combination of predictably and randomness in the policy process has revealed the cornucopia of dynamic factors at play in the policy process (2003). Policies are more often than not as Hill (2013) states, the result of complex networks involving a web of decisions that may change over time. It seems to be quite remarkable really from examining the literature, that it is ever possible to get all the 'different elements to focus on the same question in the same way' (Colebatch 2006, p.8). However, there are policies that are also the result of a simple process, or seem to be the outcome of a 'one off' event (Kingdon 2003). The co-existence of all these elements led Tim Newburn and Richard Sparks to observe that:

The emergence of, and adoption of crime control practices, policies and technologies are subject to a more complex mix of structural, subjective and simply serendipitous influences....the emergence of particular ideas is rarely the product of a process that bears any relation to rational choice model. Rather at best they tend to be the product of messy compromises and uneasy and temporary alliances and exigencies (2004, p. 6).

The chapter has also argued that policy decisions emerge out an intersection of macro and micro processes, structure and agency. As Hogg and Brown (1985) explain, structures limit what people can do and individuals act in ' conditions and processes, which systematically bend and frustrate the will of even the most progressive of such persons' (Hogg and Brown 1985, p.400). Individuals are agents

¹² There has been a recent growth in criminological literature on the role of emotion in the development criminal justice policy see Karstedt (2002, 2011) and (Loader 2011) this is incorporated elsewhere in this thesis.

within a negotiated order (Henry & McAra 2011). On the other hand, it is individuals and communities that push issues on to policy agendas, develop alternatives and take the policy decisions. Policy actors also operate within a layered policy universe where repercussions from actions can reverberate across sectors, as well as being contained within organisations and sub systems.

Examining the elements of the policy process in action can be difficult and it may be, as Bridgman and Davis point out, that policy often only becomes clear and coherent in retrospect, 'we look back at the patterns and continuities of a set of choices, and call these 'policy' (Bridgman and Davis 2004, p.3). Using the understanding and insights gained from reviewing the policy analytical literature it is anticipated that this review of juvenile justice policy process 1990-2005 will have the tools to identify the factors that have come together to shape decision-making and (non) decision-making during that time.

The next chapter continues to look further at the policy context by examining the co-existing and often conflicting sets of knowledges, discourses and strategies that inform juvenile justice policies and practices.

Chapter 3. Understanding juvenile/youth justice: models, discourses, strategies and rationales

3.1 Introduction

In the previous chapter it was argued that any analysis of juvenile justice policy needed to investigate the ways in which policy problems are constituted, discussed and understood (Considine 2005). Bacchi (2009) contends that policy is very much a cultural product and that the way a government conceptualizes a problem and the kinds of questions it asks about what needs to be addressed that will lead it to offer specific kinds of solutions¹³. The ways in which issues are problematized she argues has a lot to say about the process of governing (p. xi). Bacchi also calls for us to be circumspect about the ways in which problems are represented, stressing that it is important to interrogate whether so called problems actually exist in the way that politicians and the media present them (2009, p.xi). This chapter explores how knowledge and discourses of justice can be seen to shape the policy landscape and the decision-making process.

A critical complexity approach accepts that there are multiple, competing discourses that can influence policy decision-making. However, it proposes that there are conditions of emergence, which facilitate the dominance of particular discourses and associated practices and policies at different historical moments (Byrne 2011). Others have noted the association of youth justice discourses with their historical contexts. As Fergusson argues there has ‘been a tendency to associate particular discourses with particular ‘eras’, for example the post-war period being archetypally that of welfarism, the 1980s justice-driven, the present period characterized by managerialism, and so on’ (2007, p.181). This chapter adopts a similar kind of organisational approach, it explores the historical development of different ways of

¹³ Bacchi (2009) has developed a different way of approaching policy analysis, which she calls What’s the problem represented to be? or WPR. A WPR approach takes as its starting position that the ways in which issues are problematized can in fact constrain the ways in which they are understood and dealt with, and in order to deconstruct the dominant discursive approach analysts need to ask a series of key questions (for a list of these see Bacchi 2009 p.2).

approaching juvenile and youth justice but like other analyses (see for example Hogg & Brown 1995; Muncie 2009) it also contends that policies are informed at any one time by a multitude of discursive influences that co-exist and can be contradictory and conflicting.

The chapter includes a discussion of the range of epistemological approaches to understanding youth justice that exist in the relevant literature. It does this in order to identify how the very conceptualisation of youth justice and juvenile justice affects how we read and understand policy formulation and decision-making.

The chapter finishes by arguing that there is also a need to engage with emerging post colonial/neo colonial criminological literature especially in analyses of juvenile justice and criminal justice policies in countries like Australia, New Zealand and Canada. It explores how discourses of race, gender and nation are integral to these nations' histories, as well as to an understanding to the formulation of contemporary policy.

3.2 Models and governmentality

In this chapter I pull together insights from the literature that variously discusses models, typologies, paradigms, principles, or philosophies of juvenile justice¹⁴ (see for example Cunneen & White 2011; Garland 1985, 2001; Hartjen 2008; McAra 2010; McCallum & Lawrence 2007; O'Connor 1999; Pratt 1989; Roach 1999) and a range of governmental criminological literature that engages with discourses and strategies of youth justice (see for example Muncie 2009; O'Malley 2010). Despite their theoretical differences each of the above approaches share much in common in the way they discuss and analyse the intersections of knowledge, power, policies and practice, they also share similar themes, distinctions and terminology for analysing juvenile justice.

For Roach (1999) models provide a useful way to analyse justice related issues since they offer 'a way to cope with the complexity of the criminal process. They

¹⁴ It is worth noting that a review of the history of the growth in juvenile/youth justice literature could in itself be the basis of a thesis examining the evolution of knowledge on the subject. David Garland's book *Welfare and Punishment* (1985) explores the history of knowledges of juvenile delinquency and deviancy in the nineteenth and early twentieth century.

allow for the ideologies and discourses that surround criminal justice to be identified and for ‘details to be simplified and common themes and trends to be highlighted’ (p. 671). In addition, Roach argues that models are also used to guide policy development and practice. Models of juvenile justice tend to be guided by the identification of what is happening in practice in order to build analytical concepts such as welfare, justice/punishment, rights, corporatism, restorative justice, neo-liberalism as a basis for analysis. Rob White (1998) adopts a slightly different approach to discussing juvenile justice, using the terms ‘coercive’ ‘developmental’ and ‘accommodating’ to describe responses to crime. Coercive strategies he argues are those that prioritise the use of power to enforce regulation, law and control, operating on threats of violence and negatively labelling young people. The main agencies involved are police, security guards, courts and corrections (p. 17). Developmental approaches are seen by White (1998) to be ones that endeavour to encourage children and young people to achieve their potential; providing skills and resources, and combatting disadvantage and discrimination, and in so doing adopts a multi-agency approach. Finally, an accommodating approach is one based on negotiation and the participation of all key parties in dealing with social problems. The distinct feature of this last approach is that children and young people are seen to be genuine stakeholders in policy development and service delivery (p.22).

Since the 1980s and the growth of governmentality literature inspired by Foucault the terrain of policy analysis has been challenged (see Bacchi 1999, 2009; Bessant, Watts, Dalton and Smyth 2006; Considine 2005; Goodwin 2011,2012); as well as the ways in which criminal justice and youth/juvenile justice are conceptualised and analysed, (see the work of O’Malley 2004, 2010; Osmond 2009; Muncie 2008, 2009; Muncie & Goldson 2006; 2012 and many others). According to O’Malley (2010), even those writers, who would not necessarily identify themselves as ‘governmental criminologists’ have engaged with the literature and incorporated key concepts, ideas and language and this way according to Rose, O’Malley and Valverde (2006), governmentality has become part of an analytical toolbox.

In brief, according to O’Malley (2010), government is something that the State and other agencies and subjectivities ‘do’ and power is reconceived not as a thing in

itself but as something to be exercised; an articulation of rationalities and techniques deployed in order to solve problems (O'Malley 2010). Rationalities are schematic theories or imaginaries of society which map out the nature of problems, how they are to be identified, what their causes are, what kinds of subjects are involved and what the ideal outcome would be' (O'Malley 2010, p.10). Discourse is, as Bacchi (2009) identifies, a key concept in governmentality as it encapsulates the idea that knowledge and practice inform each other and frame the way in which issues or behaviours are problematized. It is argued that discourses, rationalities and techniques of government change over time. And, as the following discussion shows, in criminology the governmentality literature has identified techniques of governance that include discipline, normalisation, risk, security and actuarialism shaped by the transformative influence of discourses of neo-liberalism and neo-conservatism (see especially Newburn 2003; Muncie, 2009; O'Malley 2010).

John Muncie's body of work has utilised a governmentality approach to identify discourses, rationales and strategies of governance in youth justice. Muncie (2009) identifies a number of broad strategies of governance including: *welfare based interventions* which are designed to help young people in trouble and to secure their rehabilitation and re-integration into mainstream society; *justice based interventions* designed to give young people the same legal rights as those afforded to adults and divert them from the damaging effects of court and custodial processing; *risk management interventions* designed to identify those at risk of offending and secure their 'restoration' through pragmatic, cost-effective and proven methods; and *authoritarian interventions* designed to punish offenders and prevent further offending through punitive deterrence (Muncie 2009). He argues that permeating these aspects of the contemporary governance of children and young people are a number of discourses of youth justice (these are summarised in Muncie 2009, Box 9:13 at 347). These include *welfare-paternalism*, *liberal justice*, *neo-conservative remoralisation*, *neo-liberal responsabilisation*, *neo-conservative authoritarianism*, *managerialism* and *human rights*. Muncie argues that *welfare-paternalism* sees youth as deprived and in need of care, guidance and supervision; there is a focus on needs and the rationale for intervention is to respond to individual needs. In a *liberal justice* discourse youth are conceptualised as rational actors and the focus of the juvenile justice system is on the severity of the crime and formulating a

proportionate response, the rationale of intervention is to ensure due process and fairness. Muncie argues that *neo-conservative remoralisation* operates on the basis that youth are immoral. Risk assessments are undertaken to assess the likelihood of future criminogenic behaviour and justified on the basis of crime prevention. In response childhood early intervention policies and programs are introduced to ‘compel social inclusion’ (Muncie 2009, p.347). *Neo-liberal responsabilisation* takes a different tack and sees youth as irresponsible, and those families and individuals need to take measures to transform themselves. In this approach criminal justice policies are geared towards crime prevention strategies that reduce opportunities for crime and increase informal control. In this conception the state devolves crime control to individuals and communities and ‘governs at a distance’ (2009, p.241). The fifth discursive approach identified by Muncie, *neo-conservative authoritarianism* views youth as dangerous and the response in policy is to resort to overt punitiveness for short-term political expediency and electoral gain. The rationale for punitiveness is the protection of the public. Muncie recognises that *managerialism* as a discourse influences all policy but in relation to young people it rewrites policy in relation to ‘achievable and cost-effective outcomes that are amenable to audited accounting’ (Muncie 2009, p. 347). Underpinning managerialism is a rationale that is focused on pragmatic implementation of policy and internal system coherence. Finally Muncie identifies human rights as a discourse that has in a limited way shaped policy development (p.347). A human rights approach sees that children and young people are vulnerable to adult power and under-protected; in theory it challenges the paternalism of welfare based policy and demands that children and young people participate directly in decisions affecting them and should be envisaged as citizens with evolving capacities. The rationale of *human rights* discourse and related strategies is to alleviate harm, protect children and young people from abuse and exploitation, reduce social marginalisation and to actively advance children’s capacity to engage in citizenship (Muncie 2009, p.347). Each of these is incorporated into the following discussion of approaches to justice.

Muncie (2009) considers that youth justice is a hybrid system where discourses, rationales and strategies co-exist ‘alongside each other in some perpetually uneasy and contradictory manner’ (p. 309). Muncie and Goldson point out there are

‘multiple, overlapping themes in contemporary international youth justice reform’ which they identify as ‘repenalisation, adulteration, welfare protectionism, differential justice, restoration, tolerance, decarceration and rights’ (p.197).

3.3 Welfare, justice and punishment

The pairing of the term welfare with justice or punishment has been used as a way of identifying two of the main approaches underpinning juvenile justice strategies from the 19th century until the 1990s (see for example Cunneen and White 2011; Garland 1985; McCallum and Laurence (2007); McAra 2010; Muncie 2009; O’Connor 1998; amongst many others). The roots of the emergence of the co-existence of the public expression of welfare and justice attitudes to children and young people’s offending have been ascribed to the work of the first public body to investigate and identify ‘juvenile delinquency’; the English *Society for Investigating the Causes of the alarming increase in Juvenile Delinquency in the Metropolis*. The Society was established in 1815 and its subsequent report -*Report of the Committee into Juvenile Delinquency* was published in 1816 (for a discussion of its findings and recommendations see Cunneen and White 2011; Muncie 2009). The report argued that children and young people should be viewed as a distinct social group, with specific developmental needs and social and psychological attributes. It identified that delinquency was the result of a range of social factors including the ‘improper conduct of parents, ‘the want of education’, ‘want of suitable employment’ and violation of the Sabbath,’ as well as being the result of the ‘failures and criminalizing tendencies’ of existing legal procedure, police practices and penal regimes (Muncie 2009: 53). In addition the report found that young people were the victims of circumstance’ over which they ‘had no control’ (Report of the Committee into Juvenile Delinquency 1816 pp. 12-13, 25 cited in Muncie 2009 at 53). In consequence the Society believed the purpose of the criminal law should be to reform and not merely punish juvenile delinquents (Muncie 2009, p.52). The Report also recommended establishing a separate juvenile justice system where juveniles would be handled with a mixture of ‘persuasion’ and ‘reproof’ (Muncie 2009, p.52). In retrospect it can be seen that the views of the Society were way ahead of their time, almost prophetic, since the vision and recommendations of the Report were to be reflected in much later nineteenth century legislative and

policy reforms in England and Wales, the US and in the emerging states of Australia.

By the nineteenth century the body of ‘knowledge’ and science about juvenile delinquency began to grow (Lee 2006) and related professional specialisms in social work, psychiatry and law expanded (Garland 1985). It was believed that with the application of research, science would lead ultimately to the discovery of techniques for cultivating acceptable behaviour and ultimately to a reduction in crime (Ritter 2001, p.108)

One aspect of that science focused on welfare explanations for juvenile delinquency. Cunneen and White (2011) in examining what they call a welfare model of juvenile justice argue that it is characterised by the following features: behaviour is regarded as arising from a range of psychological and social factors outside the control of the individual; the focus of attention of policies and procedures is on the needs of the offender rather than their deeds; rehabilitation is the primary goal of sentencing; and the needs of the young person must be treated through appropriate intervention; treatment can occur outside the formal justice process through diversion, but involves professionals and experts; the protections of criminal justice procedures are not required because the focus is on treatment rather than punishment (p.106). According to McAra (2010), in welfare framework children are seen to be entitled to be cared for and protected at home and where the family fails to do so the state should step in the role of *parens patriae*¹⁵. Welfare approaches consider that children and young people are still maturing and developing, they do not have full cognitive functions and an underdeveloped awareness of risk, consequently they are not seen to be fully responsible for their actions and not completely culpable for their offending behaviour (Feld 2006; McAra 2010). Consequently it is argued that should not be subject to the full force of the law (Feld 2006; Hartjen 2008; Cunneen and White 2011). A welfare approach also considers that legal systems ought to be guided by the ‘best interests’ of the child (Hartjen 2008), as well as being responsive to their individual circumstances (Feld 2006; Hartjen 2008). The focus of the welfare model is not

¹⁵ As will be seen in the next chapter the principle of *parens patriae* was introduced in the late nineteenth century, and provides the court with an obligation to act in the capacity of the role of the ideal parents offering guidance and assistance.

only on the treatment and rehabilitation of the individual offender, but also on improving social conditions and addressing issues of social justice, as well as working with families in order to ensure that children and young people are not exposed to situations that lead them into deviancy and delinquency. As Hartjen states the key personnel engaged in working within a welfare approach is social workers, welfare workers and probation officers (Hartjen 2008). Muncie argues that a discourse of welfare paternalism permeates many aspects of the policies and procedures developed to address delinquency within this framework (2009). In her work on young female offenders (Carrington 1993, 1996; and Carrington & Pereira 2009 amongst others), has highlighted how punitive attitudes to young women's deviancy and crime led to many young women receiving custodial penalties for perceived immoral or unruly behaviour. In this way young women were perceived to be doubly deviant crossing the boundaries of acceptable gendered behaviour and the criminal law (Carrington & Pereira 2009)¹⁶.

The discourse and strategies of justice/punishment are also seen to permeate the development of juvenile justice alongside welfare (see for example Cunneen & White 2011; Garland 1985; McCallum & Lawrence 2007; Pitts 1988, 2003). As Garland (1985) amongst others, points out, neither a pure form of the welfare model nor the justice model has existed in practice. According to Garland (1985) juvenile justice has been shaped by an amalgam of classical conceptions of justice and punishment, which was disrupted by the ideas of positivism and welfarism. The institutions, practices and policies that emerged out of the intersections of these two strands became embodied in what Garland terms the *penal-welfare complex* (1985).

In his analysis of criminal justice in the UK, Newburn (2003) points out this duality resulted in:

a tendency on the one hand to wish to support and protect those children who for a variety of reasons may find themselves on the wrong side of the law, on the other hand, a determination to ensure that those who continually offend despite the efforts to stop them, receive a punishment that makes it clear that their behaviour is unacceptable (p.201).

¹⁶ In Australia the work of Alder (1985, 1997, 2000) and Gamble (1985) provide detailed historical evidence of the differential treatment of girls and young women

Garland argues that justice/punishment model was influenced by an amalgam of classical nineteenth century legal and criminological theory, coupled with concerns with formal legal and criminal justice procedures and those legal protections afforded by the court in terms of due process and legal procedures. Muncie (2009) identifies these strands as being shaped by 'liberal justice' and 'liberal authoritarianism'. The following discussion explores the key characteristics of these.

In a justice model Cunneen and White (2011) argue that policies and practices that focus on the offence and not the needs or circumstances of the offender. Sentencing principles prioritise proportionality in relation to the seriousness of the offence and are geared to deter future offending by the individual. In addition, according to Cunneen and White (2011), the liberal legal features of justice are built around legal principles such as due process, criminal and legal procedure, rights and proportionality in sentencing. And, for McAra (2010) a justice model that emphasises due process model is very much concerned with civil and political rights, the right to legal representation and the need for accountability in juvenile justice systems. It affirms the rights of young people to legal representation, the right to a fair trial and to a judicial review of decision-making (see also Feld 2006; Muncie and Goldson 2006). According to Hartjen (2008) an appeal to the liberal justice model associated with due process rights began to be invoked from the late 1960s onwards in those jurisdictions where welfare was deemed to be 'riding roughshod over the rights of children and young people' (Hartjen 2008, p.91). He argues that in these jurisdictions children and young people could face indeterminate periods of detention programs under the guise of rehabilitation, or as being in their best interests. In these circumstances Hartjen argues that it was believed legalism and due process rights might work to 'save children from their saviours' (p. 91).

The more punitive liberal authoritarian approach is associated with a more retributive and punitive model of justice. According to Cunneen and White (2011) sentencing is marked by the ideas of 'just deserts' or 'truth in sentencing' or by 'mandatory sentencing' or 'three strikes and you are out' that reduces the discretion of judges to target sentences to the needs of the offender. And, according to Muncie

(2009) sentences tend to be at the harsher end of the scale and are geared towards incapacitation, taking the young person out of the community and away from criminal opportunities. Muncie (2009) also highlights how the emphasis is placed on punishment and retribution and on making the young person pay for their crimes through penance. In this context rehabilitation is deemed to be a secondary goal in sentencing (Cunneen & White 2011).

The juvenile justice and criminal justice literature identifies that from the 1980s onwards there was a significant punitive turn in the discourses and practices of justice in a number of liberal market economies across the globe (see Garland 2001; Cavadino and Dignan 2006; Muncie & Goldson 2006; Muncie 2009). According to Garland, the retreat from the rehabilitative ideal and the shift to a culture of crime control (Garland 2001) went hand in hand with a morally conservative politics, coupled with strands of neo-liberal economic strategies that attacked state funded welfare and promoted the free market and new managerialist models of service provision (Garland 2001). In the US this blend of influences has been seen to result in a strategy of 'governing through crime' and the criminalising of welfare (Simon 1997; Currie 1998; Newburn 2003; Rodgers 1998). In the UK and US and other liberal market economies this was seen to lead to a significant upward trend in the numbers of young people in detention. The social exclusion of sections of the community intensified the racialization of justice, leading to an increasing overrepresentation of Afro-Americans, ethnic minorities, indigenous young people in the youth justice system and especially in detention, (Currie 1998; Young 1999; Garland 2001; Cunneen and White 2011; Muncie 2008; McAra 2012; Goldson and Muncie 2012).

Moral conservatism has also been seen to lead to the 'responsibilisation' and 'adulthoodification' of young offenders, where young people are reconfigured as rational choice actors and their criminal actions are treated in the same way as adult offenders, with under 18 year olds receiving life sentences, being transferred to adult courts and adult gaols in some circumstances (Goldson 2009; Goldson & Muncie 2012; Hartjen 2008; Muncie 2008, 2009). The dominant discourse of youth justice in a number of jurisdictions became coercion and control and not the welfare of young offenders (Goldson and Muncie 2006, p.297). Policing strategies informed

by liberal authoritarian justice are geared towards control and coercion and containment, exemplified by zero tolerance policing and the idea that the system is geared to 'fighting juvenile crime rather than securing juvenile justice' (Wacquant 1999 cited in Muncie and Goldson 2006, p.199).

Perversely, according to Goldson and Muncie (2006), the push to judicial legal principles during this period also 'allowed justice and rights to be usurped, particularly by political conservatism, as a means of delivering 'just deserts' and enforcing individual responsibility' (p.199).

Welfare and justice/punishment principles have, and continue to co- exist in, an uneasy relationship and are often in conflict leading to policies that may be contradictory and confused (see Cunneen and White 2011; Hogg and Brown 1985; Muncie 2009; Newburn 2003).

3.4 Corporatism – the 'third model of juvenile justice'

John Pratt (1989), in the late 1980s identified the co-existence of welfare and justice models in juvenile justice but also argued that the dichotomy of welfare and justice models masked the reality of what was happening in practice. Pratt pointed out that despite the rhetoric of the 'back to justice' model of the 1980s there was little evidence of a shift to due process, but there was a clear pattern emerging of what he saw as a third model of justice which he called 'corporatism'.

According to Pratt during the 1980s as the state retreated from social support and state management of the economy, there was a concomitant shift 'towards corporatist intervention and regulation in the penal spectrum' (1989, p. 246). The characteristics of 'corporatism' stood in contrast to welfare and justice as Pratt stated:

Instead of a concern for the protection of individual rights, we find instead an emphasis on efficiency and the primacy of policy objectives. Instead of a shift from the inhumanities and injustices of the institution, we find these features of the carceral system now being reproduced in the community - in those projects that are supposed to be *alternatives* to the institution (1989, p.252).

Pratt argues that the corporatisation of juvenile justice was also characterised by an increase in administrative decision-making in juvenile justice, a reduction in

autonomy for decision makers such as the judicial officers in sentencing, the introduction of strict referral criteria for program entry, greater inter-agency cooperation, greater diversity in sentencing including community based options, a centralization of authority and increased co-ordination of policy, higher levels of containment and control for some sections of custodial populations and a bifurcation in the treatment of minor and more serious offenders (1989). Another major feature of juvenile justice in the 1980s, he argued, was the growth in the exercise of a centralised bureaucratic legal authority and a push to a more efficient pursuit of bureaucratic policy goals, norms and objectives. As he states 'instead of an emphasis on 'rights', what we find in practice at nearly all levels of decision-making is this overarching emphasis on policy...the rights of the client come to be conflated with the objectives of policy (Pratt 1989, p.248).

Pratt's analysis proposed that justice systems became so well established that they were generating their own policy options and priorities, and began to respond primarily to the interests of the administration rather than concerns with the offender or the victim (see also Roach 1999). In turn, Pratt argues that self-generated justice processes of corporatism leads to what he sees as a 'bifurcation' in juvenile justice where, as he states:

The 'hard core' will still be locked up: but a delinquency management service is now provided in the community for that troublesome segment of the youth population not dangerous enough to lock away but too disruptive to ignore (Pratt 1989: 247)

Pratt's work on corporatism highlights how administrative and managerial discourses and practices have an impact on juvenile justice and on reconfiguring societal responses to social problems. In this way as Muncie (2009) argues complex, multi-faceted social and justice problems become simplified in the interests of more efficient and measurable administration (p.298). This is a point that we come back to in s. 3.7 and 3.8 of this chapter in relation to New Public Managerialism (NPM).

3.5 Radical critiques: A focus on the agents of social control

In the late 1950s and throughout the 1960s and 1970s studies of crime and deviancy began to offer a critique of the role of professionals and the state in young people's

behaviour. For example labelling theory began to redirect towards the activities of the police, courts, probation officers, teachers, media and other agents of ‘social control’ in the creation and reproduction of deviancy and delinquency (Lemert 1967; Becker 1963; Cohen 1976). Labelling theory suggested that together their actions did not deter young people from crime but had the opposite effect of confirming their deviant identity and inciting deviant actions in others (Lemert 1967, Cohen 1972). Labelling theory considered that young people’s delinquency was a passing phase in development towards adulthood. Consequently its proponents advocated a ‘hands off’ approach to juvenile crime and instead proposed juveniles should be diverted away from the formal institutions of juvenile justice and responses to crime and deviancy should be based on principles of non-intervention and custody should only ever be used as an option of last resort (Lemert 1967; Murray 1985). Others like Schur (1973) were more radical in their approach advocating for the total de-institutionalisation of state responses to crime and deviancy and that it would be more fruitful to do nothing. Alder and Wundersitz (1994) contend that labelling theory did shift thinking in juvenile justice jurisdictions although they argue the degree to which it directly informed policy decision-making is not easily measurable. However, the research evidence and body of knowledge that flowed from the labelling understanding that children and young people will grow out of crime is still a key epithet of criminological evidence about juvenile crime (Goldson 2009).

In the early 1970s the publication of an article relating to a meta-study of the effectiveness of rehabilitative programs across the USA and UK by Martinsen, stated in its summary, ‘with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no effect on recidivism’ (Martinsen 1974, p. 25). Despite the fact, his article and the evaluative research itself went on to argue that the reason for this was more than likely due to a combination of the lack of real commitment to rehabilitation, under resourcing, poor skills of workers and poor quality educational programs, the negative message was seized on by critics from both left and right as evidence that ‘*Nothing Works*’ in rehabilitation and treatment programs (Keogh 1998; Sarre 2001). The ‘nothing works’ mantra, coupled with the diversionary push from labelling theory combined to provide support for the non-intervention arguments of writers like Scull who in 1977 released *Decarceration*,

Community Treatment and the Deviant that advocated the use of community programs for working with offenders. For example in a radical move in the USA in 1975, Massachusetts closed five public correctional facilities for young people on the basis that they were harmful (Muncie 2009: 291). Only a small number of secure beds were left open for more serious offenders and rehabilitation services in the USA were bought in from the community and voluntary sectors (Sarri 1985; Jensen 2006).

In the 1960s and 1970s more radical critiques of crime and delinquency inspired by Marxism provided economic and class based analyses of the relationships between male youth subculture, deviancy, delinquency and crime (see for example the edited collection *Resistance Through Rituals* Hall and Jefferson 1993). Marxist explanations disassociated youth behaviour from ideas of dysfunction, pathology and strain, and highlighted instead the disempowering impact of capitalism (Hogg and Brown 1985). These accounts also argued that the criminal law, legal procedures and the work of criminal justice agencies engaged in the ideological enterprise of manufacturing consensus to capitalism, as well as operating openly repressive measures of coercion and control to reproduce capitalist social order (see for example Box 1983; Chambliss 1975; Hall, Critcher, Jefferson, Clarke & Roberts 1978 (for an overview of radical and Marxist criminology see Newburn 2007). Radical critiques influenced academic understandings of youth crime and policing and influenced social work and youth work practice on the ground (see Brake and Bailey *Radical Social Work* 1980). The interpretation and approach to crime and crime prevention that emerged in what came to be called left realism, had a significant impact on investment in community policing strategies and crime prevention in many jurisdictions throughout the late 1980s and early 1990s (see for example Kinsey, Lea and Young 1984; Lea and Young).

Similarly, critiques of justice inspired by feminism and anti-racism focused attention on inequitable criminal justice and juvenile justice legislation, policies, procedures, which influenced discourses about crimes such as domestic violence, sexual assault and hate crimes.

3.6 Risk management, actuarial justice and responsabilisation

According to Muncie (2009) from the 1980s onwards the terms ‘risk management’ and ‘evidence led’ policy reflected the growing importance of what has been described as a new penology of actuarialism that demanded more administrative accountability and rationality in policy management and development (p.322).

The emergence of risk management can be seen to be part of what Lupton (1999)¹⁷ has described as ‘a way of talking and acting’ in discourses, practices and institutions, which brought risk into being (p.85). According to Lupton (1999), from the 1980s onwards information and research about risks and risk populations including risks of crime, were gathered, analysed, calculated, rendered problematic and then subject to governance (p.87). Although these kinds of practices had existed in relation to fear of crime since the nineteenth century it has been argued that the distinguishing features of ‘risk’ discourse was its link to discourses of neo-liberalism and actuarialism (see amongst others Lupton 1999, Lee 2007 and O’Malley 2010). From policing to sentencing and from access to custodial and post-release programs, risk assessment and management have permeated all aspects of criminal justice and juvenile justice (see Ericson & Haggerty 1997; Garland 2001; Muncie 2009). In addition, the work of Simon (1987) and Feeley and Simon (1992,1994) on risk and actuarialism, brought attention to the ways in which actuarial techniques of governance were displacing disciplinary governance in relation to the management of crime (see also O’Malley 2010). According to Feeley and Simon strategies of actuarialism constitute a ‘new penology’ that ‘seeks to regulate groups as part of a strategy of managing danger’ (1994, p.173). Actuarialism is seen to embody the principles and practices of insurance where risks are calculated according to aggregated statistics and calculations, ‘risky individuals are identified by their location in a network of factors drawn from aggregated data of risk populations’ individuals carry a ‘risk profile’ (Lupton 1999, p.99). In this process, individuals and their social connections are disembodied and people become risk takers and carriers of risks (Wearing 2001). Youth become defined as ‘at risk’ or ‘risky’ (Muncie 2009). Risk calculations in criminology are based on aggregated statistics about population such as those identified by Farrington (1994)

¹⁷ Lupton’s book *Risk* (1999) provides a detailed overview of the key writings on the ‘risk society’ and on Foucault’s theoretical insights on risk management.

are used to identify 'criminogenic risk' that is the risk of offending or re-offending (Farrington 1994 cited in Goldson and Muncie 2006b at 40). Goldson and Muncie (2006b) ironically and quite pointedly, sum up these kinds of risk classifications as 'criminal', 'near criminal', 'the possibly criminal', 'sub criminal', 'the anti-social', 'the disrespectful' and the potentially problematic' (p.36).

An individual's criminogenic risk becomes the focus of criminal justice and juvenile justice intervention and not the social and economic factors and public policies that place an individual in that situation (Lupton 1999; O'Malley 2004; Hannah-Moffat 2010). Policies and programs focus on the individual's life choices and capacity to engage in non-criminogenic behaviour through self-management strategies such as cognitive behaviour therapy (McCallum and Lawrence 2007). Access to placements, programs, probation and parole become based on risks/needs assessments that are delivered through a risk assessment inventory (Muncie 2009; Hannah-Moffat 2010). It is argued that this represents a significant shift away from welfare and distributive aspects of crime prevention into ones that focus on individual responsibility (Muncie 2009; O'Malley 2010). O'Malley (2010) states that individuals are encouraged to manage their own risky behaviour generating what has been called 'a new prudentialism' through 'responsibilisation'. O'Malley states that the protection of public safety in a risk climate becomes a key concern of penology, justifying longer periods of incarceration (O'Malley 2010).

According to Booth and Townsley the focus on managing individuals as the bearers of risk also diminishes the well-documented insights gained from labelling theory that any engagement with the criminal justice system is in itself a predictor of future immersion in a criminal career (Booth and Townsley 2009, p.51). Early intervention, incarceration become their own criminogenic risk factors.

Despite the permeation of neo-liberalism into many aspects of the governance of crime O'Malley warns that analyses of governmentality and risk should not overplay the monolithic and all encompassing nature of neo-liberalism. As Rose, Valverde and O'Malley (2006) state discovering neo-liberal traces in the arts of governance does not mean that they are all pervasive, they co-exist alongside other rationalities of governance. For example as Hannah-Moffatt (2010) has asserted and Zedner (2007, 2009) has documented, liberal legal justice principles and

commitment to due process have attempted to resist the inexorable encroachment of risk into criminal procedure.

Muncie (2009) highlights how the focus on offender profiling and risk classification have been turned to as a way of overcoming the pessimism of ‘nothing works’ that we have seen emerged in the 1970s (p.323). In an overview of the research on ‘what works’ Muncie discusses how the results of meta studies such as those of Sherman and his associates (1997) on the impact of cognitive behavioural therapies in highly structured programmes have led to an adoption of ‘scientific what works evidence’ in the development of policies and programmes (2009, p. 324). As well as facilitating the rapid development of highly intensive interventionist approaches for particular types of offenders (Muncie 2009 p.323). According to Muncie (2009) the new paradigm of evidence led policy is problematic, since the results of ‘what works’ meta-studies are inconclusive and are used selectively to justify pre-determined government policies and negate professional autonomy (2009, p. 325).

The intersections of risk, actuarialism and neo-liberalism can also be identified in the policies and practices of new public managerialism, where the conceptualisation, administration and delivery of criminal and juvenile justice policies are based on free market principles (Clarke and Newman 1997; Newburn 2003; O’Malley 2010; Zedner 2007). Criminologists have argued that these combined influences lead to policies and practices that prioritise, economy, efficiency and effectiveness, measurable outcomes and outputs, over and above other principles of delivering justice (Newburn 2003; Muncie 2009).

3.7 Risk pre-crime, security and contractualism

The criminological literature exploring the links between risk, neo-liberalism and contemporary policies and programmes is extensive. Some analyses, such as those of O’Malley (2010) and Muncie (2008, 2009), examine the ways in which new techniques of governance devolve responsibility for managing risk and crime control away from government to private entities, individuals and communities. This change in governance coupled with the free market principles has also been seen to lead to the privatisation and contracting out of policing, crime prevention and security services (see Loader and Walker 2007; Wakefield 2003; Zedner 2007,

2009; McLaughlin 2006). Zedner describes this devolution of responsibility as a change in 'social ordering practices which also engages communities, volunteers and individuals in strategies of governance (2007).

Zedner (2007) also argues that responsabilisation and risk management have also brought about an identifiable shift in justice systems from what she calls 'post crime' concerns to 'pre-crime' concerns and a focus on securitisation and pre-emptive policing. By this she means that conventionally, crime is regarded as harm or wrong that is dealt with post hoc, however, in the emerging pre-crime society, crime is re-configured essentially as risk or potential loss and pre-emptive prevention has become the focus of crime concerns where security is a commodity which is sold for profit (2007). This, Zedner argues, has intensified since the events of 9/11, where states have ramped up security measures and surveillance, through CCTV, biometric testing, profiling and control orders, and as she states 'the logic of security dictates earlier and earlier interventions to reduce opportunity, to target harden and to increase surveillance even before the commission of crime is a distant prospect' (Zedner 2007, p. 265). The increased surveillance of populations combined with the privatisation of public space has disproportionality affected the young, the marginalised and specific racialised cultural groups; with targeted policing monitoring and regulating movement and behaviour (White 1990; Coleman and McCahill 2010).

Adam Crawford (2003) has identified what he calls 'contractual governance' and the increase in use of civil, or hybrid civil/criminal orders to regulate behaviour and possible future behaviour as evidence of the shift to pre-emptive crime management. These are seen to target young people specifically in the form of Anti-Social Behaviour Orders, curfews and other sorts of control orders. Where breaches of contracts occur individuals are then subject to a criminal sanction that can involve periods of custody (Crawford 2003). Crawford outlines how these measures are coupled with the civil regulation of public space by the use of exclusion orders to pre-empt further crime (Crawford 2003, 2007).

Pre-crime, pre-emption and anticipation of future conduct, surveillance and securitisation, responsabilisation and privatisation are seen to be significant shifts in the governance of populations and are generally regarded in criminological

literature to have a negative impact on the ways in which juvenile justice and youth justice policies have developed since the 1980s.

3.8 Restorative justice

Features of what we now understand as restorative justice emerged during the 1970s and 1980s as part of a movement towards the re-imagination of justice. It offered an alternative paradigm for principles of practice for criminal justice and youth justice policies, including conferencing, mediation and later therapeutic justice strategies. During the 1980s and 1990s a number of factors which included the rapid increase in numbers of adults and young people in custody (Alder and Wundersitz 1994; Sandor 1994), led as Hudson (1996) states to a search for different ways of 'doing justice' (Hudson 1996). According to Polk the adoption of restorative justice processes was seen to be provide the kinds of innovation that policy developers were looking for in what he argues were 'self-conscious attempts to alter the justice process' (Polk 1994, p.123/4).

Initially, restorative justice developed from two key sources the New Zealand Family Group conferencing model which had been developed to engage Maori communities in dealing with care and protection, and juvenile justice matters (Maxwell and Morris 1994; Alder & Wundersitz 1994). And later, Braithwaite's, and Braithwaite and Pettit's early work on republican theory, including the concept of re-integrative shaming (Braithwaite 1989; Braithwaite and Pettit 1990).

Muncie (2009) identifies the key elements in restorative justice as including the following principles: crime is viewed fundamentally as a violation of people's dominion and their interpersonal relationships; restoration is a response to the needs and harms experienced by victims, offenders and communities; it maximises participation of victims; provides offenders with opportunities and encouragement to understand the harm they have caused and to make amends; it advocates that communities have a responsibility to support victims and integrate offenders; mutual agreement and opportunities for reconciliation take precedence over imposed outcomes, healing, recovery, accountability and change are prioritised over punishment (p.327). Restorative justice espouses a problem solving approach to addressing criminal harm and unlike punitive justice models; the emphasis in

restorative practices is on reconciliation, reparation and reintegration (Cunneen and White 2011; McAra 2011).

According to Cunneen and White (2011) restorative justice, involves the re-engagement of victims, offenders and communities in mediation, encouraging the expression of hurt and remorse as a way of repairing harm and restoring 'dominion' (Cunneen and White 2011, p336). O'Connor (1998) also points out that in restorative discourse and practice the role of the criminal justice system is seen to be one that involves 'maximizing the capacity of individuals to enjoy the benefits of citizenship and to facilitate the rebuilding of this capacity where it is fractured through offending behaviour' (p.5). There are also a number of other goals and objectives both stated and unstated that White argues permeate restorative justice and these involve the streamlining of decision-making, ensuring victim restitution, process or outcome satisfaction for victims, better management of offenders and reintegration of offenders into a community of people (White 1994, p.183). Hartjen (2008) also considers that restorative justice is underpinned by strong elements of a welfare approach since it bypasses traditional legal procedures; it is concerned with restoring community balance and stresses the well being of children (p.90).

White (1994) also makes the point that it is attractive to administrators since it is seen to be time efficient and cost effective in comparison to traditional court based procedures (p.184).

Despite its widespread and popular acclaim there are a number of critiques of restorative justice. For example, Goldson and Muncie (2012) see that the neo-liberal conception of responsabilisation is still a key discourse of restorative justice. They argue that the premise of restorative justice is that individuals, including children and young people should take responsibility for their actions, admit guilt and remorse and engage with adults in what they term 'moral pedagogy and idealised 'repair' (2012, p. 59). White & Wyn (2008) argue that what separates just deserts and restorative justice is a matter of degrees of emphasis: "holding the young person accountable" is primordial, but in the latter model the focus is less on punishment and more on reparation' (p.160). White (1994) considers that the republican theory that underpins restorative justice has an idealised unrealistic view of community (1994). Goldson and Muncie also point out that questions of power appear to be

airbrushed out of youth justice conferencing and a simplistic narrative of victims and offenders masks the reality of the lives that many children and young people experience (Goldson and Muncie 2012, p.59). It has also been pointed out by a number of critics (see Muncie 2009 pp.226-235 for an overview) that under the guise of restorative justice, programs have been established that end up not being at all diversionary, they can become net-widening. They can bring more children and young people into the purview of the system and be more punitive than the courts in setting outcome plans that are harsher than a comparative court sentence.

It is also notable that claims were made by a number of restorative justice pioneers that it offered opportunities for indigenous communities to engage more meaningfully with dominant legal systems due to the participatory and discursive nature of its proceedings (Braithwaite 1989; Maxwell and Morris 1994). However, both Cunneen (2008) and Blagg (2001, 2008) argue that this is an essentialised position which assumes that pre-colonial forms of justice are globally similar across all peoples and that pre-colonial relations of justice have survived in tact and are free from the neo-colonial power relations that permeate all other aspects of people's lives (see also Cunneen and Hoyle 2010; Goldson & Muncie 2012).

3.9 Human rights

Finally, in this overview of key trends in juvenile justice discourse we come to a discussion of human rights. Human rights discourse has often been subsumed into a general justice model (Muncie 2009). But, children's human rights as actualised in the UN Convention on the Rights of the Child (CROC) have provided a distinct way of talking and acting on justice. A human rights discourse integrates the principles of 'best interests of the child', with due process protections of civil and political rights (see Freeman 2011, Goldson & Muncie 2012; Tobin 2013). Human rights advocates state that at all stages of the juvenile justice system children should be kept separately from adults and specially trained staff should be employed to work with children and young people (Hamilton 2011). A human rights approach argues that policies should be guided by the philosophies of diversion, detention as an option of last resort, rehabilitation and re-integration (Alston & Brennan (eds.) 2001; Alston, Tobin and Darrow 2005; Hamilton 2011; Tobin 2013). A children's human rights approach also demands that juvenile justice systems recognise the

developing maturity and capacity of the child (including the child who is deemed to be in ‘conflict with the law’) and that children should not be seen to be fully criminally responsible until at least the age of 12 (CRC 2007; Kilkelly 2011). Human rights principles advocate that that children and young people to participate in decisions making and that under 18 year olds should be included not just in decisions about their own matters but in policy development at all levels (Hamilton 2011; Tobin 2013). The philosophy and principles of a children’s human rights, their associated instruments and treaties, and regional human rights initiatives provide normative standards and language for opposing the kinds of punitive policies and programs prompted by the worst excesses of liberal authoritarianism.

3.10 A neo-colonial perspective

In Australia, as well as countries like New Zealand¹⁸, Canada and other nations with colonial histories, our knowledge, experience and understanding of criminal justice and juvenile justice is intimately bound with the colonial experience and the violent dispossession of indigenous peoples from their land, as well as the subjugation of traditional forms of knowledge and ways of life. According to Blagg (2008), criminal justice has played a constitutive role in mediating between the Aboriginal and non-Aboriginal worlds, drawing justice and policing systems into a broader set of control practices than simply those concerned with crime and in so doing they remain ‘nodal points in a broader fabric of social *relationships* [original emphasis] (p. 2). And, as Hogg (2001) argues, race and eugenics have been central to the history of policy development in colonial settler societies.

In order to develop a comprehensive and appropriate understanding of juvenile justice it is important to recognise that most of the mainstream conceptual schema outlined in the early part of this chapter have emerged from what Connell (2007) has termed, the Metropole that is, selected countries of the northern hemisphere, where the formulation of knowledge has assumed a superior position in determining global understanding of issues and experiences. Agozino (2003) has critiqued key criminological theories in a similar vein.

¹⁸ For a discussion of New Zealand see Jackson (1992, 1995); Pratt (2006)

As Blagg points out, mainstream criminological theories generally ‘operate without a theory of colonialism and its effects’ (2008, p.11)¹⁹. Cunneen argues that criminology stands out from other disciplines such as law, arts and literature in the way that it has not yet come to grips with postcolonial perspectives (2011). Cunneen points out that it is not completely absent from criminology and he provides examples of a series of writers that have examined the intersections of race, criminalisation and policing, but he argues they have tended to be centred on understanding the relationship of the diaspora of former colonised peoples to the colonial power, after migration to the colonial countries of origin and as such remain distinctly Eurocentric (2011)²⁰. As such, Cunneen argues, the criminological imagination begins to falter when confronted with ‘genocide and dispossession, and with peoples who demand that their radical difference, their laws and customs, their alterity to the west be recognised’ (2011, p. 251).

According to Cunneen (2011) there is an emerging criminological literature that is beginning to incorporate post-colonial theories into discussions of crime and justice (see his discussion for details). In addition, the work of Stubbs (2012) and Cunneen and Stubbs (2004) on women as domestic violence and homicide victims; Baldry and Cunneen (2011) on policing and prisons integrate the impact of the history of intersections of colonial gendered and raced relationships in Australia with analyses of contemporary crime and governance. The work of indigenous legal academics like Larissa Behrendt (2003; and Behrendt, Cunneen & Libesman 2009) provide re-appraisals of legal theory and justice within a neo-colonial framework and have included critiques of juvenile justice.

Cunneen calls for the development of a postcolonial criminology, which would recognise the enduring and ongoing effects of ‘colonialism on both the colonised and the colonisers’ (2011, p.249). And, a postcolonial perspective would draw attention to ‘broader questions of social and political power, to matters of legitimacy, political authority and consent (2011, p.264). Cunneen also proposes that post colonial criminology could offer insights for policy engagement in particular in drawing attention to the failure of criminal justice policies to actively

¹⁹ Platt in a 2008 revision of his own work the ‘Child Savers’ recognizes that juvenile justice histories have tended to ignore the intersections of race and class.

²⁰ Mike Brogden’s work on colonial policing in Ireland is probably one of the first texts to incorporate an analysis of the militarized nature of colonial power (1987).

engage with marginalised and racialised communities, and an inability to engage with alternative experiences and understandings of criminal justice (2011, p.264).

Blagg contends that to understand the extraordinary levels of overrepresentation of Aboriginal people in the contemporary criminal justice system both as offenders and in victimisation rates, there needs to be nuanced and variegated analysis that situates these phenomena within an historical framework formed by the process of historical dispossession, genocide and assimilation, and forms of resistance to these processes (2008, p.2).

Hogg (2001) discusses how colonial histories are different from Eurocentric ones. In his work on the history of penalty in Australia, he outlines how they need to be explored in relation to the 'history of regimes and cultures of racial segregations and governance in which indigenous people were coercively managed, for the most part outside 'normal' legal and penal institutions, until the third quarter of the 20th century' (p.355). Hogg demonstrates how non-carceral punitive practices like rationing, segregation and forced removal were fundamental to colonial societies and that they persisted and permeated the development of criminal justice practices in ways that were not tolerated in non-colonial societies. Hogg describes how segregationist practices and policies, and proclamations that Aboriginal people were insanitary held a symbolic cultural message, reinforcing the understood boundaries between the 'civilized' and the 'uncivilized', between white settler families and Aboriginal people, and in the process normalised white settler behaviour, allowing for distinct policies and practices to be established for each group (2001, p.358). He argues that the resonance of these proclamations and practices such as the forced removal of children from their families continue to inform popular ideas and attitudes, and to some extent shape policy choices today (Hogg, 2001, p.363).

Carrington and Pereira (2009) clearly articulate the legacy of these neo-colonial discourses and practices, and how they continue to influence contemporary policy.

As they state:

Indigenous communities and families are still feeling the inter-generational effects of the removal of Aboriginal children from their communities – loss of parenting skills, loss of cultural integrity, the destruction of communal authority, and the ongoing management of their day to day lives through the welfare-penal welfare agencies' high rates of child abuse, incarceration, deaths

in custody and criminalization of indigenous youths are, in this sense, direct legacies of the earlier forms of penal-welfarism that legitimated the stolen generations (Carrington & Pereira, 2009, p. 104).

The thesis recognises the neo-colonial relations are embedded in the institutions knowledge, policies and practices of juvenile justice and every day influences decisions taken.

3.11 Conclusions

O'Malley (1999) makes the point that 'there is currently a bewildering array of developments occurring in penal policy and practice, many of which appear mutually incoherent or contradictory' (O'Malley 1999, p. 176). Fergusson has also argued that any one time a multitude of discourses can inform policies and programs, as he states:

More often than not, more than one discourse can be detected in the rationale for a policy shift or a new piece of legislation. Different elements of the policy or legislation derive from different discourses (2007, p.181).

Other writers have made similar observations. For example, McAra (2010) refers to 'a myriad of principles shaping policy discourse' (p.287), and Carney (1985) in his analysis of Australian juvenile justice history highlights the fact that policies are 'an admixture of philosophy often conflicting, that remains in a state of flux' and it is 'only the emphasis that shifts' (p.203). As Muncie and Hughes, (2004) explain, '...the history of youth justice is a history of conflict, contradictions and ambiguity and compromise' (p.2).

The contradictions and conflicts in co-existing discourses can have important outcomes in policy development. For example, as Fergusson argues the pursuit of welfarist objectives through managerialist means will evoke critical contradictions in the values underpinning means and ends (2007). As Fergusson argues the rationales underpinning policy shifts and legislative reforms often embody partial and/or a variety of discursive and political philosophical approaches where 'different elements of the policy or legislation derive from different discourses' (2007, p.181). Fergusson warns anyone analysing policy that it is important not to take 'any aspect of policy at value' since they are made up of many constituent parts (ibid).

According to Fergusson, discourses of youth justice also need to be understood within their relationship to broader political philosophies, for example he argues ‘discourses of responsabilisation and managerialism have important historical traces to neo-liberalism in terms of the primacy of the individual and competitive pursuit of efficacy and efficiency, the rewards of excellence, the consequences of indolence etc’ as well as links with classical liberalism’ (2007 p. 181). At given moments these broader philosophies are also influencing other fields of public policy and politics. Using the words of Hall, Hill makes the point ‘politicians, officials, the spokesman for social interests and policy experts all operate within the terms of political discourse that are current in nations at a particular given time’ (Hall 1993, p.289 cited in Hill 2013, at p. 76). As James and Raine (1998) argue, legal principles are also seen to provide a constraint on the worst excesses of governments and, as Lacey says of the work of Ashworth on the criminal process, the norms and values of law and of justice are seen to provide a defence against pragmatic ill considered policy reforms and in particular the ‘political temptations of criminalisation as an electoral strategy’ (2012, p.13). James and Raine argue the administrative processes of the criminal justice system acted as ‘a brake on reform’ and were ‘a sieve through which proposed changes had to pass’ often confounding or confusing the intentions of neo-liberal developments (James & Raine 1998, p.47).

Fergusson also argues that the co-existence of different discourses and the way that they are presented applied and enacted need to be teased apart in order to examine the factors influencing the different stages of the policy process (2007, p.182). So for example, he argues that the public presentation of a policy may need to be politically acceptable, whereas how a policy is formulated in law or in a policy document can be different and, when presented and interpreted through the practice knowledge bases of lawyers, youth workers, police officers or magistrates, it can take on a different slant again. Each of these different stages of the policy process and the engagement of a range of policy actors creates disruptions in the discursive influence. Fergusson argues that these disruptions are mainly due to the tensions in political discourses and the disjunctures between political rhetoric, the codification of discourse into policies and programs, their implementation in practice coupled with the impact of the role of frontline staff (2007). These moments in the policy

process Fergusson argues provides the gaps, or as he calls them ‘fault lines’ where policies can evolve and be actively influenced by policy players (2007, p.186).

Hartjen (2008) also argues that discourses, models or typologies of justice are rarely reproduced directly into practice ‘ they offer representations of reality that in practice are rarely observed (p.97). Hartjen identifies how justice outcomes are also the product of the input of the people, agencies and the institutions involved in policy development as well as the dynamics of the policy process itself. As Hartjen explains the disparate agencies engaged in juvenile justice are ‘at best, ill-coordinated, often at odds with one another, and just as motivated by considerations of turf, budget and professional interest’ (Hartjen 2008, p.94). McAra also emphasises that existing institutional traditions, policies and practices play an important role in mediating the impact of trends in discourse as she argues, youth justice systems are complex architectural phenomena and the variant principles, which underpin policies ‘do not always translate into institutional infrastructure in straightforward ways’ (2010, p. 28).

This chapter has identified from the existing literature the array of developments in youth justice and juvenile justice that shaped the policy landscape. It has argued that at any given moment multiple discourses, and techniques of governance can influence policy developments and decision-making at any one time. It suggests that the patterns of negotiated order (outlined in the introduction), the architecture of systems, and key people in the policy process provide the conditions of emergence in which a particular configuration of discourses can dominate the policy field at a particular historical moment. The analytical chapters of this the thesis traces which of the policy discourses; rationales and techniques of governance discussed above, appear to shape policy decisions during the study period and how and why this has happened.

The next chapter examines the impact of the media in the policy process, exploring the ways in which it has been to see play a role in setting policy agendas and brokering communication between politicians and the public.

Chapter 4. The media and the policy process

In a democracy, policy is never the exclusive concern of experts. Public opinion exists at different levels of knowledge and expertise, and it is dynamic. There is a constant interaction between politicians and voters, governments and the community, those who seek to influence popular *opinion* and those with whom they communicate (Justice Murray Gleeson preface to Weatherburn 2004: v).

4.1 Introduction

There is a range of opinions across different disciplines about the role of the media in influencing decision-making in the policy process. This chapter explores this variety of perspectives. For example in criminological accounts of policy development the media are identified as playing a key role in the setting of political agendas and as having a direct influence on the kinds of policy options pursued by politicians to address crime problems. Criminological accounts of the role of the media chart the emergence of ‘law and order’ discourse and ‘punitive populism’ as key influences on politics and policy agendas from the late 1980s onwards.

In other policy arenas they have been accorded less influence as policy actors and in media studies the role of the media in policy and politics is seen to be a much more contested domain. Media analysts argue that there is no one size fits all approach to understanding the relationship between media, policy, politics and public opinion (Cottle 2003).

Part of the reason why the media have taken on a central role in communicating politics and policy is, as Young (2004) reminds us, due to the fact that most members of the public have never met a politician or have had little or no direct contact with political parties, or policy stakeholders. Consequently, the media provide one of the few accessible routes for the public to receive information about policy and in turn provide them with an avenue for providing commentary and feedback on policy and politics (p.140).

The chapter begins with a very brief overview of what is meant by media, it will then move on to explore dominant criminological perspectives on the role of the

media in the development of policy, this includes a brief discussion of moral panic theory, the framing of crime news in the media, the ideas of ‘law and order common sense’, ‘law and order auctions’ and ‘popular punitiveness’. It also explores the representation of young people in the news. It will then go on to examine the role of the media in communicating policy. Again, the potential range of literature that could be covered in this chapter is enormous and by necessity the analysis is schematic, providing the reader with an overview of key issues rather than engaging in depth with one particular approach.

4.2 Defining media

Before examining the selection of literature it is worth noting that the media is a shorthand term for a diverse range of means of communication, which can include fiction, drama, magazines, documentaries, art, television, reality television, film, videogames, radio social media and so on. However, most discussions of media and policy generally focus on news and current affairs in newspapers and on radio and television²¹ and this will be the main focus of the present discussion. Over the past five years or so studies of media, policy and politics have been extended to encompass the rise of social media such as Facebook, Twitter and YouTube, and the growth of citizen journalism (Pearson and Patching 2008). These innovations have to some extent shifted the terrain of the media’s impact on social, cultural, economic and political life. Luckily for this researcher (and for the thesis reader) the growth in the importance of social media as a political and policy tool mostly took place after 2005 and therefore is outside the scope of this study, otherwise this section of the literature review would have been twice as long! For a good source of recent trends in media, politics and policy see Mark Pearson and Roger Patching’s report *Government Media Relations: A spin through the literature* (2008).

4.3 The role of the media from a policy perspective

According to Hill (2013) the media remain under-explored in public policy studies (p35). From his perspective, he considers that the media shape ideas on policy

²¹ As will be discussed in a little more detail later there has been a growing body of work on fictional representations of crime and policing (see Reiner 2000), the impact of television on public perceptions of criminal justice for example critiques of the CSI Effect (Robbers 2008) and on the increasing involvement of police in the development and production of reality television shows (Lee & McGovern 2012, 2014).

agendas by promoting some perspectives and excluding others (2013, p. 177). Kingdon (2003) concludes that the media may play an important role in communicating what is going on in policy and politics but on the whole they play a very limited role in agenda setting, or in policy decision-making, especially in the specific area of US health policy. According to Kingdon this is due to the fact that that the media tend to be inconsistent and have a very transient issue attention span and therefore cannot be viewed as a serious policy player (Kingdon 2003).

On the other hand, Vromen, Gelber and Gauja (2011) in their overview of contemporary Australian politics and policy consider that the media play a vital role in shaping our understanding of political and policy issues, and in communicating the Australian political landscape to the general public. They suggest that the media act as the window through which politics is represented to the majority of people, who in turn use the media as an important information source. Vromen, Gelber and Gauja argue that in doing so the media themselves take on the role of powerful political actors in, shaping and communicating policy and political discourse, in setting political and policy agendas and in the construction and realization of representative and participatory politics.²²

4.4 Media and policy in sociology and criminology

The media have been seen to play a key role in the production and reproduction of culture, ideology and discourse in sociological and criminological literature, and in so doing have been identified as important policy actors. This section of the chapter focuses on analyses of the role of the media in relation to criminal justice and juvenile justice policy development.

4.4.1 Moral panic theory

For many years moral panic theory, has dominated the criminological and sociological landscape in framing debates about the relationships between media, crime, criminal justice and juvenile justice policies. There have been a number of theoretical elaborations of moral panic but the most influential came with the

²² Vromen et al. also bring our attention to the ownership of the media in Australia arguing that the relatively small number of players creates a number of problems, a point that is addressed later in s 4.8.

publication in 1972 of Stanley Cohen's book *Folk Devils and Moral Panics: the creation of the Mods and Rockers*.²³

I have chosen not to provide a detailed overview of moral panic theory since to do so would be covering yet again a well worn path especially since so many others have discussed and analysed its value as a theoretical tool, as well as applying it to a range of case studies in many different countries including Australia (see for example Cohen 1972, 2002; Critcher 2003; Goode and Ben-Yehuda 1994; Hall et al. 1978; Jewkes 2004; Hogg and Brown 1998; McRobbie and Thornton 1995; Poynting & Morgan 2007; Surette 1998, 2007; Weatherburn 2004; Young 2009). According to Jewkes 'so enshrined is the notion of 'moral panic' that it is not only found in criminology textbooks, but has also entered the popular media, who have uncritically employed it to describe public reaction to numerous social phenomena from child abusers to flu epidemics' (Jewkes 2004, p.65). A testament to the continuing strength of its influence can be found in the fact that in 2009 the British Journal of Criminology devoted a special commemorative edition to moral panic theory entitled '*Moral Panics 36 years On*' (eds. Ben-Yehuda & Carlen 2009). The edition contains a series of essays by prominent criminologists celebrating the legacy of the first publication of Stanley Cohen's book.

There have been a number of critiques over the years of moral panic theory, mostly as Jewkes (2004) these have stemmed from the way it has been used rather than the original theory itself. She highlights how in some studies the original issue that sparks the media reaction almost becomes irrelevant as it is seen to elicit similar moral panic reactions, and subsequent analyses develop along the same trajectories eliciting similar reactions to behaviour (Jewkes 2004, p. 76). Indeed in the 2002 edition of *Folk Devils* Cohen also considers that some analyses, which have claimed to be moral panic studies, do not really qualify as such since they don't engage with the key elements of the theory. Tiffen (2004) also contends that it is fallacious to assume, as a number of moral panic studies do, that there is little basis to the public reaction to the initial incidents, events or threats. As he says, of moral panic theory 'it is used most comfortably to describe social reactions, the analyst sees as irrational' (2004, p.1185). Another critique of moral panic theory offered by Jewkes

²³ See Critcher 2003 for an overview of other theories.

is that in some instances the way that moral panic theory is applied implies that there is an instrumental and almost cohesive, conspiratorial relationship between the media, the state and elite interests against the targeted group (Jewkes 2004, p.82). McRobbie and Thornton (1995) point out that it is very difficult to argue that there is just one media response to an issue, as the media are so diverse there is more space for competing opinions to be expressed than moral panic theory often allows - a point which the chapter returns to later (McRobbie and Thornton 1995). And, as discussed in the following section s.4.5 on media plurality, it is also seen to be problematic to talk about one public and one audience with one reaction. Cohen has also placed the impact of moral panic in some perspective arguing that it helps to shed light on the shifting sands of public reaction as well as the relative newsworthiness of stories, but doesn't offer an exhaustive explanation (Cohen 2002 cited by Jewkes 2004, p.85). He also questions the methodology of moral panic researchers in selectively using opinion pieces and editorials to exaggerate media activity and their power to direct policy agendas (Cohen 2002).

Moral panic theory is an extremely important conceptual tool for identifying the significant power relationships that can exist between state actors and sections of the media in shaping criminal justice and juvenile justice policy agendas on a selection of issues. It also provides a framework for analysing aspects of the media's relationship to public opinion, but as this chapter aims to illustrate as a theory it tends to oversimplify these relationships and extrapolates the exceptional from the everyday networks of media, policy actors and the public.

4.4.2. Media frames and narratives: crime, criminal justice and young people

Moral panic theory integrates into its analysis an examination of the ways in which crime and crime related policies are presented in the media, through the dominant frames and narratives - especially in the news.²⁴ Like moral panic theory the work of Chibnall (1977) is seen to be a foundational text for analysing crime in the news (see Greer 2010). Chibnall pinpoints key features of crime news including what he calls the 'professional news imperatives' of journalism such as 'immediacy, dramatization, personalization, simplification, titillation, conventionalism,

²⁴ The work of the Glasgow Media School and the Birmingham Centre for Cultural Studies were incredibly influential in the late 1970s and 1980s in exploring these issues in relation to crime, deviancy and youth culture.

structured access and novelty’²⁵ (1997 cited in Greer 2010 at p. 203). It is these frames Chibnall argues that create the dramatic and sensationalised ways in which crime news is presented.

Weatherburn (2004), Surette (1998) and other commentators have taken up these points about the framing of crime news arguing that established news frames and narratives about crime and criminal justice are problematic since they overwhelmingly present a partial picture of crime that emphasises its dramatic, sensational and oddball aspects which, are out of proportion to their actual incidence (Weatherburn 2004, p.3). Weatherburn also contends that the crimes that make it into the newspaper or onto the television such as murder, manslaughter, rape, robbery and so on, constitute only a very small part of what are generally mundane and routine everyday criminal actions that involve many people: shoplifting, non-payment of infringement notices, failure to pay the correct fare on a bus or train, or exaggerated insurance claims (Weatherburn D. 2006). As criminologist Ray Surette says, ‘learning about criminal justice from the news media is analogous to learning geology from volcanic eruptions’ (Surette 1998, p.80).

Media analysts see the use of frames and narratives as part of an established orthodoxy of journalism practice, which cuts across all aspects of the work and as such it is considered to be part of the *doxa* and *habitus* of journalism (Bourdieu 1979; Cottle 2003; Davis 2003). Information is presented in established ways, and people, places, events and story lines are reworked into defined narrow sets of narratives (Bird and Dardenne 1997; Cottle 2003). In turn, narratives and frames of news stories are seen to play a key role in shaping the way stories are both presented and received by audiences (Jacobs 1996 cited in Cottle 2003, at p.15). According to Tiffen this leads to a situation where the facts are sometimes moulded to fit the dominant story frames. As he states:

Journalists know in advance the type of story they are looking for. Even if the details remain to be confirmed, the likely frame for the coverage is already known. Journalists, politicians, and their staffs collectively constitute an

²⁵ Similarly, in journalism studies what constitutes ‘news’ includes timeliness, proximity (how close to home, prominence/celebrity, impact ie. implications, levels of conflict/drama, currency/topicality, the unusual, whimsical or oddball (source UTS Journalism handout Sally White, 1991 *Reporting in Australia*).

industry continually generating its own shorthand labels and stereotypes (Tiffen 2004, p.1192).

Yet, as we shall see in the next section, despite the fact journalism practices are well understood, governments are seen to react too readily to dramatic, sensational news frames, they engage in the politics of 'law and order'. In so doing, they ignore countervailing research and evidence, which, it is argued, would lead to them instead to different kinds of policy reforms (Hogg & Brown 1998; Surette 1998; Weatherburn 2004).

Sociological and criminological studies have argued that there is a dominant set of frames and narratives of young people and youth sub cultures that permeate the media and shape the public's views of young people. According to Pearson (1983) this narrow range of representations of young people is not new. In his influential book *Hooligans: A History of Respectable Fears* each generation refers to young people as the worst ever: ill mannered and unruly. Pearson argues that the media often refer to a 'golden age' of how young people behaved in the past and this is then invoked as a comparative tool to highlight the shortcomings of today's young people (Pearson 1983).

Muncie (2009) outlines the dominant themes in media reporting of young people. These, he argues include the depiction of youth as dangerous risk-takers, a danger to themselves and others, but also vulnerable due to their immaturity and lack of a sense of responsibility (p. 9). Muncie (2009) also argues that young people have become a persistent source of social anxiety and are repeatedly identified in moral panics as a threat or danger to existing social order – they are recurring 'folk devils' (Muncie 2009, p.126). Other themes identified in a range of literature in the representation of young people in the media include the ideas that: youth are both monsters and victims of monsters; evil and innocent; as *no-hopers* or atypically *high achievers*, and youth culture is depicted as strange and threatening. In addition, youth is considered to be an important period of psychological and physical development and is often depicted as a period of difficult transition between childhood and adulthood where problems develop as a result of that transition. Stories are framed in terms of what young people lack in their path to adult

maturity, judgment and adult skills (see ACIJ 1992; Critcher 2003; Jewkes 2004; White and Wyn 2008). The Australian Centre for Independent Journalism found that youth were negatively associated with 'youth gangs' and criminal activity in a large proportion of media of stories about youth (AICJ 2002).

Interestingly young women tend not to make it into the crime related news except when there are particular scare stories about young women as violent, binge drinking ladettes who transgress traditional gender norms (Carrington and Pereira 2009; Hardy 2009; Lumby 1997). Otherwise the majority of stories relate to the vulnerability of young women as victims of sexual assault, or as 'at risk' in other ways (Carrington and Pereira 2009; Lumby 1997).

An Australian study conducted by Bolzan (2003) examined the representation of young people in the media and community attitudes. The research included a time-series content analysis of a variety of media in a number of states, and interviews with members of the community including young people (Bolzan 2003). Bolzan's research found that there were diverse discursive themes, about youth in the media and to some extent her findings challenge the kinds of research findings outlined above. For instance, she found that there was a surprising lack of stories about young people and crime, and the only exception to this was media coverage in the Northern Territory where crime stories, especially about indigenous youth, predominated (Bolzan 2003 p.68). The content analysis found stories were typified by reporting that voiced concern about problems facing young people for example, stories about suicide, lack of opportunities, lack of appropriate gender roles for young men and women (p.70). Although, positive stories tended to portray young people as out of the ordinary, innovative, enthusiastic and achieving their goals (2003, p.70). Many stories also highlighted the ways in which adults contributed to these problems due to lack of supervision, training and lack of parental responsibility (Bolzan 2003, pp.72/73). Bolzan's study also found that community attitudes to young people were affected by audience experience. Those adults who had little or no contact with young people were more 'likely to be influenced by negative media reports about young people than those adults who had regular contact with them (2003, p. ix). Interestingly, in her interviews with community

members, “what politicians say”, barely registered at all as an influence on attitudes to young people (Bolzan 2003, p. ix).

A consistent finding of studies of young people and the media is that the voices of young people are noticeably absent from the media and they are generally powerless to discredit the stories about them, or to have the opportunity to offer alternative accounts (Bolzan 2003; Muncie 2009; White and Wyn 2008).

4.4.3 The politics of ‘law and order’ and ‘popular punitiveness’

Since the 1980s, discussions of the influence of the media on politics and policy have focused on what has been called ‘law and order politics’, ‘law and order auctions’ and what is termed ‘popular punitiveness’, or ‘penal populism’.

In 1980 Hall identified what he called a ‘drift into a law and order society’ and the growth of what he called ‘popular authoritarianism’ in Thatcher’s Britain. This he argued marked the beginning of a crisis in capital that he and his fellow authors critiqued in *Policing the Crisis* (Hall 1980). In his analysis, Hall identified correlations between media representations of crime and the more punitive aspects of the criminal justice policies of the government which he argued foreshadowed a radical conservative shift in approaches to crime control in future years (1980).

Drawing on Hall’s body of work Hogg and Brown (1998) in their analysis of media coverage of crime and criminal justice during a selection of Australian elections, attribute the end of what they see as a pre-existing bipartisan approach to crime policy, to the features of social, economic and political changes outlined by Hall. In their research Hogg and Brown (1998) traced a pattern of crime news stories and associated political policy promises, which they argued shared features of what they termed ‘law and order common sense’ (1998). The elements of these news stories include the following: crime rates are spiralling, crime is worse than ever and societal values are disintegrating; the system is deemed to be too soft on criminals and the police are presented as being hampered by too much consideration of the civil rights of offenders, allowing criminals to prosper and law abiding citizens left to feel threatened and unsafe (Hogg & Brown 1998, p. 29 -35). The US is held up as a mirror of the kind of lawless society that awaits Australia if corrective action is

not taken²⁶. In response to these problems the media call for more police with greater powers and tougher penalties where victims should be able to get revenge through the courts (Hogg & Brown 1998, p.21). Hogg and Brown also see that news frames depict individual crimes as being the result of individual criminal responsibility and individual rational choice; they minimise the impact of social and economic factors on crime and represent the deterioration of social and moral values as fact (1998). It is also argued by Hogg and Brown and other criminologists that that the prevalence of these stories ends up contributing to the public's lack of confidence in the criminal justice system and the growth of 'fear of crime' in the community (see also Weatherburn 2004; Surette 1998, 2007; Jones et al. 2008; Lee 2007; Roberts et al. 2003).

Subsequently, it is argued politicians endeavour to look tough on crime, in order to reduce perceived public anxiety and to assuage the lack of public confidence in the criminal justice system by promising to introduce punitive measures against offenders (Hogg and Brown 1998, p.4). Electoral promises often include the following: increasing police numbers and providing police with greater powers and deterring crime by increasing the number of custodial sentences amongst many others (see Hogg & Brown 1998, p.35-39). At election times Hogg and Brown (1998) argue political parties and the media intensify the rhetoric on law and order, tapping into the idea that there is a 'fear of crime' in the community and engage in what they have termed 'law and order auctions' to see who can be toughest on crime (see also Freiberg and Gelb 2008; Lee 2004; Surette 1998, 2007; Weatherburn 2004). The concern with crime, law and order and justice by political parties in the 1990s was not new, but what was different was that, by the late 1990s it had become such a competitive, contested, prominent election campaign issue in New South Wales and elsewhere (Hogg and Brown 1998, p.118). The premise of campaigns, they argue, is that the public are voting less and less along traditional party allegiances and vote on broad emotional responses and identity related issues rather than on detailed policy proposals, in this way 'law and order' becomes a 'political catch cry' and part and parcel of political rhetoric (Hogg & Brown 1998, p.116).

²⁶ Interestingly New York would probably no longer be used as a 'bogeyman' city since late 1990s policing reforms and demographic changes have reduced city crime rates, dramatically.

It is argued that part of the appeal to ‘law and order’ by political parties rests on the supposition that the electorate is supportive of tough policies and that the media act as the conduit for communicating policy promises to the electorate and in turn, their reporting communicates the views of the public back to politicians. The phenomenon ‘of politicians tapping into and using for their own purposes, what they believe to be the public’s general punitive stance’ has been described by Anthony Bottoms (1995) as ‘popular punitiveness’²⁷ (Bottoms 1995, p.40 cited in Freiberg and Gelb 2008 at p.3). Although ‘penal/punitive populism’ is a contested concept it could be argued that like moral panic theory, it has become a staple of contemporary criminological analysis as a way of describing the interrelationship between politics, the media and public opinion (Lacey 2008).

However, as Pratt argues, populism should not be mistaken for public opinion although they are often conflated (Pratt 2011, p.330). The media, he continues are very skilled at tuning in to expressions of public sentiment and also picking up policy debates that already exist and using them to their own advantage (Pratt 2011). Despite the media claiming to represent public opinion, according to Freiberg and Gelb (2008) there is little social scientific research undertaken on what the public’s opinion actually is²⁸. Populism, Pratt suggests, refers to the views of sections of society who feel like that they have been disenfranchised in some way or another by ‘the establishment’, or by ‘the elites’ (2011, p.330). According to political scientists Selmer and Goot (2004), sections of the media position themselves as advocates of the people. Shock jocks, television current affairs programs newspaper editorials, opinion pieces and crime news reporting claim to speak on behalf of the ordinary people and in so doing stake out the moral high ground as a way of providing them with a legitimate claim to demand action from governments (Selmer & Goot 2004). In turn politicians position themselves to be on the side of the ordinary members of the public (in Australia ‘the battlers’) to try and establish their credentials in opposition to the established elites (Selmer & Goot 2004). Hall argues that this appeal to the ‘people’ is a discursive device for summoning the kinds of people that you want. As he says, “You’re constructing the

²⁷ Populist appeals are not just confined to criminal justice. Palmers’ study of the representation of refugee and asylum policy found a similar set of assumptions about the media, popular opinion and politics (2008).

²⁸ There have been a series of recent studies of public attitudes to crime and criminal justice, especially sentencing and an exploration of the role of public emotion in policy see chapter two.

people, you're not reflecting the people." (Saturday Interview The Guardian 17th March 2012). Although, it may be difficult to measure the exact chain of causality between media stories and policy outcomes, according to Hindess and Sawyer (2002) the impact of the strength of the populist appeal in politics is that constraints are placed on 'what can be said and what can be heard in mainstream political debate and what can be done in terms of public policy' (Hindess and Sawyer 2002, p.2).

4.5 Media as a contested political and policy domain

As we have seen in the previous sections the relationship between the media, politics, policy and public opinion is a complex one and not easy to untangle. In media studies there is a range of perspectives on the relationship between news reporting and policy development, which portrays journalism as a pluralistic, contested domain with competing interests, values and viewpoints. For example, Cottle (2003) questions what he considers to be the simplistic approach of the moral panic thesis, arguing instead that in a globalized, uncertain world a diversified media provides a conduit for expressing a profusion of competing interests as media cuts across space and time (p.6). Cottle (2003) sees the work of criminologists Ericson, Banacek and Chan (1989) as offering a more accurate representation of the work of journalism on a day-to-day level. Their work examines news reporting in relation to contending views, interests and values, and recognises that journalism also engages in communicative action in pursuit of a diverse range of aims and objectives (Cottle 2003, p.7). In a pluralistic perspective of the relationship between the media, policy and politics it is seen that a range of policy players are able to tap into the symbolic power of the media. All policy players including government, independent lobbyists, public relations firms and interest groups compete to gain symbolic legitimacy, power and definitional advantage in the contest over issues by using diverse media (Cottle 2003, p.7; see also Schlesinger and Tumber 1994). It is argued that those with more resources such as public relations/communications staff at their disposal and those who have already gained media and source credentials do find access to the mainstream media easier than others (Burton 2007; Davis 2003; Franklin 2003; Schlesinger and Tumber 1994). However, that is not to say that having a voice in media is closed to others. In an ideal news environment it is

argued that professional news crews and investigative journalists seek out a range of sources for a story and don't simply rely on a small set of identified primary sources or on government spin (Cottle 2003; Davis 2003).

In a pluralistic understanding of the relationship between the media and public opinion it is also argued that there is not one audience or one public opinion (Cottle 2003). Readers and/or the audiences of news and media bring a variety of views to the media and interpret and engage in these debates and issues in their own ways, according to their social, economic and cultural backgrounds and experiences therefore news is not always read in the same way (Cottle 2003; Ross and Nightingale 2003). Audiences are also active not passive recipients of media (McNair, Hibberd & Schlesinger 2003). News therefore may provide common threads of understanding, but it is argued the media are more likely to provide a list of what issues are important to think about at any one time rather than directly forming opinion (Lewis 2005). The relationship between news reporting, politics, policy and public opinion is seen to be diverse, unpredictable and complex.

4.6 A symbiotic relationship

The relationship between governments, media management personnel and journalists is not straightforward or unidirectional it has been described in the literature as symbiotic (Davis 2003; Ericson, Banacek and Chan 1989; Freckleton & Selby 1988; Mawby 2010 2002; McGovern 2005; Pearson & Patching 2008). The qualities of this symbiotic relationship have been described as: variable, sharing interests and needs, mutually beneficial, often cooperative but also riddled with conflict, 'contested and fraught'²⁹ (Franklin 2003, p.46; see also Craig 2004). Franklin argues that the symbiotic relationship between political sources and journalists is one of mutual exchange, where political information is exchanged for news coverage (Franklin 2003, p.47). However, conflict is endemic since political sources and journalists have divergent views of the purpose of political communication. As Franklin (2003) says 'for journalists, the relationship provides opportunities to educate and enlighten and inform readers and viewers about

²⁹ Former journalist and media personality Simon Hoggart describe this fraught relationship beautifully. He commented 'journalists and sources inhabit the shared media and politicians snakepit in which we slither all over each other hissing with hatred, but hopelessly knotted together' (Simon Hoggart *Guardian* 1 June 2001, p.15 cited in Franklin 2003 at p.46).

political affairs; for politicians the purpose is to persuade voters to their point of view' (p.47).³⁰ According to Franklin conflict occurs when the media promote public discussion, active citizenry and democracy, in the process challenging political spin (2003, p.46). Or as Curran (2002) argues conflict occurs when the media, in their role of the fourth estate, call governments to account in relation to corruption, or highlight outrageous examples of spin. Many media analysts stress that this role of journalists in holding governments to account is a principle value of the profession (see Cottle 2003; Franklin 2003; Grattan 1998; Pearson and Patching 2008; Schlesinger and Tumber 1994). The appearance of political and policy related news in the media is then the result of a continued negotiation of a symbiotic relationship where political sources control access to news and information, and journalists control access to publicity and the public (Franklin 2003). However, as Davis (2003) argues, the capacity of journalists to engage in this kind of Fourth Estate journalism has been increasingly reduced as news and investigative journalists face cutbacks and there are fewer of them working on more stories, which limits the scope for in depth reporting. As a consequence, journalists are forced to become more and more reliant on institutionalized media and communications as primary sources for policy news (Davis 2003). At the same time that journalism has to deal with tougher economic times governments and other policy actors are devoting more and more resources dedicated to public relations (PR).

4.7 Media management

A number of analyses of the relationship between media and politics have identified the changing nature of government and media communication strategies. Commentators have discussed how increasingly over the past 15 years governments, political parties and non-government organisations have attempted to assert control over media by increasing the amount of resources dedicated to media management, public relations and advertising (see Burton 2007; Davis 2003;

³⁰ "The media often remind one of a boisterous and undisciplined infant, gazing with amused bafflement at what it has broken in its romps. Most of the press does not believe that its readers really believe what it writes. Most politicians believe they do. This can cause a mismatch between the two groups' attitudes to media behaviour" (Parris & Maguire 2004, p.309).

Franklin 2003; Lewis 2005; Pearson & Patching 2008; Schlesinger and Tumber 1998; Totaro 2004).

It is argued that government communications and media strategies have been centralized and institutionalised, and there has been an increasing control of political and policy information disseminated to and through the media, so much so that commentators now talk about governments becoming 'pr states' where managing the media has become an institutionalised essential tool of statecraft (Franklin 2003; Pearson and Patching 2008; Ward 2003; Young 2007). Politicians receive extensive media training and government ministers work with media advisors. In this atmosphere political 'spin' and getting the message right have become key political strategies, where image making has become incredibly important to politicians who want to make an impact and to further their careers (see the range of literature including Burton 2007; Craig 2005; Davis 2003; Franklin 2003, Grattan 1998; Pearson & Patching 2008; Schlesinger and Tumber 1994; Scott 1997; Thompson 2000; Totaro 2004; Ward 2003; White 1999). Thompson (2000) considers that the media are now the 'key arena in which relations between politicians and non-professionals in the broader political field are created, sustained and on occasions destroyed' (p. 100). However, as Pearson and Patching (2008) point out most governments have not been keen to release exactly how much is spent on media and communications in fear of public criticism.

Analysts of political communication argue that the intensification of public relations input and investment in media management is a way for politicians and especially ministers to cope with the increasing demands of their work including the demands of the 24 hour news cycle. Developing media skills is seen to help them manage what has been termed a 'permanent campaign' to seek approval (Tiernan & Weller 2010, p. 211). For governments especially, the desire to communicate to voters an 'overall' narrative about the policies set by Cabinet has become a major imperative and has become what Tiernan and Weller call a 'a relentless quest' (Tiernan and Weller 2010, p.210). According to media and political analysts, this pressure increases during elections when public relations campaigning intensify, involving political advertising, push polling, market research to gauge public opinion and

leaflet drops to targeted electorates in a bid to sell politicians and policy (Tiernan and Weller 2010).

The investment in public relations and media management is also seen by Justin Lewis (2005) to reflect what he calls the ‘mediatisation’ of policy, politics and democratic processes where the physical world has been supplanted by the mediatised landscape. As he states:

The days of the town hall meetings and electoral hustings are long gone. We now live in an age of ‘mediacracy’. We glean what we know about politics and public affairs –whether it is the need for war or the state of the public services – from watching television and reading newspapers. Despite the rise of the internet, television and newspapers are still, by some distance our dominant sources of information about the world (Lewis 2005, p.1).

The media are seen to take on a more influential role in communicating politics to the public as fewer people are involved in party politics or trade union activities than previously and therefore have less contact with politicians and policy debates in person (Hogg and Brown 1998; Tiernan & Weller 2010; Tiernan 2011; Young 2007).

Bourdieu, in his book *On Television* (1998a) also argues that the traditional values of journalism have been infiltrated by the economic demands of the entertainment business, as media conglomerates incorporate traditional news sites into their ‘for profit’ businesses (for a detailed critical discussion of the *doxa* and *habitus* of journalism and the impact of the economic field see Benson and Neveu 2005; and Champagne 2005). Circulation figures, audience ratings and advertising revenues begin to drive the reporting of policy and the investigation of political issues (Benson and Neveu 2005, p.4). Thompson (2000) argues that the increasing impact of entertainment on journalism has led to the tabloids and increasingly the broadsheet press trivializing serious policy stories by personalizing them (p.241). For some commentators ‘mediatisation’ has redirected political and policy debate into image making where political candidates can be ‘chosen on the basis of their telegenic appeal’ (Esser and D’Angelo 2006 cited in Pearson and Patching 2008 at p.7). Others have argued that politics has become more presidential where emphasis on individual image of the party leader is prioritized over policy content (Tiernan &

Weller 2010; Young 2004). Political debate becomes communicated in the media as a ‘horse race’ between individuals as polling reveals who is in front and by how much, in effect replacing in-depth policy discussion (Young 2004, p.231). Couldry (2003) also highlights how the cult of the celebrity increases the symbolic power of a good media image for politicians, with its potential to increase or diminish their political capital. In effect it is not the message that is important but the image of the messenger (Couldry 2003).

The impact of entertainment on policy and politics has been seen to have an impact on criminal justice reporting too. For example Ray Surette considers the pressure to commercialization has led to a situation where citizens are being reconceptualised by governments and media as clients and customers to whom law enforcement activities and policies are to be sold (Surette 1998, p.63). According to Pratt criminal justice policy decisions have become shaped by spin, by sound bites and doorstep grabs with the popularisation of policy phrases like ‘three strikes and you are out’ ‘life means life’ and ‘truth in sentencing’ (see Pratt 2011).

4.7.1 Media monitoring and media units

The importance that governments place on their relations with the media has been reflected by their investment in media monitoring activities and by the expansion of government and departmental media units, including juvenile justice but particularly in policing (Lee and McGovern 2012, 2014). Governments including the NSW government have established or bought in media monitoring services, expanded media liaison staff and communications units at all levels (Davis 2003; Franklin 2003; Pearson & Patching 2008; Totaro 2004). Media units and media advisors promote the work of governments, ministers and departments; they float policy ideas, deal with crises and counter negative views, and provide the means to gauge how governments are being received by the public (see also Burton 2007; Pearson & Patching 2008). Davis (2003) explains that the work of monitoring services at government and departmental levels includes: preparing a daily digest of news media content and identifying any problems that need ‘consideration’ as a way of offsetting bad news with positive stories (p.50). Young (2004) also points out that monitoring units provide instant feedback to governments on particularly sensitive topics (2004, p.79). The media are used to test the policy water and to gauge public

awareness and reaction to policy proposals. For example if politicians find that there is an adverse public reaction to a proposal they are able to disown the policy story as press rumour, or as an opposition tactic (Franklin 2003, p.47). For Couldry the fields of political and cultural production have become interdependent.

Governments and corporations also use public relations techniques to restrict media access to information, or to quash negative stories (Davis 2003, p. 31; McGovern 2005). Other political tactics involving the media involve timely releases of difficult information, 'kite flying', spinning story lines or fostering individual journalist dependency (Davis 2003, p. 39). The media are also fed stories to dissemble policies, or to discredit or undermine political careers (Davis 2003, Thompson 2000). Politicians and media managers become increasingly interdependent and policies are targeted to fit with the dominant tropes of established media storylines (Cottle 2003). Detailed studies of police media units conducted by Mawby 2010, McGovern 2005; Lee & McGovern 2012, 2014; Surette 2001) have demonstrated how they are engaged in managing information and establishing corporate profiles by engaging in numerous strategies these include: setting news agendas by controlling press releases and press conferences; nurturing relationships with selected journalists as well as excluding others; promoting reality television programs and cooperating with media companies to produce fictionalized television programs. Lee and McGovern (2012, 2014) also argue that part of the impetus for this investment in media stems from police concerns with sustaining institutional legitimacy and retaining public consent to policing, as well as facilitating the ways in which police can receive information from the public (Lee and McGovern 2012, p.6). According to McGovern (2005) and Pearson and Patching (2008), the reduction in the allocation of resources to crime news reporting, coupled with the expansion of media reporting is reflected in the fact that many of news stories about crime are closely based on media releases from departments.

Despite the kinds of pressures to control the flow information many studies of media units have found that journalists remain sceptical of the information distributed by units and continue to try and maintain independence and by-pass the control of information by establishing informal sources of information (McGovern 2005, Lee & McGovern 2012, 2014; Pearson & Patching 2008).

4.8 Inside the media: setting the news and policy agendas

As we have seen, governments and other policy players are investing heavily in attempts to direct their information and perspectives on policy and onto the news agendas, with the aim of influencing the public and shaping policy agendas. To do this effectively they target sections of the media that are seen to be the more influential industry agenda setters and pay more attention to some sections of the media more than others. A report by the Australian Broadcasting Authority (ABA) in 2001 argues that agenda setting also occurs within the industry where, ‘news producers’ opinions about ideological or social issues and their selections of news items or their ordering of news schedules might be influenced by other media’ (ABA/Bond University 2001, p.8). According to the ABA survey, in the early 2000s the most influential news sources were E newspapers, news wires like APP and morning ABC public radio news. And, before the advent of social media, the Sydney *The Daily Telegraph* and the nationwide newspaper *The Australian* were identified as the dominant influential newspapers in the news cycle (ABA/Bond University 2001, p. 8/9). From their interviews with politicians, public servants and media advisers Tiernan and Weller (2010) also identify that the political commentary in the public broadcaster’s television show *Lateline* and the Sydney and early edition national papers – were able set the news agenda for the morning radio and TV news (2010). Tiernan and Weller also identified the continuous news reporting of Sky News is a key site for policy and political broadcasting (2010, p.219).

The ABA survey also highlighted the importance of talk back radio in media agenda setting. In Sydney talkback radio was dominated by two high profile and politically influential shock jocks John Laws and Allan Jones, as well as Stan Zemanek and later Ray Hadley. They were seen to have an important impact on the public airing of policy and political issues (ABA/Bond University 2001).

Australian political commentators like Robert Manne have also highlighted how the ownership of news organisations plays an important part in determining not only the news agendas but also the political line and policy perspective relayed in stories, editorials and opinion pieces (2005, p.97). Manne argues that the lack of diversity in newspaper ownership in Australia allows the views expressed in the Murdoch

owned media to dominate (2005, p. 77). According to McKnight (2005) and Manne (2005) it's not simply that one man owns the papers, but Murdoch is also an interventionist proprietor with a distinct political agenda. Greg Dyke the former Director General of the BBC, explains that politicians are keenly aware of Murdoch's influence and are too often ready to go along with the line adopted by News Limited and the Murdoch family, because otherwise they risk political invisibility (2004, p.183)³¹.

4.9 Concluding remarks

Overall the literature reveals that the media in their diversity have become key mechanisms for facilitating the exchange of policy related information between governments and populations, as well as between policy actors. The links between media, politics, policy and the public have been shaped by a number of factors and these include the impact of market pressures and the drive to entertain, the emergence of the twenty four hour news cycle as well the burgeoning influence of public relations and media management strategies in politics and policy.

For some, the media's role is insignificant, whereas for others it is absolutely crucial in mediating the relationship between the public, politics and policy. In moral panic theory it is seen to have a direct impact on a government's policy choices. Cottle adopts a critical understanding on the role of the media and argues that the media constitute an arena in the 'public sphere' where politics and policy are contested, and issues of power are played out with 'politically contingent' and 'less settled or predictable outcomes' than have been previously anticipated (2003, p.17).

There is no doubt that the media, including news journalism, are significant players in the field of cultural production and in establishing and maintaining social and political capital (Bourdieu 2001, 2005). As Schlesinger and Tumber (1994) argue journalism is crucial in mediating societal understanding of the arena of policy and politics. The media have become increasingly important with the mediatisation of politics and policy, and the investment in public relations and media management

³¹ The influence of News Corporation and the desperation to set the agenda, develop links with politicians and dominate the market have been recently revealed in the findings of the Leveson Inquiry and the consequent court case inquiring into the activities of the former UK newspaper the News of the World (<http://www.levesoninquiry.org.uk/>).

by governments. The twenty-four hour news cycle might mean, as Kingdon argues, that the media have a short term attention span, but the permanent campaign ensures that as Young argues the issues that the media pay most attention to are the ones that the public in turn cite are the most important to them and consequently to the politicians who wish to be re elected (2004, p.143). Pratt argues that the media are adept at tapping into these kinds of expressions of public sentiment and relaying them as opinion, or capitalising on policy issues that are already under discussion to present them as their own (2011). The media also have to appear to be successful, in order to maintain market share, sustain audience figures. Presenting themselves as influential players in policy agenda setting is part of that strategy (Pratt 2011).

As we have seen, the media play a significant symbolic role in framing the dominant ways in which issues are discussed and understood. According to Couldry (2003), 'they provide a source of taken-for-granted frameworks for understanding the reality they represent' (p.1). These dominant frames are not necessarily accepted *carte blanche*, they are contested and different audiences bring their own values and experiences, their own doxa and habitus to the perception and appreciation and interpretations of media stories (Bourdieu 2001,2005). As Young (2004) explains media research consistently reveals that the media aren't very effective at telling us what to think, but they are good at telling us what there is to think about (p.143).

The media have been seen to play a key role in re-constituting the ideas and language in which issues, problems and policies are understood and communicated to the public. This is especially so in the federalised Australian government system, where criminal justice and juvenile justice are two of the few policy arenas where State and Territory governments have relatively autonomous governance roles. They are also key sites where State and Territory governments and oppositions can establish and maintain symbolic and political capital (King 2005). As the analysis and discussion in *Part Two* reveals, the importance of criminal and juvenile justice policy has been reflected in the investment of resources by the NSW government and opposition in media management, as well as the attention given to sections of the media by politicians. The thesis will now move on to the discussion of the research and its findings.

Chapter 5. The research

Real world contexts are messy (O'Leary 2005, p. 13).

The philosophers have merely described the world in various ways. The point, however is to change it (Karl Marx, Thesis XI on Feuerbach).

5.1 Introduction

The introductory chapter of this thesis provided an overview of the elements of a critical complex theoretical perspective and its related methodology. This chapter focuses more specifically on the research plan of action and the choice of research methods for conducting the empirical work. It begins by briefly examining a critical complex approach to research and then moves on to exploring the aims and objectives of this research study. The discussion then examines the details of the decisions taken about the research methods and explores the research process, including data gathering and analysis and a review of the ethical considerations of the research process.

5.2 Critical complexity and research

There were a number of theoretical and methodological considerations that needed to be taken into account in choosing the most appropriate research strategy. As we have already seen, a critical complex approach is a systems inspired theory that aims to bring together structural or nomothetic understanding of social relations and geo-politics, with an idiographic focus on subjectivity and agency (see Neuman 2006; Hughes 2007). These intersections, it is argued, provide the conditions of emergence of decision-making. A complexity approach considers that a policy effect has more than one cause and indeed may have different multiple causes. And, as Byrne (2011) argues, generative causes may not result in the same policy effect because they may not coalesce in the same way and may be affected by unanticipated multiple intervening factors (p. 22). Teisman states:

Outcomes do not just result from the intentions and actions of policy players but also from the context in which the interaction takes place and the emerging results of such interactions, This means that outputs and outcomes of the same interaction can differ in different places and at different times (2009, p.2 cited by Byrne 2011, p.30).

The research strategy chosen needed to be able to engage with this complex world of multiple layered structural and subjective intersections.

In addition, critical complexity is a realist enterprise in that it sees that there are issues out there to be studied and dealt with, but it also recognises the impact of social constructionism in problematizing issues and constituting solutions. As Reed and Harvey state, it is a position that adopts ‘ a scientific ontology which treats nature and society as if they were ontologically open and historically constituted; hierarchically structured, yet interactively complex; non-reductive and indeterminate, yet amenable to rational explanations (2002 cited in Byrne 2011 at p. 21). This means that the research methods chosen for conducting the research needed to be able to accommodate the intersections of realism and constructivism.

Byrne points out in complex realism there is also a desire to take action, to effect changes so even though social phenomena are not totally predictable, there is a search for patterns and variances that can reveal correlations and causality in social phenomena that can be acted on (2011, p.24). My intention was that the research findings could contribute in some way to public knowledge about the policy process and to understanding more about effective advocacy strategies. The research strategy therefore had to incorporate an applied element, although it was not seeking a technical solution to an identified problem (Byrne 2011; Hall 2004).

One last factor that also needed to be taken into consideration in the research approach adopted for this thesis was that this researcher was involved in a minor role in the policy process during the study period. Consequently, there is a level of autobiographical insight into the topic of study and I needed to find a methodological perspective that accommodated the researcher as an active agent in the research process. It seemed clear that this combination of factors and the fact that this was an historical study involving documentary analysis, which intended to develop a detailed rich understanding of the policy process led to the adoption of a qualitative approach.

5.3 Research aims and questions

This research aims to uncover the range of factors that influenced juvenile justice policy making from 1990 until 2005. In order to achieve this overall aim I developed a number of subordinate questions to structure the research project. These included the following:

- What were the key legislative and policy reforms during the identified period?
- Who were the people who influenced the development of juvenile justice policy agendas and policy decisions in NSW from 1990-2005?
- Which historical institutional, discursive and/or professional factors, if any, set the parameters/constrained the development of juvenile justice policy reform in NSW?
- Who were the key international, national and State policy stakeholders in juvenile justice agenda setting and policy decision-making?
- What were the key international, national and State discourses and practices shaping juvenile justice agenda setting and policy decision-making during the set period?
- In what ways, if any, did the media interact with agenda setting and policy decision-making?
- To what extent did ‘one-off’ events, or anticipated political or policy events prompt policy change? Why did they? And, how did they do so?

As will be discussed below these aims informed the choice of research methods and the development of the research process.

5.4 The research strategy

5.4.1 *Qualitative research and reflexivity*

Complexity theory and critical theories are not prescriptive about methodology (see Byrne 2011; Stubbs 2008). It is held that both quantitative and qualitative research methods have strengths and weaknesses, and that the researcher should choose the most appropriate approach for the topic of study. However, a critical complex approach does not accept that the kinds of quantitative methods, which adopt simplistic cause/effect explanations, are up to the task of engaging in complex analysis (Byrne 2011). Byrne (2011) argues that in order to identify patterns of regularities and disruption in systems and processes, researchers need to engage in what he calls ‘process tracing’, which involves pulling together ‘detailed and careful qualitative narratives’ since in a complex world ‘stories matter’ (p. 31). He argues that narrative dimensions of research can provide good insights into ‘what is, and how it has come to be’ (2011, p.71). These accounts are then available for the future, so that that any consequent studies of legislation and policy reform can look to the detailed earlier research to see if there are any comparative patterns (Byrne 2011, p.55). For Byrne then, the detail of qualitative research work is vital to understanding the dynamics of systems and policy processes (2011).

Critical complexity also demands that research is theoretically reflexive. It is accepted in a qualitative research approach that the researcher is engaged in a reflexive - dialectic relationship with their research and that knowledge is transformed throughout the research process (Neuman 2006, p.101). In this way researchers are encouraged to reflect on their research practice and make adjustments where theory and critique are intertwined. Reflexivity also extends to thinking through the process of knowledge production itself, analysing dominant ideas and practices, ideologies or discourses (Stubbs 2008). This includes engaging with the idea of social construction, which according to Bryman and Becker (2012) means recognising that ‘social phenomena and reality are created out of the actions and interpretations of people during their social interactions’ and that ‘reality then is in a continuous process of framing and revision’ (p. 274).

A qualitative research approach also provides opportunities for flexibility and adaptation, and for letting the data lead where the research goes (Katz 2002; Neuman 2006). Bartels and Richards also highlight the openness and discovery dynamic of qualitative research in criminology, as they state:

...qualitative criminologists are free to capitalise on serendipitous occurrences, such as the discovery of new sources of data...to follow up leads and explore themes that emerge unforeseen (Bartels and Richards 2011, p.7).

From the very beginning of the study it was anticipated that the ideas, concepts and themes underpinning it were a work in progress and that documentary data, the interviews with participants and the writing process itself would throw out new issues to consider, new materials to chase up and that these would inevitably shape the final outcome and analysis. A qualitative approach offered opportunities for an iterative engagement with both empirical work and theoretical reflection, and accommodated my own autobiographical input into the subject under study. As Noaks and Wincup point out, from the very beginning of a research project early reflection on the research questions and the identification of research themes can be seen to be part of this reflexive process (2004, p. 121). According to Marris and Rein:

The final outcome cannot be simply be related to the initial aim and method, since these have undergone continual revision. The whole process –the false starts, the frustration, adaptations, the successive recasting of intentions, the detours and the conflicts- need to be comprehended. Only then can we understand what has been achieved, and learn from the experience. Research is thus contemporary history. (Marris and Rein 1972, cited in Byrne 2011 at p. 57).

A critical complex approach also demands that the researcher engages in praxis, where reflection and action is geared towards change (see Byrne 2011, p. 35; also Hudson 2000; Stubbs 2008). The section on data gathering and analysis below (s. 5.) provides the details of this iterative research process.

5.5 Research methods

The research integrated three qualitative research strands: historical documentary analysis; semi - structured interviews conducted with seventeen policy actors from

the field; and to a limited extent autobiographical recollection and reflection³². As discussed above this was an iterative process where each aspect of the research informed the other.

The following table provides a guide to how each research question was approached in relation to the documentary analysis and interview material.

Research question	Strategies
What were the key legislative and policy reforms during the identified period?	<i>Locating and analysing public policy documents and secondary material relating to policy documents from the period</i> <i>Locating and analysing legislation and debates relating to legislative reform</i>
Who influenced the development of juvenile justice policy agendas and policy decisions in NSW from 1990-2005?	<i>Reviewing the literature relating to policy process and juvenile justice.</i> <i>Documentary analysis</i> <i>Interview with key policy actors</i>
Which historical institutional, discursive, professional factors if any set the parameters/constrained the development of juvenile justice policy reform in NSW?	<i>Interviews with key policy actors</i> <i>Secondary literature</i>
Who were the key international, national and State actors, agencies involved in juvenile justice agenda setting and policy decision-making?	<i>Locating and analysing public policy documents and secondary material relating to policy documents from the period</i> <i>Interviews with key policy actors</i>
What were the key international, national and State discourses and practices shaping juvenile justice agenda setting and policy decision-making during the set period?	<i>Interviews with key policy actors</i>
In what ways if any did the media interact with agenda setting and policy decision-making?	<i>Interviews with key policy actors</i> <i>Examining media sources related to selected juvenile justice policy events.</i>
To what extent did 'one-off' events, or anticipated political or policy events prompt policy change? Why? How did they do so?	<i>Interviews with key policy actors</i> <i>Locating, selecting and analysing public policy documents, media material and secondary material</i>

³² As the following discussion reveals my participation in higher levels of decision-making was limited.

Table 1. Research questions and strategies

The following section provides an overview of the process involved and the section on data gathering and analysis explores each data set in more detail.

5.5.1 Choosing a retrospective study

The decision to conduct a retrospective study was undertaken for a number of reasons. One of the main considerations was that in interviewing people about the past participants might feel less constrained by professional and ethical obligations to their former employers and consequently be able to talk more freely about the day to day influences on decision-making. As the later chapters show, those research participants who were no longer working in either the juvenile justice, or policy development sector were fairly open about the importance of emotions, personalities and relationships on the policy process in a way that they would probably not have felt comfortable doing whilst in office.

I also felt that a retrospective study could also provide interviewees and myself with the capacity to provide a long-term perspective on complex policy decisions and their outcomes. I was aware that in looking backwards I could possibly imbue events with more coherence than was experienced at the time, since according to Lowenthal ‘the past we reconstruct is more coherent than the past when it happened’ (1985, p. 234 cited in Neuman 2006, at p. 411). However, I felt that a complexity approach, which embraced disorder and order, serendipity and subjectivity coupled with the dynamic policy analytical approach of Kingdon (2003) guarded against the imposition of a smooth, simple linear analysis.

Notwithstanding this cautionary approach to the imposition of a teleological account, the fifteen years of the study period provided a sufficient time period for identifying if there were any patterns or recurrent factors that appeared to influence decision-making.

5.5.2 Quality assurance

By using historical documents and in-depth interviews, I considered that I could build up an account of the policy process that combined the expertise of those

people who had been engaged in making decisions, alongside an official record of the decisions made and in so doing achieve what Neuman calls ‘internal validity’ (2006, p.196). A mix of research techniques and data sources can be seen to increase the consistency, credibility and validity in qualitative data (O’Leary 2004; Neuman 2006). As Glesne (1999) observes, ‘ the more sources tapped for understanding, the richer the data and the more believable the findings’ (p.31). Neuman also argues that the diversity of data sources for the qualitative researcher helps to strengthen the claims to validity of the qualitative researcher’s interpretation of the data as he argues ‘if there is a dynamic connection between sources then the claims of the researcher become more powerful and persuasive’ (Neuman 2006, p.185). Glesne (1999) also outlines a series of techniques that she argues assists in the validation of data collection and analysis. These include: engaged reading; reflection; peer review and information exchange (p.32). In order to make sure that the theoretical and policy framework, ideas and findings were solid and to make sure that the analysis and findings weren’t completely off track I ran them past academic and professional colleagues. And, throughout the research period I presented papers on key issues to international and domestic conferences, and to Sydney University Education and Social Work Faculty postgraduate forums. Feedback was invited on the issues raised and written papers were also subject to peer review. Other academics were consulted about the ideas involved and the Faculty higher degree research group in the early stages of the project provided a venue for testing out ideas and comparing methodological problems and initiatives.

As the research progressed, I gained confidence that the two sources of data, and the process of reflection involved, offered a *credible* account of decision-making since together they provided validation of each other (see Bryman & Becker 2012, p.276). In a complex approach it is accepted that another person doing the same research will not necessarily come to exactly the same conclusions, because there are so many factors that contribute to the research process itself including the qualities of the researcher engaged in the study. Nevertheless, it is argued that there should be a strong possibility that other researchers will be able to reach similar observations of the patterns that permeate the issues under study (Neuman 2006, p. 418). This means that I needed to be confident that if another researcher used the same data sets as I did, I could expect them to come to broadly similar conclusions. Bryman

and Becker (2012) also argue that the potential *transferability* of findings can also provide another measure of ensuring the quality of qualitative research (2012, p.277). I consider that with the same theoretical approach, research questions, data sets and research process, another researcher would come to similar findings. And further, the findings would definitely provide useful insights in other policy contexts. Finally, the list of materials, documents, the transcripts of the interviews also ensure that the research process has been what Bryman and Becker call *dependable* (2012 p.277).

5.5.3 Pilot Interview

Before conducting the main interviews I conducted a pilot interview to ensure that the interview schedule and conversational method used, could achieve the outcome that I wanted. The pilot was undertaken with an individual who had been involved in juvenile justice policy development over the study period. From the pilot, the interview schedule appeared to be comprehensive and in response to feedback from the interviewee I amended two questions to reduce ambiguity. From the pilot it also appeared that the flow of the schedule worked well. The schedule moved from specific questions to more open questions and then on to a more personal question where the research participant was asked to assess their own contribution to the policy process. The structure not only encouraged a natural conversation style, but also allowed the interviewee to feel comfortable in reflecting on their own career at the end of the conversation.

5.6 Data collection and analysis

As stated above, I designed the research study to be an iterative process, developing and analysing bodies of knowledge that informed each other, these included the three strands of historical documentary sources, interview data, autobiographical recollection and reflection. The diagram below (Figure 1) provides a visual representation of this process. The details of the data collection and analysis then follow.

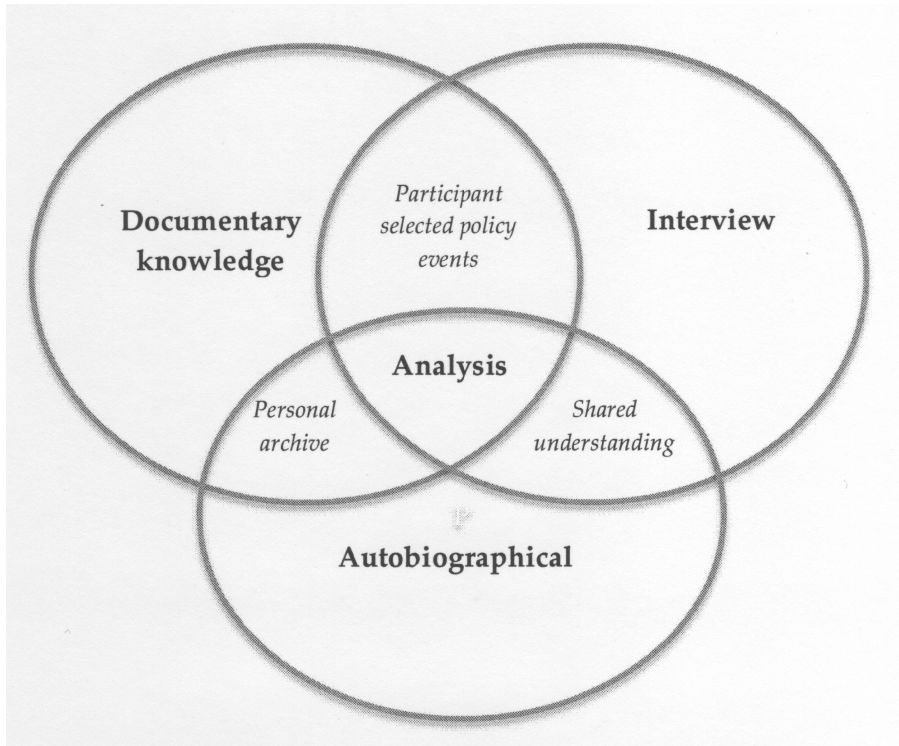


Figure 1. An iterative research process

5.6.1 Document selection

Before I began the research I had to make important decisions about the documents to be used. Since the research project covered fifteen years, I considered that it would be impossible to identify and analyse every piece of legislation, every policy document ever produced, every media based juvenile justice story ever written, filmed or aired on radio. Therefore, I ran an initial scoping study on legislation and policy using secondary materials, for the study period. I already had a personal collection of primary and secondary documents on broad youth justice issues. These included, policy documents, submissions, annual reports and inquiries from government and non-government sources, and personal communications. These had been gathered over the years from my involvement in advocacy and research. Other materials were collected and analysed as they were identified from the literature review, relevant databases and broader internet searches. From this initial documentary scoping search I put together a timeline of key legislative developments for the period under study. This can be found at *Appendix 1*. The timeline gave me an appreciation of the range of policy events that had occurred and allowed me to gain, and in some circumstances regain, familiarity with the range of

issues that could be raised by research participants. The timeline was also offered to research participants as *an aide memoire* in advance of the interviews and again during the interviewee process. Only two people took up the offer to use it, including the pilot interviewee. As the research progressed and the interviews took place, I chased up reports, references, legal cases and media reports mentioned by interviewees and they were consequently incorporated into the research and analysis. *Factiva* searches were conducted in response to media stories and issues referred to by interviewees.

The documents gathered for the research were both *selective* and *representative* (see Bryman 2008). The researcher *and* the research participants were involved in selecting the documents used, and the documents gathered were representative of the ideas, debates, discussions and decisions that were happening during the study period (Bryman 2008).

5.6.2 Documentary sources

This research project gathered a range of both *primary* and *secondary* documents. Although, according to McCulloch (2004) primary and secondary documents can often overlap; primary documents are generally seen to include archival manuscripts, diaries, private collections and those pamphlets, periodicals and government reports which have not been produced primarily for research purposes (p.31). McCulloch (2004) points out that there are a range of texts, online document sources and commentaries that can also be considered to be both primary and secondary materials. O’Leary (2004) considers that secondary materials are mostly comprised of commentaries on events and issues (p.177).

The *primary* sources for the documentary analysis were drawn from the following:

- NSW Hansard.
- NSW Parliamentary Inquiries.
- NSW Parliamentary Select Committee and Standing Committee Reports.
- Juvenile Justice Advisory Council, Youth Justice Advisory Board, Aboriginal Justice Advisory Council reports and publications.

- Law case reports.
- NSW Law Reform Commission, Australian Law Reform Commission reviews, inquiries, submissions.
- Annual Reports from Family and Community Services/ Department of Juvenile Justice.
- NSW Department of Juvenile Justice Policy and research reports.
- NSW Ombudsman legislative reviews, annual reports, occasional reports.
- NSW Bureau of Crime Statistics' statistics, research reports.
- NSW Police Annual Reports, research and policy reports.
- NSW Youth Justice Coalition reports and submissions

Primary sources also included what O'Leary (2004) calls *running records* such as the statistical documents maintained by organisations such as, the NSW Bureau of Crime Statistics and Research, NSW Department of Juvenile Justice, the Australian Institute of Criminology and the Australian Institute of Health and Welfare. Secondary sources came from articles and commentaries written during the time and from historical accounts and biographies. The media have also been included as a key source of documentary material. As Noaks and Wincup (2004) argue, media sources on criminal justice and juvenile justice provide important policy documentary sources. They state:

...media representations of crime and deviance provide a unique documentary source for qualitative research in criminology.... Especially since the majority of the public receive the bulk of their understanding of crime through the mass media (p.113).

The available range of public and private documentary sources has been a little overwhelming at times, but they have provided a rich body of knowledge to draw on.

5.6.3 Documentary research and analysis

The research process did raise a number of issues about how to read and analyse documentary sources. McCulloch (2004) argues that the value of documents as sources of data is often marginalised and in many instances documentary texts are often relegated to providing background material to research. In addition, according to Lewis (2012), there appears to be little guidance on how to approach documentary research (p. 323). For this study, the documents were read and analysed on the same basis as the interviews and in conjunction with them. This is described by O’Leary (2004) as an ‘ongoing and iterative process’, which continues from the beginning of the research, throughout the research process and in the writing (p.179). For O’Leary, (2004) documentary analysis includes the data collection method, the selection of materials to be used as well as the mode of analysis. Consequently, the collection, review, interrogation and analysis of various forms of text become a primary source of research data.

McCulloch (2004) points out that documents are developed within the technical and empirical environment of the host organisation, relaying the values and goals of the agency involved and unconsciously or consciously the knowledge framework in which they are being developed. In addition, he contends that the statements, content and even the absences in the content can convey a lot (2004, p.47). Consequently documents have to be viewed critically. According to Noaks and Wincup (2004) the value of official documents is that they can provide insights into organisational priorities, how issues are discussed and framed, as well as marking shifts in organisational culture and changes in political and economic climates (p.109). The collection, reading and analysis of the documentary material of both *primary* and *secondary* documentary sources need to be seen as the products of an institutional production process and they have been read and understood, as O’Leary (2004) prescribes ‘in relation to the author/organisation, the intended audience, the circumstances of their production, and in relation to the document type’ (p.180).

Finally, as McCulloch reminds us the use of documents, their selection and analysis is the product of an interactive process, including what the reader ascribes to the meaning of the documents and not just what the author intended (2004, p.45). The

subjective position of this researcher and reader has been made fairly clear throughout this research and it is acknowledged that my reading and analysis of the documents may well differ from others.

The data from the documentary materials have been intertwined with the data from the interviews in all the analytical chapters.

5.6.4 Semi - Structured Interviews

Since one of the main aims of the research was to gain insiders' perspectives on juvenile justice decision-making, I decided to use a fairly loosely structured interview format, which is probably best described as a semi-structured interview (Bryman 2008; Hall 2008). This format allowed me to obtain in-depth data (O'Leary 2005). I developed open-ended research questions and the interview schedule acted as more of a loose guide to ensure that I covered all aspects of the research and to ensure consistency. The interview guide can be found in *Appendix 2*.

This particular interview format allowed interview participants to share their extensive knowledge and experience of the policy process with me in a natural, conversation style. As Callaghan says:

...the basis of the qualitative interview in social research is that people do know a lot about why they do things, they are reflexive about their world, they subject their own experiences and motivations to examination. Social research seeks to render the taken-for-granted, reflexive (2004, p.13).

The conversational style of the interview meant that participants could provide information about the policy process from their own perspective and they provided their own illustrative examples including case studies to support the points they were making, their own reflections on events (see Hollway & Jefferson 2000; O'Leary 2005). Interviewees were invited to lead the conversation and I offered gentle prompts where necessary to ensure the interview covered all of the relevant questions. I tried not to be too directive during the interviews, but on occasions I had to bring the interviewee back on track when examples fell outside of the period of study, or wandered off into other policy areas. The qualitative interview format provided a lot of scope for flexibility and allowed me to make on the spot decisions

about prompts, guiding the flow of conversation, opening different avenues for exploration and adding or omitting questions, and this provided both the researcher and the interviewee the opportunity to decide when and how to close the conversation (see Irvine 2012). As the interview was more of a conversation than a structured questionnaire, the research participants also asked me questions, or asked for my views. Consequently, it could be said that the data gathered was the result of a joint enterprise (see Hollway & Jefferson 2000 for a discussion of conversational style interviews). It seemed to me that the fact that I was an experienced and fairly confident interviewer helped the interview process to run smoothly. It was also relatively easy to establish rapport with participants since I was fairly familiar with the research area and, I was roughly the same age as the interviewees³³.

It was really interesting to note that most of the interviewees, who were all experienced professionals, mentioned at the start of the interview that they were not sure that they had anything to offer the thesis, but then went on to provide amazing insights and reflections on the policy process. Each interviewee was also asked for permission to be contacted in case I had any follow up questions or for clarification and, although everyone gave permission, it proved not to be necessary.

5.6.5 Face to face and telephone interviews

Each interview was taped with the permission of the interviewee. The advantage of taping interviews is that it gives the researcher the chance to be an active listener, paying attention to the direction of the conversation and making occasional back up notes. As Irvine (2012) states, taping allows for a natural conversational flow to develop (p.293). The option of conducting a telephone interview was also offered to each interviewee, but only two ended up being conducted by phone, the rest were conducted face to face. The two people who chose the telephone interview were incredibly busy people and one of them, a journalist, would have been used to telephone interviews as they are everyday practices of the profession. Each phone interviewee was asked for specific permission to record the call in compliance with the *Telecommunications Act 1997*. According to Irvine (2012), there is not a lot of research evidence to date on the differences between telephone and face-to-face

³³ Some of the reflections on conducting qualitative research contained in the collection by Bartels & Richards (2011) provide really revealing and disturbing accounts of the attitudes that young female researchers have encountered in the research process.

interviews. Clearly, there are no non-verbal clues to guide the conversation and sometimes as I found there was a verbal overlap at times when both the interviewer and the interviewee were talking, but on the whole the narratives provided via telephone interviews were not significantly different compared to the face-to-face interviews. My only observation was that the two telephone interviews were shorter than the other interviews and were more under the control of the interviewee, but the data was still detailed and provided a rich source of material. As Irvine highlights, since so much of contemporary communication is online, or conducted through phone calls, the lack of difference between interview formats is not surprising (2012 p. 299).

The length of the face-to-face interviews varied. Some were time limited due to the needs of the participants and this was negotiated ahead of the interview, others ended when the conversation was drying up or all themes were covered, or when the interviewee gave clear indications that they were ready to conclude the interview. On average, interviews lasted for an hour. However, others went on for a couple of hours at the instigation of the interviewee! I was more than happy for the interview participant to take the discussion where they wanted, which is probably why some of the interviews lasted two hours over a cup of coffee or four.

The interview transcripts provided what O'Leary (2005) calls 'thick description': they were full of well-considered insights, great examples and reflected the range and depth of experience of the participants (p.159).

5.6.6 Sample selection

In total there were seventeen interviews. Participants were selected using *purposive* sampling that is, they were deliberately chosen for their links to the research area (Glesne 1999; O'Leary 2004; Silverman 2005). The interviewees were recruited using three methods – *volunteer sampling*, *handpicked sampling* and *snowball/network sampling* (O'Leary 2005, p. 94). Three participants were recruited by placing an advertisement in the *Law Society Gazette*. However, a request sent out through a youth inter-agency newsletter did not receive any replies. Five interviewees were contacted after being identified in policy documents, academic literature and from by lines in media articles. Other research participants were

contacted after being suggested as important policy actors by interviewee participants. Three people contacted with requests for interview did not eventually take part in the project. When interviewees declined to participate I approached another person who had worked in the same stakeholder set. I knew four of the participants including the pilot interviewee from having worked alongside them in the youth sector.

Interviewees came from a range of key agencies involved in the policy process and also from those with an interest or expertise in the research subject and together they presented an impressive range of expertise and knowledge on all aspects of the decision-making process. Some interviewees had acted in a number of roles over the study period, moving from non-government to government/ public service positions, between public service portfolios or had moved from one non-government organisation to another. There were only four interviewees who were still working in the same or similar jobs. Interviewees were drawn from the following range of organisations/professions:

- Public service: Attorney-General's Department, Family and Community Services, (initially responsible for juvenile justice), Department of Juvenile Justice, NSW Police Force, NSW Legal Aid Commission.
- Members of Consultative bodies such as Juvenile Justice Advisory Council (Youth Justice Advisory Council).
- Politicians with portfolio responsibilities for juvenile justice/ policing and/or specific interest in children's issues
- Judicial officers, lawyers
- Non-government organisations providing advocacy and legal services for children and young people
- Academics
- Media representatives – journalists, editors, public relations.

I have not listed the exact titles or positions that the participants held in their respective organisations or professions because I consider that it may be possible to identify them personally. Interviewees are identified throughout the thesis by a general reference to their position and seniority and profession, or by their identification code. I have also referred to all participants by the pronoun *she*. Apologies to any participants offended by this decision but it does help to maintain anonymity.

I recognise that in other circumstances I could have interviewed a much larger sample of stakeholders but the nature of the doctoral thesis provides very real constraints on what can be managed by one person within a set time frame. I was satisfied that with the seventeen interviewees I had an adequate number of representatives from the majority of stakeholder groups involved in the policy process.

5.6.7 Transcription, coding and analysis

I have yet to see a complicated problem not become more complicated (O’Leary 2005, p.11).

Each interview was transcribed by a professional transcription service and reviewed immediately. Interview analysis and documentary analysis were undertaken at the same time and each informed the other in what Silverman (2005) describes as an ongoing reflexive process (p.152). As detailed above, this research was always intended to be an iterative project. In keeping with the advice of Noaks and Wincup (2004), I kept an open mind and flexible approach. In the ‘analytic focus’ there was no pre-determined agenda: I wanted the data to present me with new information and to challenge the way I saw issues (p. 131). I did not leave the analysis of the data till the end of the project. I read and re-read the interview transcripts as they came in coding, revising, re-coding, forming ideas and making notes as I went. There were a number of unexpected themes that emerged from the interviews, which meant that I had to examine new ideas and follow up new areas of research. One of the most unexpected aspects of the interview material was the emphasis that interviewees placed on individual personalities, emotions and their influences on the policy process. This is reflected in the attention given to subjectivity and affective factors throughout the thesis and especially in chapter ten. It also led me to review

my theoretical approach to ensure that the role of agency was adequately incorporated into my analysis. As outlined above, when interviewees mentioned key reports, cases, important media events or debates in Hansard, they were followed up and then included in the data. Again, the iterative, reflexive nature of the qualitative research process proved to be flexible enough to accommodate these kinds of shifts.

As the interviews were undertaken, I began to see clearly how important the interviewee's background, character, professional position played in their perspective of the policy process. They were not objective data sets, or extracts separated out from the person but discursive subjects, whose views were part of the whole person (Hollway & Jefferson 2000, p.68). Today, when I read their words in the manuscript I can see the person, or hear their voice and for me that is important, I feel that my own immersion in the data and my manual coding brings a level of authenticity and integrity to the findings and brings the data alive.

Initially interviews were coded thematically, from themes identified in the research questions and then from any other consistent themes that emerged from the interviews as they progressed and major gaps were noted. During a second sweep major themes were broken down into sub groups (axial coding), including concepts, ideas, issues, silences. In a third pass through the data, I selected quotations and case examples that seemed to exemplify the key themes of the thesis and which appeared to closely represent the particular viewpoints of the interviewees. As transcripts came in and further issues were raised, the initial transcripts were revisited. If something new or unexpected appeared in one transcript, the others were reviewed again in the light of the new information, to see if there was any resonance with previous material and to assess its significance. During writing, the transcripts were re-checked to ensure that nothing was missed. By the end of the study period each transcript had been coded and recoded at least four times, each transcript separately dated and each manuscript was covered in notes, stickies and different coloured marker pens. The analytical chapters of this thesis reflect the coding categories and sub categories that were established during this process. In the way that O'Leary advises, the documents were also treated like the interviews themselves, themes that resonated with the interview schedules were highlighted

and included in the review process (2004, p.180). In addition anything that stood out as different or unexpected in the documents was noted.

5.7 Writing

Writing each chapter, although distinct from the data analysis itself, was also part of this analytical, reflexive process. As Coffey and Atkinson (1996) state:

Writing and representing is a vital way of thinking about one's data. Writing makes us think about data in new and different ways. Thinking about how to represent our data also forces us to think about meanings and understandings, voices and experiences present in the data. As such, writing actually deepens our level of academic endeavour (p.109 cited in Noaks and Wincup at p.134).

As the data came in and transcripts were coded they formed the basis of draft written materials, draft chapter sections, or conference papers and presentations. Writing helped to tighten ideas and inform the analysis. The final structure of the thesis was formed through this process.

As I was writing I also considered how I was going to cite the interview material since, from a review of the relevant literature, there appears to be no clearly defined rules about using quotations (see Corden & Sainsbury 2012). Throughout the thesis, quotations are used to illustrate key points. Participants often expressed issues far more succinctly than I ever could and I considered that examples from the field provide the reader with great insights on the reasons why and how policy decisions take place. I have tidied up the verbatim quotations - taking away the hesitations and inappropriate language (there was some swearing!) to make them more readable and to make sure that they reflect the overall quality of the information that I was given.

The analytical process described in this section recognises the kind of integrated interpretative process described by Neuman - it combines a first order interpretation of the interviewee material, a second order interpretation of the researcher and a third order interpretation which integrates writing and reflection with theory (Neuman 2006, p.160).

5.7 Ethical considerations

There are a number of ethical issues to consider during any research process and universities have now introduced systematic ethical review procedures for researchers to follow. The plans and ideas for this research were submitted to the *Sydney University Human Research Ethics Committee* for consideration and permission was granted to proceed after a few minor amendments. The Ethics Committee's letter of permission to proceed has been reproduced and can be found in *Appendix 3*.

Banks (2012) also identifies four key ethical considerations for researchers. These include: *respect* for research participants and the need to obtain ongoing informed consent for participation in the research; *protection* which guarantees anonymity and confidentiality for participants but also provides the option of opting out of confidentiality if interviewees so wish; *public and professional responsibility*; and *honesty* at all points of the research process from developing the project to writing up the final account. These have also been given due consideration.

Participation in the research project was voluntary and no pressure was placed on participants to engage in the research. Each potential interview participant was given a participant information sheet that provided comprehensive detail on the aims, objectives and methodological approach of the research, a description of what was expected of the participant and an objective statement of the potential risks of the process. Each participant was also provided with a consent form, which included a statement that pointed to their right to withdraw at any time from the research, and an outline of the University's complaint process. Copies of these forms can be found in *Appendix 4* and *Appendix 5*.

All interviewees spoke to the interviewer in their personal capacity and all but three were no longer working for the organisation that had employed them in the 1990s and early 2000s. It was not necessary to seek permission from their ex-employers or to go through an employer based ethics consideration. Nevertheless, the consent form made it explicit that no participant was required to divulge information that may be in breach of any undertakings entered into by the participant to which they still feel bound.

All tapes and transcripts were coded with a letter and a number. There are no identifying names on transcripts. The list of interviewees and their codes are kept separately. The author was the only person involved in conducting the interviews and was the only person to have access to the identity of the interviewees. Transcripts were sent to a professional transcription service with only an identifying code number and no name. All efforts have been taken to remove materials that may allow the reader to identify the participants.

One important aspect I had to consider as an interviewer was that I knew four of the interviewees personally from having been involved in youth advocacy and working alongside them for a period of years. I was initially worried that this might create a moral or personal obligation on them to participate in the research, or could be seen to skew the interview process in some way. In order to reduce any bias in securing interviewees I approached each potential participant in the same way and indeed one of the interviewees who ended up not participating in the project was one of the people that I knew. After reading through research methodology literature, I decided that as long as I was open about this and recognised this connection it would not be a problem. O'Leary (2005) argues that in order to be reflective, all researchers have to really think through their own views and that stating political/ personal positioning is almost *de rigueur* in a research thesis (p. 30). It was reassuring that I was not in a unique situation. As Hollway & Jefferson state, qualitative research is by its very nature subjective and the interviewer is 'not a neutral vehicle representing views in an uncontaminated way' (2000, p.3). The approach of the research project was one that was reflexively aware of the subjectivity of both interviewees and interviewer.

I do consider that my familiarity with and experience in the field was an asset in that it allowed the conversations with participants to continue in an informed way. Yet it became evidently clear as the research progressed that I had a lot to learn. It became clear that there were so many aspects of policy decision-making that I was not aware of, and had not been party to, and that despite what I might have thought initially I was not really an insider. This was reinforced by the fact that most of the former senior public servants who I interviewed had no idea who I was. This was damaging to the ego but good for claims of interviewer objectivity!

Finally, my commitment to conducting ethical research was also prompted by the fact that I will more than likely have professional and personal associations with many of the interviewees in the future, as I return to working in the field.

5.8 Concluding remarks

The combination of primary and secondary documentary materials and in depth interviews provided a rich source of research material. Letting the interview data guide the analysis and the structure of the thesis was incredibly rewarding - I learnt a lot and found that the issues raised by participants challenged many of my ideas about decision-making in the policy process and made me rethink aspects of my theoretical outlook. The following chapters have emerged from the analysis of the data outlined to produce a unique historical account of decision-making in juvenile justice.

Chapter 6. A tale of two policy streams

6.1 Introduction

The publication of the *Kids in Justice Report* in 1990 marked the beginning of a policy reform process in New South Wales that appeared to culminate in the introduction of the *Young Offenders Act 1997* (YOA), which came into effect in 1998. Chan (2005) identifies the YOA as a significant, progressive, innovative piece of legislation that incorporated principles and practices of human rights, diversion and restorative justice into statute. However, as this chapter will argue, throughout the seven years it took to finalise the YOA there were other developments in juvenile justice policy that did not embody the same principles and philosophical approach as the YOA.

The analysis of data collected from participants suggests that there were in effect two streams of juvenile justice policy decision-making in New South Wales over the study period: one characterised by the policies and philosophy of the YOA and the other by a more ad hoc, reactive set of policy responses. In addition, participants identified two phases of policy development. The first was from 1990 to 1997, from the publication of the *Kids In Justice Report* to the enactment of the YOA. This period was characterised by participants as more forward looking with a coherent long-term policy vision bound together by rational, deliberative policy processes and, as one community based solicitor explained, '*it was a more optimistic period*' (P9). The second period was seen to begin towards the end of the 1990s when the kinds of features of consultative decision-making and the vision for juvenile justice that characterised the first phase appeared to fall away and a more pragmatic politics begin to dominate policy decisions.

Using documentary material and commentaries from the period interspersed with observations from participants, this chapter begins to explore some of the key juvenile justice policy decisions over the fifteen years of the study period. It lays down the history of policy for the analytical chapters that are to follow. It begins with a very brief historical overview of juvenile justice from the first years of the twentieth century.

6.2 Historical context³⁴

By the turn of the century the New South Wales colonial administration had established a legal and criminal justice infrastructure based on the English legal system, but imbued with the raced and gendered discourses and strategies of governance outlined in chapter three (see Baldry and Cunneen 2011; Behrendt, Libesman & Cunneen 2009; Blagg 2008; Cunneen 2001; Cunneen and White 2011; Hogg 2001). There were a number of distinctions in the development of the juvenile justice system, which mean that its historical trajectory was different from that of the ‘mother country’.

The colonial police were distinct from the ‘New Police’ of England: they were militarised and had been actively involved in frontier expansion, clearing indigenous people from their lands and, from the nineteenth century onwards, governing reserves and missions where they had the responsibility for taking children away from their families and country (Hogg 2001; HREOC 1997; Jennet 2001; Osmond 2009; Sturma 1987; Van Krieken 1992). As Hogg and Golder (1987) explain, in the early years of the colony the police were also responsible for ‘a bewildering array of tasks’, which went beyond crime control and included all aspects of government administration and regulation (p.63). Consequently, individual officers held (and still do today) a considerable amount of legal discretion in day-to-day decision-making so that order could be directly established and maintained (Dixon 1997; Finnane 1987, 2002). The governing authority for the police was invested in a single commissioner who had a direct relationship at first to the governor of the colony and then to the police minister (Dixon 1997; Finnane 1987). As Finnane points out, this gave the police a high level of influence in government circles and from the nineteenth century onwards the police were, and continue to be, accorded a powerful voice in the development of legislative and policy reform (1987, p. 31; see also Finnane 2002).

Although courts had begun to establish distinct sentencing practices for juveniles from the 1840s onwards, it was not until 1905 with the introduction of the *Neglected Children and Juvenile Offenders Act (NSW)* that a separate children’s

³⁴ This is a very cursory overview and more detailed accounts of juvenile justice history can be found in Cunneen & White 2011; the edited collection of Borowski and Murray 1985; Borowski and O’ Connor (1997); Carrington & Pereira 2009; the NSW Law Reform Commission 2005; and Seymour 1988.

court was established (Cunneen and White 2011, p.14). Australian children's courts dealt with both criminal and welfare matters and criminal proceedings were informed by the kinds of legal principles and trial procedures to be found in the adult court, but were also required to take 'the best interests of the child' into account in sentencing determinations (see discussion in Seymour 1985, 1988). The children's courts were presided over by a specialised children's court magistrate in metropolitan areas and social workers and probation officers were appointed from the early days to provide reports to the court and manage children released into the community on conditional discharge, probation, or parole (Cunneen & White 2011; Seymour 1985; 1988). From the early days of juvenile justice there were a number of diversionary options available to police and the courts such as warnings and cautions. Later, children's aid panels were introduced which became an integral part of juvenile justice especially from the 1970s onwards (Alder & Polk 1985; Alder & Wundersitz 1994; Challinger 1985; Tierney 1985)

Children could be brought before the court for both criminal offences and what were termed 'status offences' (Carney 1985; Gamble 1985). Status offences were defined as 'pre-delinquent acts, which, if not controlled, could escalate into more serious delinquency' and were the means by which the children's court sought 'to control unruly children' (Gamble 1985, p. 95). Status offences included being deemed to be neglected, or being in moral danger and included other behavioural issues that were found to need correction and treatment (see Carney 1985; Gamble 1985; Seymour 1985). High numbers of girls were referred to the court by parents and social workers for status offences, especially if their behaviour was seen to be promiscuous or in other ways gender inappropriate (see Carrington 1993, 1996; Carrington & Pereira 2009; Gamble 1985).

The children's court could place convicted offenders and status offenders on control orders, which sentenced them to periods in detention³⁵. Unlike convicted criminal offenders, status offenders were subject to control orders that were not reviewable by the courts and release from custody was a decision made at the discretion of the supervisor of the custodial institution (Carney 1985). Many of these custodial

³⁵ Custodial institutions included industrial schools, 'homes' and reformatories but there was very little difference in their regimes of discipline, work and punishment (Atkinson 1997; Cunneen & White 2011; Carney 1985)

institutions were cruel places and as recent inquiries have discovered girls and boys were subject to brutal treatment, including sexual and physical assault³⁶.

From the turn of the century until the 1930s indigenous children living on missions and reserves were dealt with separately in relation to welfare and some criminal matters (Osmond 2009; Van Krieken 1992). The *NSW Aboriginal Protection Act* was introduced in 1909 and gave the Aboriginal Protection Board (established in 1893), the power ‘to assume full control and custody of the child of any aborigine’ (HREOC 2007 p. 34). The Board acted in *loco parentis* and in 1915 the *Aborigines Protection Amending Act* gave total power to the Board, (which later became the Aboriginal Welfare Board) to separate children from their families without even having to establish in court that they were neglected. In 1969 the Aboriginal Welfare Board was dissolved and power to remove indigenous children from their families was incorporated into the 1939 Child Welfare Act (NSW) under the administration of the NSW Social and Child Welfare Department (Carrington & Pereira 2009, p. 102). Indigenous children were then sent to the same institutions as non-indigenous children. Although, as Carrington notes, perceptions of indigenous parenting practices and the extent of poverty amongst some communities meant that children were still removed and placed into wardship in disproportionately far higher numbers than non-indigenous children (Carrington & Pereira 2009, p.102). Indigenous children and young people also continued to be policed more heavily than other children, be less likely to be diverted to pre-court options like cautions and be more likely to receive custodial sentences (see for example Atkinson 1993; Blagg 2008; Carrington 1993; Carrington & Pereira 2009; Cunneen 2001; Cunneen & White 2011; HREOC 1997).

The intersection of the welfare and criminal systems was also tragically revealed in the large numbers of girls, young women, and indigenous children and young people, who passed between welfare institutions and the penal system (Carrington 1993, 1996; Carrington & Pereira 2009; Girls in Care Project 1986; HREOC 1997; Shaver & Paxman 1992).

³⁶ Inquiries and reports include Parliament of Commonwealth of Australia, Standing Committee on Social Welfare 1985; Senate Community Affairs Committee 2005; NSW Select Committee on Juvenile Offenders 2005; Royal Commission of Inquiry Into Aboriginal Deaths in Custody 1991; Royal Commission of Inquiry Into Institutional Responses to Child Sexual Abuse ongoing).

As in many other jurisdictions by the late 1970s onwards there were moves in most Australian jurisdictions to separate out children's welfare and criminal proceedings (Carney 1985, 1991; YJC 1990). By the 1980s a range of factors had combined together to create the climate for change. There was pressure from children's rights and indigenous civil rights activists to introduce due process rights in relation to policing and court proceedings, as well as lobbying to provide children with access to legal representation (Alder and Wundersitz 1994, O'Connor & Sweetapple 1988; YJC 1990). These demands for reform ran alongside lobbying from within the public service and from non-government organisations about the poor treatment of juveniles in detention (Borowski 1985; YJC 1990). Towards the end of the 1980s the discourse of children's right grew stronger with the impending ratification by Australia, of the Convention on the Rights of Child (see Alston & Brennan (eds.) 1991; YJC 1990). Brought together these shifts in approaches created a new policy climate in which the introduction of a suite of new legislation in New South Wales, separating out children's welfare and criminal issues took place (see YJC *Kids In Justice Report* 1990).

In 1987 The *Children (Care and Protection) Act 1987* was introduced to deal separately with 'the child in need of care' or 'at risk of harm'. Juvenile detention centres were established in the *Children (Detention Centres) Act NSW 1987*. The legislation included administrative details about standards and disciplinary procedures (YJC 1990). Detention centres were to act as correctional centres for convicted and remanded young people, separating them from children in substitute care deemed to be in need of care and protection who in turn were to be placed in secure residential institutions³⁷ (Carrington 1993,1996). Detention centres and residential homes were placed under the control of the Director General of Family and Community Services. Status offences were formally de-criminalised in 1987 and initially the rates of detention of children and young people especially girls dropped dramatically (Carrington and Pereira 2009).

³⁷Residential care continued to exist for those children and young people who could not be placed in foster families, or in community placements due to disabilities or behavioural problems. Ormond/Thornleigh, an annexe to Parramatta Girls home, continued to operate as a residential institution until 1977 and then re-opened as a truancy residential school until 1998 (Carrington & Pereira 2009).

The *Children Community Services Orders Act 1987* was also introduced and provided a statutory base for the introduction of community service orders as a sentencing and post release option. The *Children's Court Act 1987* laid down the procedural rules and guidelines for the separate children's jurisdiction. The *Children (Criminal Proceedings) Act 1987 (NSW)* (CCPA) also strengthened the idea that children should be dealt with differently from adults. It set out a number of child-focused principles, which were to guide all criminal justice proceedings in relation to children, who were deemed to be criminal responsible from the age of 10 (NSWLRC 2005, p. 14). The government established that the CCPA should prevail in all criminal proceedings relating to children, except for the *NSW Bail Act 1978* a point that will be returned to later in the thesis (see *Appendix 6* for more details of the CCPA).

The package of legislation did not cover all aspects of the criminal process and there was still a wide range of legislation that lay outside of the child focused reforms including the *Crimes Act (NSW) 1900*, *Justices Act (NSW) 1902*, *Bail Act (NSW) 1978*, *Summary Offences (NSW) 1988*, the *Sentencing Act 1989* and the *Police Service Act 1990*.

Despite the significant changes to child welfare and criminal legislation outlined above and the range of diversionary options available to the children's court, the NSW Youth Justice Coalition (established in 1988), considered that the NSW juvenile justice system still 'appeared to be in turmoil' and the organisation embarked on an ambitious project to develop a juvenile justice policy agenda and a range of policy options for the 1990s (1990, p.5).

6.3 The early impact of the Kids in Justice Report

The *Kids In Justice Report* was based on extensive research and consultation with government, youth workers, non-government policy actors, young offenders and their families and offered a comprehensive, detailed review of all aspects of juvenile justice. At a broader level, the report stated that there had been huge swings in ideology reflected in policy, where 'the rhetoric of 'rights' was being replaced by demands for 'responsibility', 'security' and 'punishment', and that juvenile justice was becoming more politicised due to the late 1980s politics of 'law and order'

(YJC 1990, p. 5). The report argued that the existing legislation and policy were incoherent and fractured and that too many agencies with different agendas were involved in the system. It found that juvenile justice was not working in the interests of young people, it undermined children's human rights and was in need of a whole of government overhaul (YJC 1990). In the research leading up to the publication of the *Kids In Justice Report* 1990 the YJC found that there was disparity in the use of police discretion, variation in the use of magisterial discretion from region to region and from court to court: in effect 'a geography of justice' (YJC 1990, pp. 282/283). The YJC also found that Community Service Orders were used less in the Northern and North West of the NSW where there were higher proportions of Aboriginal young people attending court and detained in custody (YJC 1990, p. 280; see also Richards 2011; Taylor 2009). The YJC also found that policing practices resulted in youth being policed differently according to their gender and their ethnic and cultural background and that young people from Aboriginal, Vietnamese, Islander and Lebanese backgrounds were harassed and picked up by police more frequently than other young people. Aboriginal children and young people were underrepresented in warnings, cautions and diversionary measures and over-represented in detention centre populations and in out of home care (YJC 1990). The research for the KIJ Report also found that girls were drifting from care into juvenile justice (YJC 1990 p.26; see also Alder & Baines eds.1996; Carrington 1993,1996; Carrington & Pereira 2009; NSW Girls in Care Project 1986).

The *KIJ Report* pulled together key reports, research evidence and expert advice including information from young people and their families to develop a series of recommendations for the future development of juvenile justice, which was called 'a blueprint for the nineties' (YJC 1990). As the KIJ report states, it was taking on an ambitious task of establishing 'a blueprint', but it wanted future reform to be 'well informed, balanced and planned' (YJC 1990, p.5).

The recommendations were underpinned by the philosophy and principles of the UN Convention On the Rights of the Child and related instruments and they incorporated a commitment to restorative justice and youth conferencing. The *KIJ Report* recommended that diversion, rehabilitation and due process rights should be at the core of any new approach to justice and that children's rights should be

recognised through ‘statutory recognition’, and strong systemic governance practices (YJC 1990, p.130).

One of the interview participants for this project, P6, who was one of the founding members of the Youth Justice Coalition and who had also been one of the principal architects of the *Kids In Justice Project*, recollected how the rights and justice agenda of the YJC and of the KIJ Report had its foundations in social justice and criminal justice campaigns of the 1970s and 1980s. P6 considered the Youth Justice Coalition to be a ‘*younger sibling to the NSW Criminal Justice Coalition*’³⁸ and that early members of the YJC believed that advocacy needed to be on ‘*a systemic and individual level*’ (P6). In order to ensure that the research report had a major impact, the Youth Justice Coalition developed strong networks with key policy actors, lobbied politicians and public servants and developed a strong media campaign (see chapter nine on the media for more details).

In May 1990, just before the publication of the *Kids In Justice* report, the Minister for Family and Community Services the Hon. Virginia Chadwick released a policy paper entitled *An Agenda for Juvenile Justice in New South Wales: A Statement of Government Policy Achievements, Future Directions* (YJC 1990, p.5). In a pointed comment in the KIJ report, the YJC stated that it considered that this was an action taken by the government in response to the impending publication of the KIJ report, in an attempt to forestall any criticism that the Department of Juvenile Justice had failed to set out its own future agenda (YJC 1990, p.5). As the KIJ report highlighted, there were strong similarities between both the Departmental statement and the KIJ report. This was not surprising since the Director General of the Family and Community Services had been an advisor to the report and other senior public servants and juvenile justice officers had been members of the KIJ research steering committee and advisory panel. The cornerstone of the government’s statement, like that of the KIJ Report, focused on prevention, diversion and detention as a last resort. However, the NSW Youth Justice Coalition criticised the department’s document for its lack of costings, its selective use of data, focus on detention and security, and the lack of consultation with non-government organisations and the community (YJC 1990).

³⁸ The Criminal Justice Campaign in New South Wales had actively lobbied on miscarriages of justice, prison abolition, and the rights of offenders mainly in relation to adults.

For interview participants, the KIJ report was seen to play a key role in establishing the parameters for policy development in the 1990s. One of the interviewee participants who later became a key figure in non-government youth advocacy saw that ‘*the Kids in Justice Report provided a benchmark for what a good juvenile justice system would entail*’ (P1). The report also had an impact on individual working practices. For example, one participant felt that her early years of working as a children’s solicitor were strongly influenced by the KIJ Report. As she explains:

What stands out for me is when I started in 1990 the Kids In Justice Report had just come out.... it was a fantastic foundation for policy work because it was full of facts and figures and recommendations, that we were able to draw on when doing any lobbying work.... (P11).

This section has examined some of the key findings and recommendations of the *Kids In Justice Report* and the ways in which it was viewed by interviewees. The next section explores the kinds of policy actions and reforms that occurred in the years after its publication.

6.4 Government initiatives

6.4.1 NSW Standing Committee on Social Issues

In August 1991, the Attorney General, the Hon. Peter Collins (who was to later become the leader of the Coalition in Opposition), referred a full inquiry into the juvenile justice system to the NSW Parliament’s Standing Committee on Social Issues (SCSI 1992). The committee membership was established from across party lines in an attempt to develop non-partisan political support for juvenile justice (SCSI 1992, p. ix). The SCSI reviewed the whole of the NSW juvenile justice system and published its report in 1992. It heard evidence from 64 people, consulted with other states and key stakeholders and visited New Zealand to examine Family Group Conferencing (SCSI 1992, p. ix). The Committee’s report findings and recommendations were very similar to those of the KIJ Report and appeared to be grounded in the same kinds of research and evidentiary material. The Committee accepted in its findings that the ‘overwhelming majority of young people come in contact with the juvenile justice system only once’ (SCSI 1992, p.x). It also

appeared to be convinced by the argument that diversion should be a guiding principle for reform. It stated:

The Committee found that in recent years there has been some reduction in the use of custody as a sentencing option for young offenders. However the research shows that more young people can be diverted from detention (2002, p. xii).

The SCSI also accepted that diversionary policies reduced stigmatisation and exposure to the criminogenic effects of the system and not only facilitated rehabilitation but were also cost effective (SCSI 1992, p. x & p.64). The SCSI argued that crime prevention needed to be the first response to juvenile crime and that diversion should be the first response to minor offences once committed (SCSI 1992, p. x). The Committee stressed that institutionalisation should only ever be an option of last resort for juveniles and should be reserved only for the small group of serious and violent offenders who were to be provided with services and programs to help their reintegration into society (1992, p. xii). In its discussion of diversionary options the SCSI examined the role of cautions and, despite what they acknowledged as police resistance to the idea, recommended their expansion (see SCSI 1992, p.70). The SCSI called for community based sentences to be used more widely to help rehabilitation and to allow the young offender to become a responsible member of their community ‘without the dislocating and damaging effects of incarceration’ (1992, p. xii). The Committee proposed that victims needed to be considered and respected in all aspects of the juvenile justice system. The SCSI also acknowledged the importance of research and information. They argued that the public tended to be misinformed about juvenile justice and argued that ‘the community needs to accurately and sensitively informed of the facts relating to juvenile justice and the rationale behind the determinations of government’ (1992, p. x). The Committee recognised that the causes of juvenile crime were complex but they were seen to stem mainly from social disadvantage, family breakdown, substance abuse, low morale and self esteem (SCSI 1992, p. xi). The Report also addressed the need to develop a comprehensive and coordinated response to juvenile justice and called for a whole of government response that included health, welfare and education polices (SCSI 1992, p.x). From the committee’s documentation it was clear that costs, and cost efficiencies and effectiveness were beginning to be taken into account in planning policy options and strategies. NSW

YJC and the SCSJ based some of the rationale for strategies proposed on the basis that the estimated direct costs of juvenile crime amounted to \$250 million per year and indirect costs such as were estimated at about \$4150 million per year and in addition they argued that ‘the costs in human suffering are immeasurable’ (SCSJ 1992, p. xi).

6. 4. 2 Juvenile Justice Advisory Committee

In 1991 the Attorney General had also established the Juvenile Justice Advisory Council (JJAC) to provide policy advice to the government on juvenile justice. The Council was made up of government and non-government experts and was co-chaired by Michael Hogan (from the community legal centre the Public Interest Advocacy Centre) and the Hon Marie Bashir at the time an eminent psychiatrist (and who is at time of writing the NSW Governor General). Michael Hogan had been one of the principal architects of the *Kids In Justice Report* and, as will be discussed later in this thesis, an influential policy entrepreneur in the early to mid 1990s. Over the years, various representatives from community organisations and service providers and experts on juvenile justice sat as members of the Council. In 1998 the JJAC later changed its purpose from being a general advisory group to become a formal advisory group supporting the introduction of the YOA and became known as the Youth Justice Advisory Committee. Under the imprimatur of the *Young Offenders Regulation Act 1997* the YJAC provided the government with advice on regulations, all aspects of conferencing, including the monitoring and review of the implementation of the YOA (see Hennessy 1999). It was disbanded in 2004 (<http://www.lawlink.nsw.gov.au/yjac>).

Despite its formal role, one of the interviewees for this project who had been a member of the JJAC felt it had never been able to fulfil its brief. As P1 said, ‘*my recollection was frustration about the JJAC, it didn’t have any resources*’ (P1). This meant that the Committee had the capacity to identify key issues and problems but the secretariat that supported the JJAC was not able to undertake the policy work and the research and consultation required. As P1 continued ‘*It was capable of being a much better source of advice for the Minister than it was resourced to do*’. P1 felt that this was partly a strategic decision as she went on to explain: ‘*It was fair*

to conclude that it was deliberate. It meant it couldn't provide an adequate independent source' (P1).

By 1992, although there had been extensive work undertaken by the parliamentary committee, Jenny Bargaen a member of the YJC, in a commentary piece, argued that there had been very little movement towards realising the vision outlined in the KIJ report, she observed that:

...pragmatism and personal politics have often taken priority over reasoned debate and principled commitment to the development of a centrally co-ordinated approach aimed at ensuring justice and fairness for all young people (Bargaen 1992, p.118).

In short, despite the in depth consideration of the principles and recommendations of the *Kids In Justice* Report coupled with the introduction of a number of key measures, there was still a shortfall by 1992 in the government's initial response to the report.

6.4.3 Aboriginal Justice Advisory Committee

The KIJ Report and the SCSJ Report had both identified the need for the NSW government to act in relation to the overrepresentation of Indigenous young people in the juvenile justice system and especially their overrepresentation in detention. In 1993, as part of national response to the recommendations of the Royal Commission Into Aboriginal Deaths In Custody (RCADIC) 1991, the New South Wales government established an Aboriginal Justice Advisory Council (AJAC), to monitor the implementation of the RCADIC recommendations and to provide advice to government on justice related matters. The NSW AJAC consulted widely with Indigenous communities; developing a range of position papers on justice issues and in 2004 developed an Aboriginal Justice Strategic Plan, which established a vision for criminal justice and youth justice including numerous aims and objectives for the government to achieve in relation to Indigenous policy and programming in areas such as crime prevention, policing, courts, detention and post release programs (Allison & Cunneen 2010). Yet despite the energy and input from the AJAC and support for their proposals, the numbers of indigenous young people appearing in court and being placed in detention continued to rise (Atkinson 1993; Taylor 2009; Richards 2011). Eventually, as Allison & Cunneen (2010) point out,

state based AJACs have since been abolished or allowed to collapse and the NSW AJAC was finally disbanded in 2009 (p. 648).

6.4.4 The Government's Juvenile Justice Green Paper and White Paper

The SCSI Report was followed in 1993 by the publication of a government Green Paper produced by the JJAC entitled *Future Directions for Juvenile Justice* and in 1994 by a government White Paper *Breaking the Cycle: New Directions for Juvenile Justice in NSW* (1994). Both reports laid out the principles and objectives for juvenile justice and, as the Green Paper stated, the aim was that through this process of discussion and research it would then be possible to 'establish a clear direction and sound framework for juvenile justice to the year 2000' (JJAC 1993, p. v). The Green Paper and the White Paper also contained a *Charter of Principles for Juvenile Justice* that laid out a philosophical basis for policy development and implementation and also provided a set of guiding principles. Although the wording of the charters changed between papers, they both identified that crime prevention; diversion and reintegration should be the primary focus of juvenile justice. The Charter principles also recognised victim's rights and needs, highlighted the importance of involving families in juvenile justice, called on communities to take responsibility for supporting juveniles and for providing the first recourse for diversionary and sentencing options. The Charter principles incorporated a commitment to relevant human rights rules and conventions, and integrated key Articles of the Convention on the Rights of the Child. The principles also recognised the specific needs of particular groups of children and young people including young women, youth with disabilities, Aboriginal youth, juveniles from non-English speaking backgrounds, geographically isolated youth and wards of the state, and in response called for 'specific preventive and support services, bail options, pre- court interventions and court-ordered sanctions' to be developed to target their needs (1994 at p.4). The Charter principles also stated that respect for the law; the rights of victims, the interests of the community and accountability of individual offenders would maintain public confidence in the juvenile justice system (1994, p.4). Other recommendations addressed decision-making processes, stating that policy needed to be developed and implemented 'in a coordinated and consultative approach between all levels of government and the non-government

sector'. It also stated that 'juvenile justice processes and outcomes should be monitored by appropriate accountability mechanisms' (White Paper 1994 p.4).

Both papers also outlined how the principles would be realised in relation to juvenile crime prevention, policing, legal representation, court procedures, sentencing options and community based diversionary mechanisms, including youth justice conferencing. They addressed the health and educational needs of offenders and outlined the need for children in detention to have access to rehabilitative programs and post release services. The White Paper also addressed the findings of the *Royal Commission Into Aboriginal Deaths in Custody 1991* and the need to tackle the overrepresentation of Aboriginal youth in the juvenile justice system. The White Paper stated that the government was committed to involving Aboriginal people in policy development and delivery, and to improving health, education, housing and infrastructure services and improving socio economic conditions as a means of reducing the numbers of Aboriginal young people coming into contact with the juvenile justice system (White Paper 1994 at p. 23).

The Green and White papers also provided a statement of commitment to establishing a coordinated and comprehensive government wide approach to juvenile justice that would be responsive to local community needs, by establishing locally based Community Youth Taskforces (White Paper 2004 p.25).

Significantly, the White Paper heralded the arrival of youth justice conferencing as a prospective state wide juvenile justice procedure. Conferencing had been established informally in Wagga Wagga (NSW) in 1991, as a hybrid police-cautioning scheme by an enthusiastic advocate, Senior Sergeant Terry O'Connell (Bargen, Clancy and Chan 2005, p.19). Based on New Zealand's Family Group conferencing and Braithwaite's (1989) theory of re-integrative shaming, the Wagga scheme was entirely run by the police and held at the police station (Bargen, Clancy & Chan 2005, p.19). The Wagga scheme had led to a reduction in the number of matters going to court and, despite some major criticisms of the police run scheme (see later discussion in the chapter on policing), there were many supporters of the philosophy and practice of youth justice conferencing and restorative justice. Together supporters lobbied for this different approach to justice to become a guiding model for the development of juvenile justice policy (Bargen, Clancy &

Chan 2005). The White Paper recommended that a pilot Community Youth Conferencing (CYC) scheme should be established that combined diversion with empowering victims of crime (White Paper 1994, p.13). The CYC was to be administered by statewide Community Justice Centres (Bargen, Clancy & Chan 2005, p.19). The pilot began in 1995 and was evaluated in 1996 and as Bargen, Clancy and Chan state, 'the evaluation found that there were 'a number of systemic and structural problems' and the police were 'reluctant gatekeepers'. It recommended that legislation was required to 'govern the conferencing process' as well as the issuing of cautions and warnings by the police (Power 1996 cited in Bargen, Clancy & Chan 2005 at p. 19).

During the lead up to the YOA, the Office/Department³⁹ of Juvenile Justice also released a flurry of policy reports and position papers that built on the range of issues identified in the SCSJ Report and in the Green and White Papers (see in particular the work of Michael Cain 1995,1996).

6.4.5 Finalising the YOA

In 1995 a Labor government was elected and another cross government consultative committee was established in 1996 by the new Labor Attorney General the Hon. Jeff Shaw (1995 – 2000). According to Bargen, Clancy and Chan (2005) the Minor Offenders Punishment Scheme (MOPS) working party was handed a brief to investigate, in consultation with key stakeholders, how alternatives to court processing might work and to develop draft legislation (p.20). The members of the Committee were drawn from the Office of the Director of Public Prosecutions, the Legal Aid Commission, the Department of Aboriginal Affairs, the Police Service, the Department of Juvenile Justice, the Judicial Commission and other government departments. Police representatives were drawn from operational and policy areas (Bargen, Clancy & Chan 2005). The Committee consulted widely and received over 50 submissions (2005, p. 21). As Bargen explains, the MOP's Working Party Discussion Paper was distributed widely and was finalised after consultation with key stakeholders (Bargen, Clancy & Chan 2005, p.20). It was the MOPS group that drafted the sections of the YOA relating to warnings, cautions and conferencing and which proposed the establishment of a separate agency with responsibility for

³⁹ The name changed back and forth.

running conferencing, to enhance accountability and openness (2005, pp.19/20). As one of the former members of the group stated, conferencing was established in a separate directorate under the auspices of the Department of Juvenile Justice ‘*so that we couldn't be accused of what the police were being accused of, of being the chasers, the catchers and the judges*’ (P3). According to Barga, Clancy and Chan, taking conferencing away from the police and restructuring it so that it was different from the Wagga Wagga conferencing model was controversial and did not go down well with police and selected victims’ groups (2005, p.20). Despite some opposition to sections of the YOA, it was finally introduced in 1997. And, as Hansard records, the Young Offender’s Act came into effect on 6 April 1998. The main object of the Act according to s.3 (a) was to “provide an alternative process to court proceedings for dealing with children who commit certain offences.” (NSW Parliament, Hansard 21 May 1997, Legislative Council).

As the next section will show, despite opposition it was the support from the policy community and key policy actors that opened the policy window and pushed the legislative reform through.

6.5 Bipartisan support for diversion and rights

One of the key characteristics of the development of the YOA was that it received bipartisan political support and through the consultative process developed commitment from those government and non-government representatives involved, surviving a change of government from the Liberal/National Party Coalition to Labor in 1995. As one interviewee told me, ‘*it really didn't matter that there was a change in government.... at that time what mattered was that you had a commitment from those who could make a difference*’ (P7). P8, a government media communications expert also explained, *it was bi partisan... everyone agreed that no, we don't want to lock up kids and yes, we want to do things differently* (P8).

Interviewees attributed the bipartisan support for the policy reforms that underpinned the YOA in part to the values of the three successive Attorney Generals, the Hon. Peter Collins (1990-1991), Hon John Hannaford (1992-1995) and then the Hon. Jeff Shaw (1995 - 2000). According to interviewees, all three were traditional liberal lawyers with strong beliefs in civil and political rights,

whose support for the principles of juvenile justice adopted by the KIJ report, the SCSI Report, the Green and White Papers and the MOPS Working Party helped to establish the consultative mechanisms that then drove the policy reforms through Cabinet and from there, through parliament. In the words of P7, who had worked closely with both Hon. John Hannaford and Hon. Jeff Shaw, *'they were not swayed by 'law & order' politics.'* Hon. John Hannaford in particular was seen to be supportive of the diversionary policies and, as P6 who had worked closely with him stated: *'he was a really strong small 'l' liberal lawyer'* (P6). P7, an interview participant who had been closely involved with the MOPs Working Party, also praised Hannaford, acknowledging that:

'...he was open to the evidence....children get involved in criminal activity during the course of their adolescence and the evidence was saying then that most kids grow out of crime... but he also understood that there were a lot of children going through the children's court processes that really didn't need to go to court' (P7).

The influential role of individuals in decision-making will be explored in more detail in later chapters, but what is important to acknowledge here is that there was a common shared commitment (or at least a lack of open resistance), amongst those with the authority to make decisions, to the recommendations and proposals of the YOA. As P6 observed, *'...There was a genuine coalition of interests and collaborators and people who had strong values informed by what was right and decent'* (P6).

The support for the reforms also included senior public servants. As P6 states:

There were people inside government at policy level and at senior management level, who were prepared to advise government what we were saying at the time was OK ...rather than just dismissing us or ignoring us.... Ken [Buttram⁴⁰] was a fellow traveller, philosophically and Laurie [Glanfield Director General Attorney General's] was tolerant (P6).

In her evaluation of the YOA, Chan (2005) also found that, despite pockets of resistance to the Act and some problems in its implementation, it was *'the broad and on-going consultation' with major 'stakeholders' that was one of the major strengths of the decision-making process'*, as well as the open nature of decision-

⁴⁰ Ken Buttram was the Director General of Family and Community Services, and of the Department of Juvenile Justice at various times throughout the study period.

making and the commitment of government departments to its success (2005, p.39). Chan considered that it was also clearly worded and comprehensive (2005, p.41).

For others, the YOA was seen to be an almost perfect piece of legislation and the product of a considered, consultative policy process. And, for one interviewee who had been a senior executive officer in the police it was *'a great piece of legislation. It's one of the best pieces of legislation I've ever seen. Then they tried to tinker with it (P12)*.

The early 1990s were thus seen by some of the participants in this study as the halcyon days of juvenile justice policy formulation and implementation in NSW. One interviewee who had been directly involved in research and policy development in a number of public service departments throughout the 1990s and early 2000s said of the years 1990-1997: *'It was a time as I recall when there was a more sophisticated discussion about the importance of juvenile justice and the importance of ...diversion, prevention and rehabilitation (P17)*.

The intent in this discussion of the development of the YOA is not to paint a romantic view of the decision-making processes. As the book *Reshaping Juvenile Justice* documents, there was opposition in government and outside of government to the reforms, and the policy outcomes were achieved only through contest and compromise (Chan 2005). And, as will be discussed later not only were many of the reforms opposed by the police; there was also a reluctance to operationalize them. As P7 recalls, there were also gaps in the reach of the legislation especially in relation to court processes, which as we shall see was mainly due to failure to consult in depth with the Senior Children's magistrate at the time. In addition, not all aspects of implementation were thought through. For example, as Chan highlights, although the YOA in s7 (b) specified that all children were entitled to legal advice, no funding had in fact been made available to allow that to happen (2005, p.32). It was only in 1998 that funding was assigned to set up a telephone advice line, the Youth Hotline, staffed by solicitors from the Children's Legal Service at the NSW Legal Aid Commission (Chan 2005, p.33)⁴¹.

⁴¹ Insights into the impact of the lack of legal support for young people were revealed by a qualitative study of young people's experiences of the YOA conducted by the NSW Youth Justice Coalition. It found that young

As we have seen, the legislation was driven through by a coalition of policy actors who ensured that it was as detailed and comprehensive as it could be. One of the key things that sustained its passage through parliament was the political will of the Attorneys General to take it through the parliamentary process.

However, the development of the YOA only represented one aspect of juvenile justice policy decision-making during this time: there were other reforms that were less enmeshed in the values and principles of the YOA and continued to reflect patterns of policy development that were driven by other demands. The next section explores this parallel policy process.

6.6 Beyond the YOA

... a lot of juvenile justice policy, probably like a lot of public sector policy is not that thought-through. It doesn't have that long-gestation. It doesn't have that broad reference to movements and schools of thought that were happening internationally or even elsewhere in Australia. Yeah it was just more reactionary (P5).

The principles and policies that were being shaped in the consultative processes of the YOA including diversion, rights and conferencing had little or no place in a raft of reforms that were also introduced during the policy period. Together, these reforms enhanced police powers, restricted young people's use of public space and together contravened many of the rights enshrined in the CROC. The following discussion looks at these legislative reforms, suggesting some of the reasons why they were introduced, including the particular policy climate in which they developed.

6.6.1 *The Children (Parental Responsibility Act)*

At the same time as the government was emphasising children's rights and anti-discrimination in one area of policy development in others, the principles and standards of the CROC were being subverted. The *Children (Parental Responsibility) Act* enacted in 1994, (revised later to become the *Children (Protection and Parental Responsibility) Act*)⁴², provided police with powers to

people were not advised properly of the options available to them in relation to courts, cautions and conferences (YJC 2002 p. ii), and made admissions to offences after being offered inducements by police (YJC 2002, p. iii).

⁴² The legislation has since been rescinded

remove young people from public places, limited the rights of children to meet in public places and in effect imposed youth curfews in some country towns (Cunneen & White 2011; Sanders & Grainger 2003). The legislation allowed local governments to apply to the Attorney General to be designated as an 'operational area'. In operational areas police were given the power to escort young people from a public place without charge if they were under the age of 16, were not supervised by an adult and were deemed to be in danger of being abused, injured or at risk of committing an offence (Sanders & Grainger 2003, p. 81 see also Cunneen & White 2011). As Sanders and Grainger point out, the police were also granted the power to use 'reasonable force' to effect the removals (2003, p. 82). Under 16 year olds were then to be taken to the home of the child's parent, carer, relative or an 'approved person', or to a Department of Community Services 'approved' place (Grainger & Sanders 2003). The law came into operation in Ballina and Orange on a twelve-month pilot basis, with both towns having high numbers of Indigenous young people (Grainger & Sanders 2003). Anderson, Campbell and Turner point out that although Independents in Parliament and some Labor politicians opposed sections of the Bill and a number of amendments were made, including the fact that the legislation should only be introduced on a twelve-month trial basis, it was still passed (Anderson, Campbell and Turner 1999: 57). Later, an independent evaluation report presented to the Labor government in 1997 provided a scathing, critical assessment of the legislation and its implementation. Yet despite this, the Carr government reworked the legislation and in its new guise it was assented to by Parliament in July 1997. Significantly, this occurred the day after the YOA was enacted (Anderson, Campbell and Turner 1999, p.57).

Another part of the amended legislation focused on parental responsibility for children and young people's behaviour. It provided the Children's Court with the power to compel parents to attend court with their children, to make them sign undertakings as to their children's behaviour and in extreme cases punish parents whose neglect was seen to their children's offending. Although by 2004 it was found that these provisions were rarely used, the introduction of these responsabilising measures suggests a break with the ethos of the YOA (YJC/YAPA 2004).

As Anderson, Campbell and Turner argue, the Act was criticised on a number of grounds, including its potential for net widening, the fact that it was racially discriminatory, and in 1997 it was subject to condemnation by the United Nations Committee on the Rights of the Child:

The committee is concerned by local legislation that allows the local police to remove children and young people congregating which is in every infringement on children's civil rights, including the right to assemble." (S.73 UN Concluding Observations Committee on the Rights of the Child AUSTRALIA 40th Session 2005 CRC/C/15/Add.268).

One of the interview participants, who had been a community based representative on a committee involved in the review of the *Children (Parental Responsibility) Act*, found that the government was not open to persuasion on this and other issues relating to the policing of young people. As P9 explains, *we were trying to have a sensible discussion with government and we came up against a brick wall. It was disheartening and tiring* (P9). Her sense was that, government and public service representatives from the late 1990s onwards were paying lip service to the idea of consultation. The earlier optimistic times were fast disappearing. As she recollects, *I lost heart, because I am sitting there chatting and they are nodding politely to me but there was no listening and absolutely no changes to their approach and it just got worse and worse. I kind of gave up* (P9).

From this perspective, the former more open consultative approach of the government with the non-government sector on juvenile justice was beginning to close down and a different agenda was emerging.

6.6.2 Zero tolerance and the extension of police powers

The *Kids In Justice Report* had been highly critical of the abuse of police powers and discriminatory policing practices employed by police against young people and in particular against young people from Aboriginal and ethnic minority backgrounds (YJC 1990). In 1994, the YJC released a further report *Nobody Listens*, which was a compilation of extensive qualitative data on young people's negative experiences of policing (YJC 1994). The NSW Ombudsman's Office also conducted an inquiry into the policing of young people, which examined the policies, practices, procedures and culture of the NSW Police Service (NSW

Ombudsman's Office 1995). The Report documented examples of discrimination and inadequate policy and practice directions that resulted in negative experiences for young people from a range of ethnic communities (NSW Ombudsman 1995). Data on discriminatory policing and prosecution decisions were also the subject of a national report by the National Council of Youth Services (Guerra & White 1995). In 1997 a study was published that documented poor policing experienced by young Indo-Chinese Australians in Fairfield and Cabramatta (Maher, Dixon, Swift and Nguyen 1997). The report, *Anh Hai*, used in depth interviews with heroin using young people and revealed that they were being policed outside of the framework of the law, subject to random and illegal public strip searches, harassment and over-policing, and that there were few remedies available to them to address the problem (Maher et al. 1997). The police were also subject to censure for poor policing of different sections of the community by the Wood Royal Commission (*The Royal Commission Into the New South Wales Police Service*)⁴³. The commission report catalogued policing misdemeanours, abuses of power, corrupt practices and concluded that saturation policing in some areas of the state had little impact on crime rates (Anderson, Campbell & Turner 1999, p. 53). In their book *Kebabs, Kids, Cops and Crime*, Collins, Noble, Poynting and Tabar (2000) examined what they claimed was racist policing against Lebanese youth in Lakemba and Western Sydney, and explored what they considered to be the emergence of a manufactured moral panic about Lebanese youth gangs (2000). Throughout the early to late 1990s accumulated research on policing also found that children and young people's use of public space was being increasingly regulated through the extension of police powers (Anderson, Campbell & Turner 1999; Cunneen & White 2011; Sanders & Grainger 2003).

Yet despite this accumulated evidence and the work being undertaken on the YOA on diversionary policing, successive NSW governments seemed to ignore the concerns raised in this succession of reports and inquiries and instead, embarked on a series of legislative reforms that appeared to be characterised by the kinds of punitive emotions of 'law order politics' discussed elsewhere in this thesis. I was interested to explore with interviewees why they believed this may have occurred

⁴³ The Wood Royal Commission was a wide-ranging inquiry into police corruption and malpractice, overseen by Justice Wood. It began in 1995 during the Premiership of Hon Nick Greiner and reported in 1997.

and, although responses that targeted the media and political expediency are discussed in later chapters, one interviewee who had worked in a range of government departments during the period highlighted how there was a combination of criminal justice related incidents which together created, in their words, created an '*amazing political firestorm*' so that the late 1990s and early 2000s provided '*a very different space, so reform was not on the agenda*'⁴⁴ (P17).

Criminological literature and media sources together reveal that during the period described by P17, zero tolerance policing (ZTP) was also becoming the policing policy *de jour* internationally and domestically (see Anderson, Campbell & Turner. 1999; Cunneen & White 2011; Darcy 1999; Dixon 1999; Griffith 1999; Jones & Newburn 2007). Emanating from the US and associated with the policing of New York during the time of Mayor Rudolph Giuliani and Police Commissioner William Bratton,⁴⁵ ZTP was very popular in political rhetoric during the years of the Blair government (Jones & Newburn 2007). Cunneen and White argue that zero tolerance was interpreted as a way of 'taking pre-emptive police action in certain places (city hot spots) and against certain people (youth gangs) (2011, p.245). As Cunneen & White point out, anti social behaviour is not tolerated in a zero tolerance approach no matter how minor, with young people in public places becoming subject to close surveillance, monitoring and often displacement (2011). James Q. Wilson, a criminologist who had a major influence on the development of zero tolerance style policing initiatives in the US, visited Sydney in 1997 and in turn, NSW senior officers and the Police Minister Hon. Paul Whelan went to New York to study the policing strategies in operation there (Anderson, Campbell & Turner 1999, p.52). In 1999, the NSW parliamentary library published a major review of zero tolerance policing, examining its relevance for NSW (Griffith 1999). Griffith documents that there was a significant policy buzz amongst politicians about ZTP; for example, the 'Police Minister Paul Whelan said that neither he nor the Police Commissioner Peter Ryan would shirk their responsibilities to introduce zero

⁴⁴ Interesting to note 'reform' was often used by interviewees as a shorthand term for progressive reform.

⁴⁵ In 2005 William Bratton by then Police Chief of Los Angeles visited Sydney to discuss policing policy with the Police Minister Carl Scully and Police Commissioner Ken Moroney see <http://www.smh.com.au/news/National/Soccer-louts-add-to-police-woes/2005/03/13/1110649058765.html> accessed 31/7/2013.

tolerance policing' and in September 1998 Premier Carr referred to 'zero tolerance on knives' when introducing legislation dealing with the possession of knives and other implements (Griffith 1999, p.1). In February 1999 the NSW Police Commissioner, Peter Ryan, in an interview for Channel Nine's Today program, called for 'zero tolerance policing of drug distribution and importation' (Griffith 1999, p.1).

As P17 points out, it became difficult for politicians during this time to sustain the beliefs and '*ethos of diversion and less intervention... when you've got kids in Redfern shooting up and Cabramatta being out of control*' with '*high rates of opiate deaths*' (P17) and when Western Sydney mayors were also lobbying the government 'for curfews for young people' (P17). In 1998, Lakemba police station was subject to a drive-by shooting with seventeen shots being fired into the police station on November 2nd 1998 (see Hansard, Parliament of NSW 10th November p.9546

<http://www.parliament.nsw.gov.au/Prod/parlment/hansart.nsf/V3Key/LA19981110022> accessed 14/6/2013). There were other factors that shifted the ground in attitudes to policing when two police officers were stabbed to death - David Carty in 1997 and Peter Forsyth in 1998⁴⁶. The Wood Royal Commission Into Police Corruption had handed down its report in 1997 and a new Police Commissioner from the UK, Peter Ryan, had been appointed in 1996 ostensibly to revamp the organisation and to restore authority and legitimacy after the Wood Royal Commission.

In Cabramatta there was also a great deal of controversy about the policing of drug users and drug trafficking. The *Anh Hai* report came out at the same time that Tim Priest, a former police sergeant embarked on a campaign criticising senior police for the mismanagement of the policing of the drugs trade in Cabramatta. In addition, the earlier drug trade related murder of Fairfield/Cabramatta MP John Newman had never been fully resolved. Together these events led to the instigation of a *Parliamentary Inquiry into the Policing of Cabramatta* (NSW Legislative Council 2001). Its findings contributed to the resignation of the Police Minister Paul Whelan

⁴⁶ Death of Constable David Carty in Fairfield in April 1997 (Hansard Parliament of NSW 22nd April p.7843 <http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LA19970422027> accessed 14/6/2013). Death of Constable Peter Forsyth in March 1998 Ultimo while trying to arrest a drug dealer (Hansard, NSW Parliament 31st March p.3745 <http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LA19980331051> accessed 14/6/2013).

and a number of senior police officers in 2001⁴⁷. On top of this series of incidents in 2000, a series of gang rapes committed by Australian Lebanese youth also sparked a major media outcry and led to a series of legislative amendments to suspects' rights in sexual assault trials (see the 2003 Report *Race for the Headlines: Racism and Media Discourse* released by the NSW Anti-Discrimination Board; see also Stubbs 2008).

One further factor that contributed to the dampening down of justice reform agendas was that, as P17 pointed out, there was a peak in crime levels in NSW when '*other countries had experienced it slightly earlier than us*' (P17). Politicians and the media could point to the recent rise in crime statistics to justify their tough policy agenda.

During this '*firestorm*' P17 argues that '*juvenile justice got caught in the backwash*' and that '*what became important was crime and policing, as governments felt that they had solved juvenile justice*' (P17). P17 argues that being seen to be '*tough on crime and tough on the causes of crime*' (a political slogan of the Blair government) becomes more understandable in this context and although the management of policing in Cabramatta provided an exception, long term consultative strategizing for solving immediate crime problems can be seen to become less of an option in this climate. As P17 states, '*I can't imagine an Attorney or a Premier fronting a press conference saying our response is to refer this matter to a general justice advisory council and they shall report to us in 2001*' (P17).

Policy decisions taken in this climate resulted in a series of legislative reforms to policing powers that not only consolidated those that already existed, but also expanded police capacity to stop, search and detain. For example what came to be known as police 'move on' powers were incorporated into the *Crimes Amendment (Police and Public Safety) Act 1998 (NSW)*. Initially proposed in 1996 (in the wake of the 1995 election) as the *Street Safety Bill*, the legislation was targeted at controlling 'gangs' and contained provisions to disperse groups of young people from public areas (Anderson, Campbell & Turner 1999). Although research conducted by Rob White during this period had found that the kinds of 'USA style

⁴⁷ Interestingly it was later found that the evidence of a key witness a former police officer Tim Priest was misleading, and unsupported.

gangs' depicted in the media and in political rhetoric simply did not exist in Australia, the 'gangs' rhetoric informed debate (White 2007). Many critics of the legislation argued that the 'anti-gang' legislation in New South Wales was simply targeted at young people who hang around in public spaces or who might associate with their friends there, and who were thought to be undesirable (YJC/YAPA 2004, p. 6). In 1996 the draft legislation was fiercely opposed by a coalition of politicians including Labor politicians, senior public servants such as the Director General of Juvenile Justice Ken Buttram and non-government organisations including the human rights group Defence for Children International (DCI) (Anderson, Campbell & Turner 1999, p.72). This opposition, coupled with the evidence of rising numbers of Aboriginal youth in custody combined to temporarily quash the impetus for the reform (Anderson, Campbell & Turner 1999, p.72). However, according to Anderson, Campbell and Turner, the spectre of the threat of USA style 'gangs' and youth disorder never really went away and in the policy climate described above, the legislation was reintroduced alongside amendments to the *Summary Offences Act* and 'together they served to extend police search powers' (1999, p.74). The revamped *Crimes Legislation (Police and Public Safety) Act NSW 1998* gave police the power to issue directions to young people to leave any area. A refusal to 'move on' or failure to comply with 'a reasonable direction' from police could result in either, an on the spot fine, a warning, a formal caution, or a court attendance notice (CAN) or a charge (Sanders & Grainger 2003, p.65). A reasonable direction was deemed to be one based on an officer's assessment that a young person was engaging in actions that constituted harassment or intimidation, or obstruction or 'is likely to cause fear to a person of reasonable firmness' (Sanders & Grainger 2003, p.65). Later the legislation was extended to include 'the fact that a person is present in a location with a high incidence of violent crime' (YJC/YAPA 2004, p.4). This, it was argued, was an example of 'hotspot policing' - a ZTP initiative (see also Grainger & Sanders 2003). Anderson, Campbell and Turner argue that campaigns from the Daily Telegraph and intense lobbying by the Police Association and others meant that by late May 1998 the *Crimes Legislation Amendment (Police and Public Safety) Bill* had passed through the Lower House of Parliament (Anderson, Campbell & Turner 1999, p.75). As it went through parliament the order maintenance intent of the legislation became very apparent.

The key purpose of this provision (the move on powers) is to enable police to disperse persons acting in a disruptive manner before a situation gets out of hand' (Second reading speech to the Crimes Amendment (Police and Public Safety) Act 1998 Hansard Legislative Council p.4277, 5 May 1998 cited in Sanders & Grainger 2003 at p, 65).

The legislation also tightened up knife possession and provided the police with discretionary powers to conduct searches for knives and other dangerous instruments. Search powers were extended to include school lockers (Anderson, Campbell & Turner 1999; Cunneen & White 2011). Anecdotal evidence from young people given to youth workers indicated that some of the directions given by police were unreasonable, for example telling a person to leave a two kilometre radius of a particular railway station for seven days, or issuing a direction without any reasons to a person who had already moved on (YJC/YAPA 2004, p.3). A review of the legislation conducted by the NSW Ombudsman's Office in 1999 found that young people aged 15-19 were stopped and searched more than any other group and that a high number of searches took place where no knives were found (cited in Cunneen & White 2011 at p. 247). The Ombudsman's Report also found that 48 per cent of individuals 'moved on' were under 17 and that many of the provisions were overused with people of Aboriginal and Torres Strait Islander descent, especially in areas of the State where there were more concentrated percentages of Indigenous populations (NSW Office of the Ombudsman 1999, cited in Cunneen & White 2011 at p.247).

There were other legislative reforms that impacted adversely on young people. During the 2000 Sydney Olympics police were accorded special public order powers that extended their capacity to stop, search, remove individuals from public areas and to disperse people. In addition, police search powers were extended to include use of sniffer dogs in the *Police Powers (Drug Detection Dogs) Act 2001*. The control of young people's movements was also extended to include sentencing provisions. The *Justice Legislation Amendment (Non-Association and Place Restriction) Act 2001* was introduced and gave courts the power to impose an order restricting with whom young people could meet or where they could go with respect to any sentence carrying a maximum penalty of six months or more. Basically, as Sanders and Grainger argue, this covered most offences committed by young people. The same orders could also be imposed as a condition of bail, parole or

leave from a detention centre (2003, p.270). Unless the person had a reasonable excuse for their actions, it was also an offence to break the conditions of the order and could result in imprisonment or a hefty fine. The Act not only contradicted international human rights legislation in relation to freedom of association but it also disproportionately affected young people if they lived in high crime areas, or areas of high socioeconomic disadvantage (The Shopfront Legal Centre 2007).

Cunneen and White (2011) argue that the increased scrutiny of young people's use of public space went hand in hand with increased privatisation of retail and commercial space. The growth in the development of shopping centres policed by private security guards, with extensive powers to control movement into and within centres led in some instances to children and young people being banned from shopping centres. In rural areas in New South Wales bans had a devastating effect on people's lives since shopping centres often housed government income support, employment services, housing, health services, post offices and many other services (2011). In order to try and deal with this situation the NSW Youth Justice Coalition in association with the Youth Action Policy Association (YAPA). YAPA worked with some of the major retail developers to produce Shopping Protocols that negotiated agreements on young people's use of space in centres (see www.YAPA.org.au).

In 2001 the destruction of the World Trade towers on September 11 had a cataclysmic global impact on international politics, but also had major repercussions for criminal justice and security legislation and policing in many domestic jurisdictions (for an overview of the global reach of security and anti-terrorism legislation see Loader & Walker 2007, Zedner 2009). In New South Wales and Australia, anti-terrorism and security measures permeated all aspects of the criminal justice system and can be seen to have underpinned the further tightening of the regulation of young people's use of public space (Loughnan 2009; see also Lynch, McGarrity and Williams 2010).

Public order legislation in New South Wales was tightened even further in 2005 after a number of street disturbances in Redfern in 2004 (Cunneen 2008; Budarick 2011), in Macquarie Fields in February 2005 (Lee 2006, Burchell 2008) and in Cronulla in December 2005 (Noble ed. 2008). Based on temporary powers trialled

during the 2000 Sydney Olympics and reviewed in discussions on anti-terror tactics, the *Law Enforcement Legislation Amendment (Public Safety) Act 2005* commenced on 15 December 2005. It was hastily introduced to avoid media and public criticism, and provided police with special powers in relation to public disorder. Police were given the powers to ‘lock down’ neighbourhoods, control movements of people and vehicles, with significant powers of detention (Part 6A), extended search provisions and traffic control (ss. 14, 15, 36A and 38).

The kinds of rapid decision-making undertaken in these series of reforms provided a stark contrast to the slow consultative processes involved in the development of the YOA. They appeared to be driven by political pragmatism and by external influences; a pattern that also underpinned the bail reforms discussed below.

6.6.3 Bail: piecemeal reform

Another issue that was raised by a number of interview participants was the recurrent amendments to bail legislation and the policing of bail conditions. P14 believed that the changes in the 1990s and the early 2000s were made mostly ‘*in response to tabloid media outbursts and similar outbursts by the Police Association*’ (P14), which led to ‘*a situation where a carefully crafted Bail Act was being amended on an ad hoc basis rather than in response to any serious review*’ (P14). The nature of the reforms has also been subject to criticism by others. The initial amendments to the bail provisions were severely criticised by the ALRC in its 1997 *Seen not Heard* Report and they were described by Brignell in 2002 as:

Piecemeal reforms, often arising from political imperatives or moral outrage over a particularly abhorrent high-profile case rather than... empirical research or evidence have led to the gradual erosion of the presumption of innocence (Brignell 2002 page 11 cited in Stubbs 2010 at p.487).

P10 also pointed out how police practices in relation to bail also ran counter to the philosophy of the YOA: ‘*the police policy of enforcing bail conditions and arrest without the use of discretion.... undermines whatever Juvenile Justice is trying to do and whatever the Young Offender’s Act is trying to do*’ (P10).⁴⁸ This was a point

⁴⁸ It was significant that at the time that the interviews for this thesis were being conducted, a NSW Law Reform Commission Inquiry into the reform of bail legislation was under way (NSWLRC 2012). Campaigns for bail reform had developed momentum since the 1990s and had been the focus of an intense lobbying campaign by youth and criminal justice reform advocates during the 2011 election (Crime and Justice Reform Committee).

also made in 2005 by the NSW Law Reform Commission who found that the bail reforms, and the way that bail was policed, undermined the overall thrust of NSW juvenile justice philosophy and policies (2005). The Commission argued that the bail reforms also had the potential to prejudice the sentencing of young offenders if found guilty and further stigmatize young people pushing them towards further offending, as well as placing them in the company of convicted serious offenders (Brignell 2002 cited in NSW Law Reform Commission 2005, pp. 230/231). Stubbs (2010) also argues that the reforms ran counter to the philosophical intent of the YOA to take the specific circumstances of young people into consideration and to divert young people from the courts and from custody. She argues that with ‘one limited exception’ the amended Bail Act 1978 s.32 (1) (b) which requires a court to take into account any special needs that may arise from children being under the age of 18, all bail reforms failed to consider the likely impact of the legislation on children and young people and was therefore in breach of the CROC (Stubbs 2010, p. 487). For some young people the outcome was that they were spending more time in custody waiting for their court appearances than the sentence for their conviction would have warranted (Wong et al. 2010). The NSW Law Reform Commission also argued that the bail reforms breached the CROC because they failed to: place children’s best interests as the primary focus of legislation, take children’s developmental needs into account on a case by case basis; comply with the principles of CROC and the Beijing rules in that detention was not always used as an option of last resort (NSWLRC 2005 rec 109).

Interview participants saw that the changes to bail had had a profound negative effect on young people. As P14 stated, she ‘*had no doubt*’ that the amendments to the bail legislation had ‘*led to an increase in remandees*’ and ‘*the number of juveniles bail-refused*’. This observation is borne out by research on the effects of bail legislation. From 2002 the numbers of young people in custody began to rise (Stubbs 2010). This increase, as Stubbs (2010) argues, was mostly due to young people being held in custody on remand, that is, they were denied bail or was found to have broken their bail conditions. From 2003-2004 to 2007-2008 the numbers of young people in custody increased by 56 per cent (Stubbs 2010). As Stubbs also

The fact that that bail was on the public agenda at the time may well have placed this at the forefront of participants’ minds.

points out, the upward trends in Indigenous young people being placed in custody on remand were even more pronounced over the study period and beyond (Stubbs 2010, p.485). The Aboriginal Justice Advisory Council found in that there was a disproportionate denial of bail to Aboriginal defendants with 10% refused bail in comparison to 4% for non-Aboriginal defendants (AJAC 2001; see also Schwartz 2005). Numerous analyses and investigations have outlined the details of the plethora of ad hoc reforms to bail legislation (see Brown, Farrier, McNamara, Egger & Steel 2010, Steel 2009; Stubbs 2010). Wong et al. (2010) in their study of bail highlight how the rise in the numbers of young people in custody numbers was due to a combination of factors including the onerous conditions attached to bail, the heavy policing of technical breaches of conditions, poor administration and coordination of records of young people and the lack of youth accommodation which, when combined together led to a situation where increasing numbers of young people were placed in custody due to breach of bail conditions (not technically a criminal offence) (2010).

Although as we have seen, one interview participant felt that governments were politically compelled by the firestorm of events during this period to react instantly and to appear tough and it was these factors determined their policy choices, another participant who had been a senior public servant saw the situation differently. For P3 the move away from diversion and rehabilitation was due to the fact that the *'Labor government has lost a philosophical basis'* and *'that there was no vision and no sense of purpose'* not just in juvenile justice *'but across all departments of government'* (P3). This lack of vision, it was argued, left the government vulnerable to media influences and policies based on immediate reaction. As they explained further *'one of the reasons why I think that's occurred...is because the current people think that you just pluck ideas and present them and you'll fool everyone and they'll believe that you're doing something'* (P3).

6.6.4 Looking tough

P10 raised an interesting point about the symbolism of discourse that informs legislation. She argued that often governments framed legislation using tough language even if the reforms were not as punitive and controlling as they first appeared. Although the example used by P10 lies outside the timeframe of this

thesis, it illustrates such an important point that it is included here and is equally applicable to zero tolerance policing (see Jones and Newburn (2007) on the symbolism of ZTP policy statements). P10 highlighted how the Labor government's rhetoric about tackling anti-social behaviour at the 2007 election made community groups worried that the government was about to introduce the kinds of anti-social behaviour orders (ASBOs) that had been introduced in the UK. However, as P10 describes '*the YCO has some extremely attractive features. It's quite a progressive approach but because it's, YOUTH CONDUCT ORDER*' [shouted by the interviewee to emphasise the toughness] '*.... it's wrapped up in tough talk. Politically they were able to sell it to the law and order lobby*' but she argued not to the youth justice lobby '*because it sounds tough but actually was more benign*' (P10). As P10 continued, '*the idea is to give vulnerable young people the access to a suite of holistic multi-agency approaches*' to dealing with their problems.

6.7 Whatever happened to human rights?

I also asked interview participants what role that human rights had played in influencing policy reforms over the period. Participants from a non-government organisational background felt that any explicit commitment to children's human rights and the principles of the CROC faded away after the publication of the *Kids In Justice Report*. As one of the children's solicitors interviewed said of human rights '*....I don't think any Labor government has had any interest in the Convention on the Rights of the Child quite frankly...*(P9). And, as P10 states '*I don't think human rights treaties are particularly fashionable. I know they were a lot more fashionable in the late 1980s early 1990s when you could talk about them and get some traction*'. And from P11, who had moved on from being solicitor and was now involved in judicial administration '*...I don't think it is something that's at the forefront of policy makers' minds when they are developing policy or legislation*' (P11). However, the same interviewee also went on to say that human rights might be indirectly included '*sometimes the sentiment is in the objects of legislation but in different wording*' (P11). Another interviewee was absolutely adamant that CROC '*had played no role whatsoever*' in particular in '*care and protection*' (P2). P1 considered that there was a missed opportunity to incorporate a commitment to the CROC in the government's response to the demands by non-government

organisations for the creation of an independent statutory Children's Commissioner. P1 argued that when the position was created as part of a government department '*it wasn't in the form that we advocated for*' and '*our sense was early on it was there to keep the government out of the newspapers rather than advocate for the rights of children*' (P1). In this way an administrative mechanism altered the potential of human rights to advance juvenile justice reforms.

P14, who had been an independent executive legal officer, considered that states hide behind the delegation of powers under Federalism and in so doing dodge their responsibilities on human rights. She also argued that because it is the Commonwealth government that signs up for international human rights treaties '*there's no direct obligations on the states to comply with these provisionsso then it comes to courts and the courts will use international treaties for to limited purposes one is to fill a gap in local law⁴⁹, if there is one, the other is to resolve any ambiguity in local law, if there is one. Beyond that international treaties have no impact on State litigation*' (P14). P14 commented that in these circumstances the Commonwealth can go to international bodies and hold its hands up to the international community and say '*Well we signed it and we're doing our best but it's those naughty States and Territory governments that won't do what we hope they might*' (P14).

The views on the role of human rights expressed by interviewees stand in stark contrast to the optimism with which children's human rights were viewed as a basis for policy development in the *Kids In Justice Report* and in other policy commentary and conversations held in the early 1990s.

6.8 Discussion

This chapter has shown that there were two main policy streams providing the undercurrent to legislative decision-making during the study period. One was exemplified in the slow gestation of the YOA from the blueprint proposals

⁴⁹ According to Ludbrook (1995), in the case of *Teoh (Minister of the State for Immigration and Ethnic Affairs v Ah Tin Teoh)* High Court of Australia 1995, the High Court gave support to the principles of the Convention on the Rights of the Child (CROC), the majority of the court found that even they were not part of domestic law the principles should not be precluded from having a binding effect, and that they needed to be considered in administrative and legal determinations. However, in response the federal government introduced the *Administrative Decisions (Effect of International Instruments) Act 1995* that reversed the onus to consider international instruments.

contained in the *Kids in Justice Report* to the implementation of legislation in 1998 and was, according to Chan, a reflection of its ‘careful drafting of rules, and regulations, good management, constant monitoring and continual improvement’ (Chan 2005, p.25). This, as interview participants emphasised, was also the result of bipartisan political support especially from successive Attorney Generals as well as from senior public servants. Policy options appeared to incorporate the kinds of principles of rehabilitation, diversion, prevention, restorative justice, due process and children’s rights outlined in the Kids In Justice Report’s proposals.

The other policy stream was the product of more hastily conceived responses to immediate issues. Policy options were characterised by an emphasis on managing public order and security, and involved extending and consolidating police powers.

From the evidence gathered, it appears that when governments are under political pressure, there are different imperatives to consider than during a long-term policy reform consultative process. During pressure points, depending on the stage in the political cycle (see chapter 9), it has been argued that governments and politicians need to be seen to act and to respond to demands from vocal lobby groups and/or the media. In doing so, they tend to fall back on the kinds of legislation outlined in the second part of this chapter. French (2012) suggests that it is easy to be cynical about this form of political pragmatism, but argues that the development of trust and confidence in government is an important part of politics in a democracy and in fact politicians need to develop the skills and expertise to respond ‘to the inexhaustible variety of ‘wicked, messy ‘problems which the public unfailingly present ...under the constant pressure of publicity and competition’ (p.538).

Interview participants felt that from 1990 onwards there was a change in the political and policy atmosphere and consequently they perceived that the juvenile justice policy agenda shifted to be more reactive and punitive. The next chapter explores the kinds of research and evidence, discourses and decision-making processes that informed these shifts.

Chapter 7. Knowledge, evidence and decision- making

The processes exist for good policy making and law reform to occur....those processes are good processes because they are consulting with the relevant agencies and people. They take a holistic view so that they're looking for a consistent answer that works (P12).

7.1 Introduction

As we saw in the previous chapter, despite the commitment to holistic progressive juvenile justice reforms outlined in many of the discussions preceding the introduction of the *Young Offender's Act 199*, moves towards a consistent whole of government response to the YJC youth justice blueprint and the proposals contained in the government's Green and White Papers can be seen to have been disrupted by political and policy reactions to other issues on the policy agenda. This emerged from local government pressure, police lobbying, external events like 9/11 and from policy examples like zero tolerance policing being picked up from international policy trends.

The kinds of policy decisions identified in the two policy streams emerged from different processes, but also engaged with different sources of information, research and evidence in order to justify the decisions taken. This chapter examines in more detail the types of research and evidence that informed the development of policy and decision-making from 1990 to 2005 and the ways in which that information was used.

The chapter begins by providing an overview of the established research knowledge about juvenile crime in New South Wales during the study period to provide a context for understanding what kind of information was available. It then moves on to explore the relationship between research and evidence in different settings.

7.2 Setting the scene: patterns of NSW juvenile crime 1990 - 2005

50

In New South Wales, since the 1970s, policy makers have been able to access multiple sources of research materials including material produced by policy and research sections of government departments, the NSW Bureau of Crime Statistics and Research (established in 1969), the NSW Judicial Commission, NSW parliamentary research library and parliamentary reports of inquiries, NSW Law Reform Commission inquiries and reports, academic sources, non-government organisation independent research, as well as national databases and research sources. Together they provide rich sources of data for informing decision-making.

Before beginning this brief overview of the key findings of criminological research on young people in New South Wales and elsewhere, it is important to reiterate (as discussed in the earlier chapter on methodology), that statistics and other forms of research relating to crime are not viewed here as stand alone objective ‘facts’ but are considered to be the result of the social processes of the legal system and discretionary decision-making of individuals (see Bottomley and Pease 1986; Stubbs 2010; Cunneen and White 2011). So for example, changes in legislation, law enforcement and sentencing practices can have a dramatic impact on statistical outcomes (Bottomley and Pease 1986; Cunneen and White 2011). And, as Cunneen and White (2011) argue, the source of the information such as victims surveys, self-report studies, policing records, court records and prison statistics often reflect the social and policy dynamics of the organisations in which they were produced and individually provide selective glimpses into patterns of offending, reporting and prosecutorial decisions (see also Baker 1998; Mukherjee 1985, Mukherjee & Wilson 1989; Weatherburn & Baker 1999).

Nevertheless, there are consistent criminological findings that establish common core understandings of young people’s offending patterns and the impact of juvenile justice systems, which form what Goldson (2010) terms ‘established criminological knowledge’⁵¹. According to Goldson (2010) this knowledge includes the following:

⁵⁰ I recognize that these are general statements about youth crime, but they have been compiled from a wide range of research reports and materials, which reconfirm the same patterns.

youth offending is relatively normal; youth crime trends are relatively stable; diversion and minimum intervention are key strategies to stop re-offending; universal services, holistic approaches and ‘decriminalizing’ responses comprise the most effective and least damaging forms of intervention; and finally custodial sanctions comprise the least effective and most damaging forms of intervention. In NSW similar patterns of both offending and responses to offending can be found in the work of the NSW Youth Justice Coalition 1990; research reports from the New South Wales Bureau of Crime Statistics and Research (see Baker 1998; Cain 1996; Coumarelos 1994, Weatherburn & Baker 2001) and in commentaries on juvenile justice (such as Cunneen & White 2011; O’Connor 1998). There are other patterns of consistency in research findings, for example it is well established that the overwhelming majority of offenders are male (Carrington & Pereira 2009; Cunneen & White 2011; O’Connor 1998). And, although there are some discrepancies in actual rates, research shows that most juvenile offenders do not re-offend or go on to commit serious crimes; it is only a small proportion of offenders who go on to commit a high proportion of offences and many of these are children who come into contact with the formal criminal justice system at an early age and who have a complex range of health, welfare and social needs (see Cain 1996; Cunneen & White 2011). Pulling together key patterns in research reports and commentaries, it has been found that: juvenile crime is mainly low level property crime; it is usually committed in the same geographic community in which the young person lives; a young person is more likely to offend in association with others than compared to adults who tend act work alone; most juvenile crime is unplanned; the harsher the penalty the more likely someone is to re-offend; those who re-offend do not on the whole escalate to more serious crimes of violence; and only a small number of offenders are responsible for the majority of offences (Cain 1996, 1998; Chen, Matruggio, Weatherburn & Hua 2005; Cunneen & White 2011; O’Connor 1998).

Putting the seriousness of offences in perspective, only 5% of young offenders nationally receive a custodial sentence when found guilty of an offence (Taylor 2009, ix). From 1986 -2002 across Australia the overall rate of detention went down by roughly 50% but then started to rise from 2002 onwards (Atkinson 1993; Taylor 2009). In New South Wales, as we found in the previous chapter, the rise in the numbers of young people in detention can be attributed to the rise in the proportion

of the number of young people placed in detention on remand having been refused bail (Stubbs 2010, Taylor 2009).

Numerous studies have found that repeat offenders, including young people in detention share some common life experiences. These include, socio-economic deprivation, low income, poor housing, interrupted housing, large family size and unemployment; antisocial parents and siblings; poor parental supervision and harsh and erratic child rearing, child abuse, neglect, sexual assault, parental drug addiction, broken homes and early separations; higher rates of intellectual disability and cognitive impairment; poor school attendance; significant health problems (see Farrington & West 1990; Polk 1994; NSW Justice Health 2003, 2009; O'Connor 1998).

There also continues to be a significant overrepresentation of Indigenous young people at all stages of the juvenile justice system, but especially in arrest figures, court appearances and detention centre numbers. However, as we have seen Indigenous young people are relatively underrepresented in relation to cautions and community based sentences (see Cain 1995; Cunneen 2006; Cunneen, Luke & Ralph 2006; Cunneen and White 2011; Luke & Cunneen 1995; YJC 1990). From the 1990s onwards there was a rapid rise in the number of girls appearing before the courts and being placed in detention so that by the mid 2000s Aboriginal girls accounted for 21% of all female court appearances, compared to 15% for boys (Carrington & Pereira 2009, p.100).

In 2013, Weatherburn, McGrath and Bartels suggest that there are what they call three 'dogmas' of juvenile justice that have influenced policy and legislative reform development since the 1990s. Their implication being, that ideology had driven reform rather than 'real' empirical evidence. The dogmas they identified included the following: that contact with the court system increases offending; that youth justice conferencing is more effective than traditional forms of justice; and that young people 'grow out of crime'. The article then points to empirical evidence that they argue, proves that youth justice policies are based on false empirical assumptions. The implication being that there is no other legitimate basis for policy than statistical data. In a trenchant critique of the article, Richards and Lee (2013) not only challenge the conclusions made about the empirical data presented, but

also highlight how empirical data/ statistical evidence has only ever been one of the many factors that are taken into consideration in the development of policy and that normative values, obligations to international treaties, legal principles play an important role in policy development.

The following discussion explores the debates about the role of research evidence, and other forms of knowledge in the development of policy. It examines why there is a dissonance between established criminological 'facts' and policy decisions, and what other factors determine the way that evidence is presented, valued and used.

7.3 Deliberative decision-making

The kinds of consultative mechanisms engaged in by the YJC and by the various government committees during the development phases of the YOA are ones that can be described as 'deliberative' (see Barnes 2008). They incorporate a range of research evidence and involve relatively open discussion with the public and a wide range of interest groups (Barnes 2008). These processes are also seen to have educative and transformative effect on decision-makers, as they consider the evidence presented from those directly involved in an area, they gain a better understanding of the issues under discussion. In this way Barnes considers that individuals can 'move from positions based in self-interest to those that are more likely to deliver social justice' (Barnes pp. 468/9).

Barnes also proposes that deliberative processes eventually generate better decisions as they tease out the pros and cons of policy options and put them on the table. They sift through the gathered evidence choosing the best course of action in the process and in so doing, accord greater legitimacy to the decision taken (2008).

Barnes (2008) argues that deliberative decision-making involving the public, is sometimes used as a means for dealing with 'wicked' policy problems; those deemed to be contentious or involving a multitude of competing factors. In his analysis of the Premiership of Hon. Bob Carr in NSW (1995-2000), Clune (2005) similarly argues that the Premier, in an attempt to keep in tune with public sentiment and opinion polls, would use summits and other consultative forums such as the Drug Summit in 1999 in this context. Clune argues this was not just a cynical

strategy whereby the Premier ‘could bring critics into the tent’ but also provided a solid basis for going ahead with decisions that sometimes might not be immediately popular (2005, p.50). The Drug Summit recommended the introduction of a medically supervised injecting room, an incredibly contentious policy, which the Premier ended up establishing despite outspoken opposition (Clune 2005, p.50). The Summit also led to the setting up of an innovative Adult Drug Court in Parramatta and the Youth Drug and Alcohol Court (since disbanded)⁵².

In contrast, others view the role of formal inquiries and commissions far more critically. In a collection of essays on criminal justice related inquiries and Royal Commissions, Gilligan and Pratt (2004) argue that in effect deliberative processes are a calculated means to lend legitimacy to decisions. They argue that the ‘official discourse’ of the inquiry provides a form of ‘official, objective truth about crime and criminal justice’ placing an official stamp on existing attitudes about the issue at hand (2004, p.2). In addition, according to Gilligan, the authoritative figures of the civil servants in this process are represented as impartial experts engaged in the constitution of ‘*the truth*’ and in so doing could be said to be engaged in a process of legitimising the rationality of state administrative and legal procedures (2004). Inquiries, for Gilligan, are crucial elements in the forms of governance in modern democratic societies (Gilligan 2004). Although Gilligan argues that the inquiry can be used as a symbolic instrument of agenda manipulation or state management of decision-making he also sees that the process can on occasions open decision-making up to alternative points of view and in this sense may be disruptive to accepted ways of thinking and official lines (2004, p.23). Duffy (1996) also points out that while the intentions lying behind deliberative decision-making might be well placed, in practice:

...government agencies and advisory groups frequently convene public consultations without adequate planning or clear expectations of the outcomes ...As a result community organisations are becoming increasingly distrustful of consultative bodies (Rubenstein 1995, cited in Duffy 1996, at p.38).

The ideal of deliberative decision-making is appealing, it offers a democratic process with opportunity for in depth research and consideration of policy options

⁵² In 2003 under pressure from lobby groups such as the Salvation Army as well as the police, another summit style inquiry was established the Misuse of Alcohol Summit was established in to investigate violence on the streets and in hotels.

to address issues of concern that may be complex and difficult to resolve. Criticisms appear to be levelled more at the subversion of the process by governments rather than the idea.

7.3.1 Consultation and the golden age of law reform

Throughout the 1980s and 1990s, during what Tilbury (2005) refers to as the ‘golden age of law reform’, deliberative decision-making appeared to play a significant role in the development of proposals about different kinds of legal policy reform, although the extent to which the proposals were then implemented is open for debate.⁵³ Duffy (1996) argues that the demand for consultation in law reform in Australia began to develop in the 1970s and 1980s and by the 1990s it was being driven by ‘increasing community concern about the ability of governments to meet community needs and expectations in an increasingly complex society’ (p.37). But, she argues, it was also prompted by the move to adopt private sector management principles in the public sector, where in theory the customer determines how the company in this case the government does business (Duffy 1996, p. 37). Duffy outlines a number of ways in which consultation took place in decision-making processes in NSW these include: advisory and consultative committees; task forces; public forums; customer or client councils; focus groups; public inquiries; discussion papers; Regulatory Impact statements; Law Reform Commission Reviews (1996).

In addition to the reports and inquiries identified in the previous chapter, there were a number of these kinds of consultative mechanisms focused on children’s issues, rights and needs established at state and Federal levels. For example, the NSW Child Protection Council released the results of its inquiry into *Systems Abuse* in 1994 (Cashmore, Dolby & Brennan 1994). The NSW SCSI released its *Inquiry into Children’s Advocacy* in 1996. Nationally, the publication of the *Report of the Royal Commission of Inquiry Into Aboriginal Deaths In Custody* in 1991 highlighted the urgent need for reforms to criminal and juvenile justice policies for Indigenous adults and young people to reduce their over representation in custody. The *Bringing Them Home Report* (1997) focused attention on the devastating impact of

⁵³ Consultative decision-making was a feature of other policy decision-making fields (see Goodwin 1999, Keen 2006).

the Stolen Generations on Indigenous families, communities and Indigenous culture. The Australian Law Reform Commission in conjunction with the Human Rights and Equal Opportunity conducted the first national audit of Australia's compliance with the CROC and together they held an inquiry into children, communities and the law, which was published in 1997 as *Seen & Heard: Priority for Children in the Legal Process* (ALRC/HREOC 1997). Amongst the wide-ranging recommendations the report called for the establishment of national standards for juvenile justice, as well as the endorsement nationally of rehabilitation as the primary aim of juvenile detention.

In this climate of consultative reform, the NSW Police Service also finalized their first *Police Youth Policy* statement in 1995. It had been developed in consultation with other government departments and community groups over two years (Anderson et al. 1999, p. 51). The policy stated that it aimed to treat young people fairly and foster change and all officers were encouraged by the Police Commissioner Tony Lauer to read the report and put the policy into practice (Lauer 1995 cited in Anderson et al. 1999 at p. 51). The Police Youth Policy emphasized the importance of diversion and arrest as an option of last resort. Unfortunately, as will be discussed later, the promise of the Police Youth Policy was not seen by many to be matched by operational police action on the ground. This wealth of accumulated information and research emphasised over and over again that children's human rights, children's welfare and citizenship status should be the foundational principles on which legislation, policies and practices relating to children should be developed and that systems should be responsive to children's needs and rights and optimise their participation in decision-making.

7.3.2 The NSW Parliamentary Committee System

Interviewees held a range of views on the value and role of deliberative processes. For example, the work of the NSW Parliamentary Select Committee on Social Issues (SCSI) was acknowledged by P7 who commented '*the volume of really good work undertaken by the Social Issues Committee was enormous I think they did four*

to five reports around young people. Their reports were well informed and well written (P7)⁵⁴.

One of the participants for this project, (P4), was in a unique position to provide insider insights about the work of other parliamentary committees, the ways in which they gathered research and evidence and how they influenced decision-making. P4 had worked for the NSW parliamentary committee system in a range of capacities for a number of years.

P4 began by outlining the committee system. As she explained, the parliamentary committee system is made up of Standing Committees and General Purpose Committees and had *'a clear policy process for receiving briefs, researching issues and reporting back'* (P14). In this way P4 considered that it offered *'a formal consistent process'* where *'referrals coming to the parliamentary committees came from the State Attorney General, from the Commonwealth Standing Committee of Attorney's General (SCAG) individual Ministers, or from the NSW lower or upper house depending on the committee and the issue'* (P14). As P4 continued, committees have representatives from all political parties, an appointed Chair and expert members.

P4 argued that, the strength of the committee system founded on the opportunity for participation it provides *'good ground to get public involvement in the issue'* (P4). The Committee achieves this by sending invitations to the public for written submissions as well as providing opportunities for witnesses to provide evidence in person. According to P4, when issues are referred to the committee system and go out to public consultation they are open to a broader remit than when they are considered in house by the relevant department. As she explained:

There are any number of ways you could develop some recommendations, but I suppose departments can certainly consult with the public, but they don't do it in quite the public way that we do. Because we put all our submissions on the web, most of our hearings are in public, that sort of thing (P4).

⁵⁴ For a full list of all NSW Parliamentary Committee Reports see *Register of Legislative Council Committee Reports and Joint Committee Reports 1998-2011* at [https://www.parliament.nsw.gov.au/prod/web/common.nsf/key/committeeslctereports1988-2011/\\$file/Compiled%20register%201988-2011.pdf](https://www.parliament.nsw.gov.au/prod/web/common.nsf/key/committeeslctereports1988-2011/$file/Compiled%20register%201988-2011.pdf)

In this way the parliamentarians (from all parties) sitting on the Committee, get exposed to different viewpoints, not just those from the public service ‘...when we go to the public hearing phase, we always make sure that our witness list is very balanced, in terms of the various views’ (P4).

Evidence presented to the committee also comes from many sources. P4 described how the terms of reference generally stipulate that staff should examine overseas research, evidence and policy (especially from the UK and the US) and that submissions often highlight international examples. The committee staff ensure that there was a wide range of views sought for consideration. As P4 stated:

...you try and get a balance, so you try and include academics, and you try and include people in NGOs and government agencies, that sort of thing. So you try and do it as broadly as you can, and hope you can get a lot of stuff back (P4).

In this process the ‘views of the Director of Public Prosecutions’ were seen ‘to carry a lot of weight’ (P4) and people talking about their life or work experiences ‘would equally be viewed with importance’ (P4).

P11, a former community based solicitor also considered that the evidence in the inquiry process presented from people working on the ground was really important for parliamentarians and public servants to hear. She observed ‘It’s very compelling to hear what someone has to say about policy when they are informed by what they actually do’ (P11). And that this was particularly so, ‘if you can come straight from court and say “Well this is what’s happening in court with all my clients’ (P11). As she pointed out, ‘if the experiential evidence is backed up by what academic research is saying then it becomes more compelling’ (P11).

This same interviewee also made the point that before the establishment of the NSW Legal Aid Commission’s Children’s Legal Services in the late 1990s, non-government organisation solicitors such as those who were members of the Youth Justice Coalition and/or were employed by community legal centres were crucial sources of information about the impact of juvenile justice policies in practice, due to their ‘specialist experience in working with young people’ (P11). As P11 went on to explain, as solicitors they were working directly with offenders, victims of crime and children in state care and that ‘we were hearing directly from the young people,

so we were a compelling source' (P11). However, as children's legal services were incorporated into government direct services P11 argued, the unique insights provided by non-government experts became less distinctive.

Discussing the parliamentary committee system with P4 provided a unique opportunity to discover how someone on the inside viewed the critiques of deliberative processes in the literature. As we have seen, there have been a number of critical analyses of inquiries and commissions in criminological literature (see Gilligan 2004; Gilligan & Pratt 2004 and Scraton 2004) that suggest inquiries can be a form of window dressing designed to allay dissent and criticisms of government. Hughes (2000) also suggests that despite the policy options developed from Royal Commissions on the whole they are not followed through. As he states, 'there is a long history of political neglect of research-based policy recommendations' (Hughes 2000, p.245). In Australia the failure by governments to fully implement the recommendations of the Royal Commission Into Aboriginal Deaths in custody is a significant example (see Behrendt, Cunneen & Libesman 2009; Cunneen & McDonald 1997). And, as a participant myself in many of these processes, I was aware of many of the concerns expressed by members of the policy community about the limited value of the process. For example, one of the concerns often expressed by my colleagues was that the committee findings were a foregone conclusion and it was really a waste of time attending.

P4 did agree that on occasions, inquiries could be open to the criticism that they achieved little in terms of outcomes, as she stated: *'I think it's probably easy to look at those inquiries that do get raised as a response to a political issue, and it can be, maybe, a sop, or a fobbing off, of being seen to be doing something and then maybe not doing something'* (P4). However, P4 argued that there was real integrity in the process and a concern to find out information and make an informed judgment through open debate. P4 asserted that committees were an integral part of the policy process and were seen as such by Ministers. The Law and Justice Committee in particular, she argued, was seen by the Attorney General to be *'an important part of the policy development cycle'* (P4).

P4 also explained that there were formal requirements for members of committees to be open to debate and discussion. As she stated they *'have an obligation to reach*

unanimity in their reports' (P4). And further, that the committees were 'supposed to be like a little 'mini-parliament' they 'get together to nut out issues that the parliament as a whole doesn't have time to do (P4). P4 argued that there was also real integrity in the research and evidence gathering process, as she explained 'I've been involved in a lot of inquiries that actually have had good intentions from the start really great processes, and rigorous processes as well, a lot of involvement from people, and a fairly balanced analysis (P4)'. P4 considered that the committee process was relatively free from subjective bias and displayed what she considered to be the best of the public service that is 'working impartially for the public good' (P4). In order to ensure impartiality, committee researchers and support staff were rotated so that public servants didn't get too invested in one committee, or develop a relationship with one particular chair (P4). Although Chairs of the Committee do have 'the power to direct staff how to present information ...their particular views were secondary to the Committee's decisions on outcomes and recommendations' (P4). She considered that there were occasions where politicians with a particular objective might push a matter through, but that was more likely to happen in General-Purpose Standing Committees, which are non-government controlled and 'have the power of self-referral' (P4). Also, as P4 acknowledged, no matter how good the policy process was, 'at the end of the day, you are leaving the decision in the hands of a group of members of parliament (P4).

In my study, non-government participants were also quite sceptical about the value of the inquiry and submission process, as P10 stated... *they are useful but they don't necessarily achieve change' (P10). Another community based policy actor who had presented evidence at numerous inquiries felt that 'nothing of significance came out of inquiries' and that the purpose of inquiries seemed to be 'to keep us busy writing submissions' (P1). As an example, this experienced advocate pointed out that non-government organisations regularly asked for funding for advocacy services but 'never received them' (P1).*

P4 considered that even when there appeared to be no directly identifiable policy outcome from inquiries they still provided committee members and, indirectly parliament, with solid well researched information to draw on in parliamentary debate and decision-making. As she stated, *'I would suggest that there are many*

benefits in addition to whether there's a concrete outcome...one of these is informing the members, helping them understand an issue, but also having something like that on the record' (P4). P4 explained further:

I've seen the minds of members change over the course of an inquiry. I've seen them coming in with a particular view, really listening to the information that's been presented, and sometimes being persuaded about something that they might have held a contrary view on.... And by the questions they ask, I can see them taking note of the issue, really thinking about it, and learning as they go (P4.)

For P4, the research gathered and deliberative process allowed members of the Committee to get a good grounding in an issue so that, when they were '*deciding on any legislative amendments*' the information and conclusions from parliamentary committee reports '*can be fed back into the debate as it happens in parliament*' (P4). The parliamentary committee interviewee felt that the committee report provided an '*authoritative analysis*' and '*makes them [the parliamentary members] feel confident that they knew enough about the issue to make up their own minds and vote in parliament*' (P4).

The resources developed from inquiries were seen not only to be educational and informative for parliamentarians, but they were also seen by non-government organisations as an important resource for their own law reform activity. As a children's solicitor explained '*they give us an evidence base which we wouldn't necessarily be able to collect all on our own*' (P10). For example P11 felt that:

....Aboriginal Deaths in Custody was the big report and there were all those recommendations that are still relevant today ...it was one of the greatest sources of information for policy developers on many areas affecting Aboriginal people and for criminal justice in general (P11).

P4 described how the various committee staff were very much aware of the important role that parliamentary reports played for politicians and other policy actors, '*so you do want to make them the best piece of work that you can get*' (P4).

These findings on the committee process provide unique insights into the way that information, discussion and deliberation contribute to the development of policy options and recommendations that are then available to parliament. They also show that even if there are no direct policy outcomes, the in-depth comprehensive

research material gathered and the recommendations developed, provide short term and long term educative and transformative effects for committee members, as well as providing an important source of information for government and non-government policy actors. The deliberation process also has the benefit of bringing policy actors and the public who share policy interests together providing the opportunity for a broader engagement in policy development.

7.3.3 The practical limitations of deliberative decision-making

Despite the undoubted benefits of deliberative and consultative policy processes they were considered by one experienced interviewee to be cumbersome. As P6 stated:

I've been in government now longer than I've been outside government. You do get a finer appreciation of it's frustratingly slow, but generally the quality of what comes out of the other end, if you do get your moment... is fantastic because you do get good reform and enduring reform and things that do make a big difference in people's lives (P6).

Another interviewee who had been a statutory legal officer for many years considered that consultative approaches tended to be used selectively, as P14 commented '*more carefully thought through processes tend to be in relation to things that don't have immediacy in the media. Larger policy issues that take a bit of time to analyse and to make recommendations about (P14)*'.

According to French (2012) deliberative processes can incorporate all the rational, reasonable elements of the policy process model, but they can only ever constitute a small aspect of the usual business of decision-making and certainly cannot respond to the kinds of emotional urgency and political demands that underpin policy decisions (p. 533).

It's also important to remember that despite common assumptions, most legislative reform does not in fact make it into parliamentary debate. As Duffy (1996) reminds us 'most legislation is passed without any formal public consultation' (Duffy 1996, p. 24). Duffy discusses how the volume of delegated legislation, which is the responsibility of ministers and subordinate authorities, far exceeds the number of opportunities for deliberative decision-making and even though notification of

public consultation is required in law very little citizen participation happens (Duffy 1996, p.23).

In summary, the previous chapter outlined the significance of consultative deliberative processes in the development of the YOA and contrasted this form of decision-making against highly politicised policy-on-the-run that was neither informed by, nor produced a solid evidence base for policy. In this chapter, interviewees' perceptions of the significance of the knowledge used by and produced through deliberative processes is confirmed, but in recognition that not all policy decisions are, or even can, be arrived at via extensive knowledge production and interrogation processes.

7.4 Research and evidence and the public service

As we saw in chapter three there were a number of rationales and strategies of juvenile justice that emerged in the 1980s and 1990s that valorised particular 'scientific' or 'evaluative' forms of research and evidence and which focused on risk management as a priority in criminal and juvenile justice administration. This section explores in more detail the impact that the demands for 'evidence based policy', 'what works' and 'risk management' began to have on decision – making in New South Wales, especially in the public service.

7.4.1 Evidence Based Policy and New Public Managerialism in Australia

As Ransley (2011) argues, 'evidence led' or 'evidence based' policy making (EBP) is understood to encompass the kinds of rational and scientific approaches to policy decision-making that rely mainly on independent, 'objective' evaluation and quantitative analysis (Ransley 2011, p.232). In the UK, the rise of the call to evidence based policy is generally traced back to the election of the first New Labour government in 1997 (Ransley 2011; Goldson 2010). There, the move to EBP was framed by the NSW Cabinet Office as an approach that had the potential to break new ground in policy development. For example it was argued that it would question inherited ways of practice and would deliver longer term goals (Ransley 2011). According to Allard and Manning (2011), the articulation of the need for EBP at a national level first occurred in Australia when Prime Minister

Rudd stated in 2007 that the agenda for public policy making should be based on ‘robust, evidence- based policy’ and that, the government was ‘interested in facts, not fads’ and further policy evaluation should be driven by analysis of all the available options and not by ideology, (Rudd 2008 cited in Allard & Manning 2011 at p. 188). Although, as Allard and Manning state, by 2008 the terminology of EBP was still in its infancy in criminal justice (2011), the calls for more statistically focused performance and outcome evaluations in policy had been happening for a while. As Don Weatherburn the Director of the NSW Bureau of Crime Statistics and Research stated in 2009:

Over the last 20 years in Australia the attitude of Government to policy evaluation has changed dramatically. Ministers (and Treasury officials) are no longer content to rely on anecdotes from agency heads as evidence that their programs are working. Rigorous evaluation is usually required, especially if the program is controversial or expensive (Weatherburn 2009,p. 1).

As Sanderson states, some of the arguments for moving towards evidence based policy formulation in Australia were couched in terms of the need to modernise government (2012, p. 334). Also underpinning the discourse of EBP is the idea that there is a simple technocratic response to complex issues (Ransley 2011, p.233). In addition the promulgation of EBP also assumes that policy made in this way will be more effective than other types of policy due to its ‘scientific’ foundations (O’Dwyer 2004 cited in Ransley 2011 at p.233). For critics of EBP such as Sanderson, the privileging of evaluative knowledge is a form of ‘instrumental rationality that focuses on ‘deriving correct means to given ends’ at the expense of the appropriateness of those ends (Sanderson 2003, p.334). In this technical, instrumental vision Sanderson argues there is ‘little sympathy for the broader enlightenment function of social research it is more concerned with ‘practical applications’ (p.335).

Freiberg (2005) argues that the appeal of evidence led policy in criminal justice was closely tied to a shift away from traditional bureaucratic administration towards new public managerialism (NPM). The impact of NPM on the public service had ramifications for the kinds of research and evidence that came to be valued in the development and adoption of criminal justice and juvenile justice policies, practices and programs (Freiberg 2005). Freiberg pinpoints the constituent elements of NPM

as being a stress on ‘clarity of purpose’ through corporate planning, accountability through performance management by the use of Key Performance Indicators (KPIs), bench-marking processes, data collection analysis and publication of performance outcomes, and the monitoring and supervision of performance through internal and external auditing (2005, p.14). In this framework, Freiberg argues that policy success began to be measured in relation to efficiency and effectiveness and economy. Allard and Manning (2011) also discuss how increasingly economic analyses including cost effectiveness and cost efficiency became central to assessing the viability of policies and programs, as well as to evaluations of their success. Freiberg highlights how judicial administration, policing and the courts in the late 1990s became increasingly subject to auditing and assessment in relation to ‘output based management’ (2005). As Sanderson explains, in a strong performance regime departments become accountable for achievements against their targets and considerable emphasis was given to evaluation (2012, p.334). As Ransley (2011) explains, Treasury Departments became increasingly important in policy decision-making as they ‘became the driver of demands for program evaluations’ (Ransley 2011, p. 232). And, according to Freiberg (2005), in this climate the Commonwealth’s Productivity Commissions and state based auditors were accorded increasing power to review all aspects of criminal justice administration. The impact of the changes were felt in states and territories too, so for example, in 1991 in NSW the *Public Finance and Audit Act 1983* expanded the Auditor-General’s role to include performance audits of government departments including police, courts, corrective services and juvenile justice. In 2004/5 the NSW Auditor General conducted its first audit of juvenile justice in NSW resulting in the report *Managing and Measuring Success* (NSW Auditor General 2005).

7.4.2 NSW public service: a change in the research climate

According to one of the former senior public servants interviewed for this project, the Department of Juvenile Justice department had been committed to research informed policy development throughout the 1980s. As P3 told me, on taking up a position in the department in 1995 it had been one their goals to restore a research-informed culture: *‘I said to the Minister we should get back to research-based*

practice. I was doing a lot of the reading myself at the time, and I was using that to authenticate the decisions that I was making' (P3).

P3 also felt that research was vital for directing departmental practice telling staff '*We've got to have a firm policy and beliefs system on which we are directing our practice and way forward (P3)*'. In an anecdote that is worth quoting at length, P3 recounted how she tried to instil awareness of the important of criminological research and praxis during a training session. This included the following exercise:

*I want you to take a sheet of paper, and one side of the sheet I want you to write the ways in which you have professionally developed in the past three years. Write them down." And I'd look around and there'd be people sitting there puzzled. And I said, "Are people finding this hard to do?" And it'd lead into a discussion and they'd say 'yeah'. And I'd say, "If you're not reading, on what basis are you making some of the decisions that you're making? On gut-level feelings or what? We can't keep doing this." And then I'd say "Write down on the other side of the paper any books that you've read on criminology or juvenile justice in the last three years." And most people couldn't write a f**** title. They couldn't! And I'd say to them, "This is just unsatisfactory. We've got to have a firm policy and beliefs system on which we're directing our practice and our way forward (P3).*

A commitment to research, evidence and detailed evaluation in the 1990s within the department was seen by another senior executive to have led to a willingness to be open to new ideas. As P7 described policy development at that time '*...it was much more nuanced, and if there was mixed evidence the department would say 'it suggests we take this path, so let's try it and let's evaluate it and see how we are going' (P7).*

Several interviewees considered that there was a change in the overall direction of juvenile justice policy and practice as the new millennium approached. The rise of performance management was seen to overshadow the commitment to the philosophical principles and values of the YOA that were held by senior staff. For one interviewee it was the retirement of Ken Buttram from the position of Director General of Juvenile Justice in 2002 that marked that change. As P17 said, *I think the reformist zeal properly left with Ken and we've had bureaucratic competence ever since. Your job is to administer your job is not to be a public figure (P17).* The same interviewee also felt that the introduction of performance based Senior Executive Service (SES) contracts for public service managers had a major impact on the

policy leadership in the public service. P7 agreed, and explained: *'somewhere you can tie this into the wider discussion about public intellectual and the notion of the politicisation of the senior levels of the public service which I think is really important fact, watching the SES contracts come in and their performance base'* (P17).

P3 considered that the introduction of the SES also came at the time that Labor governments began to run out of ideas and consequently politicians and public servants became more willing to bend with popular opinion, rather than looking to research for policy ideas. P3 believed that research was discarded in favour of politicians and public servants maintaining their careers. As P3 explained, *.....you've got to have people with some commitment to research, and some people who are just not populists. And that's why the public service has fragmented, because they don't seem to understand that. People come up with their own crazy ideas to impress their ministers, and it's not research-based in a lot of cases'* (P3). P7 also felt that politics began to outweigh policy considerations in the late 1990s arguing that the overriding concern of politicians and public servants became *'Do we stay in power if we do this?'* (P7). P7 did not think that the senior public servant's policy pragmatism was necessarily all that 'new', as she said *'I think that seed has always been there'* (P7). However, they felt that the situation worsened in the early years of the new millennium and that public servants did become more instrumental in their use of research and evidence in the pursuit of power, so that policy decisions did indeed end up leading the evidence. As P7 pointed out, there was a *'contradiction of saying we want to have evidence based policy, that was kind of the public mantra, and that the reality of what the policy we were told we had to implement was'* (P7). This presented a problem to this participant who was not in fact a career public servant, but had been employed to undertake a specific role. As they explained *'...we wanted to maintain integrity in that job but it was almost impossible towards the end ...you found yourself being directed to do things that were completely against your own philosophical beliefs and if you didn't do them you were ostracised basically'* (P7). In this climate the power and authority of the individual senior executive within a public service department could re-direct a policy agenda no matter what the established research, evidence, law, policy and practice might say. As P7 stated: *'policy can be ignored completely if someone says,*

“No this is how we’re going to do it, and I will direct people to do it this way, whether you like it or not” ’ (P7).

Former public servants expressed despondency about the direction of juvenile justice under the later Labor governments. As P7 said, *NSW has been going down hill in terms of progressive policy for a long time’ (P7)*. P3 related how she had become quite cynical about policy having any principles or philosophical foundation at all *.....People think that you just pluck ideas and present them and you’ll fool everyone and they’ll believe you are doing something (P3)*. Non-government organisation policy actors also shared this view of the pragmatism of juvenile justice policy. One interviewee who had had been an active and engaged member of a number of government consultative committees on juvenile justice accepted that in the early 1990s one of the priorities of juvenile justice had been to *‘keep kids diverted out of the system and reduce numbers in detention centres’ (P1)*, however she felt that overall government approaches to juvenile justice were less principled and there was little normative vision: *‘If I was ticking boxes I would tick the pragmatism box, no stated vision or strategic direction (P1)*.

7.4.3 The rise of ‘What Works’ and ‘risk management’

If I was to reflect on that period, it felt like it [juvenile justice policy] went from being almost a really home spun, kid-centric social work oriented model for lack of a better term, to a site based at a distance, sterile, technologically driven, risk based (P17).

Ransley argues the focus on ‘what works’ in policy development promulgated the idea that ‘ideology’ (ie normative positions) were a hindrance to effective policy solutions (Ransley 2011, p. 232). Meta - studies⁵⁵ of programs were developed to provide persuasive data on what elements were effective in reducing recidivism. In Australia, ‘what works’ was specifically associated with psychological and individual approaches to behaviour management and, according to Keogh (1998), by the mid 1990s in Australia those professionals working with adolescents (especially young people with psycho-social and drug addiction problems, as well as violent and sexual offenders) began to secure support for offender programs using the results of the meta-studies data. ‘What works’ provided psychologists,

⁵⁵ See especially the work of James Maguire et al. *What Works: Reducing Offending* 1996 and Henggeler 1994; Lipsey 1995; Hollin 1996; Borduin et al. 1990 cited in Keogh 1998 pp. 27 -28).

counsellors and juvenile justice service providers with the evidence to advocate for increased funding and for the development of programs based on multi-systemic cognitive-behavioural techniques, as well as interventions with families (Keogh 1998). And, although as Ransley argues ‘what works’ can be seen to be relatively successful in securing resources for intensive treatment programs, to some extent it tied policy success to a narrow set of objectives (Ransley 2011). As Sanderson (2003) says ‘what works’ was not necessarily the most appropriate means of examining policy and whether the end identified was worth in fact worth getting to (p. 338).

At the same time that ‘what works’ began to prevail as the dominant discourse in individually based treatment for more serious offenders, ‘risk management’ also began to emerge as the basis for policy and program development and behaviour management. Interviewees attributed elements of the shifts in the overall philosophy and policy directions of the department of juvenile justice to the rise of these two bodies of knowledge and to strategic responses to juvenile crime which, when harnessed to EBP and NPM, produced change to the policy climate. When operating together they had significant impacts, as P17 explained ‘*you go into a detention centre and it is palpably different from how it was in the early 90s*’. This was in their opinion because ‘*risk logic*’ is so much part of their thinking. *I feel like there’s been a psychologisation of the system (P17)*.

For one of the senior public servants interviewed for this project (P3), ‘what works’ provided a solid evidence based foundation for policy and program development especially for ‘*what we should be doing with kids in the institutions*’ (P3). However, another interviewee, P7, was far more critical and told me that she tried to caution against the uncritical adoption of what works, which she considered reified particular forms of knowledge and also closed down policy possibilities. P7 says of ‘what works’ advocates, ‘*they weren’t really drilling down to say ‘What do we mean by works*’ (P7).

The emergence of a ‘risk’ paradigm as a major influence on policy development can be identified by its first formal mention in the *Department of Juvenile Justice’s Annual Report 2001/2002* highlights the adoption of the use of the ‘*Youth Level of Service/ Case Management Inventory – Australian Adaptation*’ assessment

instrument (DJJ 2001/2002 at p.3). P17 believed that the rise and continued dominance of a risk paradigm lies in the fact that it allowed for a refocusing of attention away from social and economic factors, from failures of the system to a focus on *'you and that you need to do the work rather than what needs to be changed in your environment* (P17). P7 also saw that the focus of 'risk was on the individual, and this also undermined systemic analyses. As P7 explained:

It's always the young person's fault, it's never a product of circumstances or a context or bad relationships with a particular police officer in the area. So you get the irony as has been pointed out by Chris Cunneen many times of a 10-14 year old Aboriginal boy being very risky you know - 99% certain to be locked up in adult jail. ... (P7).

According to P7 risk instruments also offered a quick and easy diagnostic process for workers, it offered administrative benefits *'...it gives workers a so-called objective tool that doesn't take very long to administer'* (P7).

P17 considered that some of the shift towards adopting what they called a *'risk averse philosophy'* especially in detention centres was in essence a product of the bifurcation in the way that offenders had been dealt with since the introduction of the YOA. As she explained *'with the majority being diverted away from detention'* (P17) it left a smaller percentage being sentenced to custody and that they were *'actually a much, harder more complex, disadvantaged group'* (P17). P17 also argued that employee Occupational Health and Safety concerns also prompted the strengthening of risk management in custodial settings, particularly after the killing of a youth worker by a detainee in Yasmar Detention Centre in 1999.

For P7, the coalescence of a risk framework with the dominance of facets of new managerialism was exemplified in the audit of juvenile justice undertaken by the Auditor General's Office in 2004/2005 (Auditor General NSW 2005). In the audit procedure representatives from the Auditor General's Office who were not juvenile justice experts, reviewed the performance of juvenile justice. As a result P7 recounted that the auditors called for the introduction of risk assessment instruments not only for young people entering custody, but also for those attending conferences. P7 considered that one of the senior representatives from the Auditor's Office was being highly selective about the 'risk' evidence they were using, drawing only from the material that supported the outcome that she wanted (P7). As

P7 states *'the US literature [name withheld] looked at said how wonderful risk assessment was and the tools made it so much easier to classify kids in custody'* (P7). The same Auditor's Office staffer also told senior juvenile justice staff that the police should administer risk assessments to young people receiving cautions or attending conferences *because in their words 'that will tell you what you are meant to do with them'* (P7). As P7 reported even when she pointed out to the Auditor General's representative that this was outside the legislative provisions of the YOA saying, *"Police have no power to do anything except ask the child to write an apology"*, she was then told *"Oh that doesn't matter you know they could refer them to services"* (P7). In P7's assessment a misreading of the research evidence on risk drove the disregard for the legislation. P7 also told me that when she pointed out that the reading of the research wasn't accurate she was silenced. As P7 explains *'I was saying where is your evidence for this? What are you drawing from to come up with these conclusions? And as P7 states 'I was kicked under the table and told to shut up because I kept saying I don't understand why you are suggesting we should go down this path'* (P7). P7 felt that by the early 2000s the Auditor-General's Office had the upper hand in terms of their authoritative role in decision-making and that this outweighed any in-depth reading of the research evidence, in turn undermining the expertise of juvenile justice policy administrators.

Stevens' ethnographic study of the UK civil service identified similar patterns in the values placed on research and evidence. According to Stevens research and evidence contained in policy proposals had to be seen to be useful to senior staff. One way to do this according to Stevens was for public servants to ensure that the proposals *'fit into the existing narrative of government policy'* (2010, p. 246).⁵⁶ According to Stevens, the discursive stories that policy narratives drew on *'will often have been set already by the general thrust of government policy'* that is, they engage with what he calls established *'discursive tropes'* (2010, p.246). As interviewees in this study identified the broader discursive tropes of risk management and performance monitoring were beginning to infiltrate juvenile

⁵⁶ Stevens' (2011) ethnographic study provides a fascinating insight in to the civil service. A successful civil servant did not necessarily have specialist knowledge in an area but had good problem solving skills and *'added value to the policy process'* (2010 p. 245). Personal connections also provided the way up the career ladder not knowledge of or commitment to the policy issue at hand (Stevens 2010, p.245).

justice from the late 1990s onwards, limiting the range of ways in which policy could be discussed and developed.

It could be argued that the culmination in the rise of performance evaluation, risk management and NPM as a basis for policy development was exemplified in the introduction of the *NSW State Plan* in 2006. The setting of performance measures for policing and for reducing recidivism by targeting ‘at risk’ individuals privileged the setting of auditing and managerial goals over both legal principles and other policy objectives such as diversion and least intervention. This led to an increase in police contacts with young people, especially those who were on bail (for a more detailed discussion of the impact of the State Plan see Noetic Solutions 2010; Wong et al. 2010).

7.5 Academic research and writing

Although research and evidence was seen to be important for policy and program development by interviewees, academic research was seen to be less valuable to policy development, mainly due to the perception that it was too removed from the day-to-day reality of policy making. This view of academic research is not new; in 1985 Tierney argued that practitioners in the field tended to rely more on in-house research and evaluation studies and parliament inquiry reports than academic studies (1985, p.314). P7 explained why academic research was seen to be problematic, she stated *‘you as an academic might say ‘nothing works’ but we’ve got some responsibility, we’re responsible for working with these kids (P7)*. P17 also considered that academic research in criminology was not grounded in the realities of policy-making and *‘did not have a public policy perspective’* and that academic research was *‘answer light’* and *‘on the periphery’* (P17). As P17 continued on to explain, *‘You can’t always expect a pre-packaged answer to a complex policy question. But at the same time you should be able to have a discussion that informs policy rather than just gets you nowhere’* (P17). In other policy domains such as health and education this interviewee believed that there was a stronger link between academic researchers and policy development, due to the established tradition of scientific expertise where there was *‘a strong sense of educational tradition and knowledge’* whereas in criminal justice P17 felt that

policy makers turned to internally produced or commissioned research and evidence (P17).

Alex Stevens (2010) in his UK study of the civil service also found the same ambivalence to academic research; this included his own early attempts to write research policy proposals that were considered to be far too equivocal by civil servants. Stevens remarks that for civil servants ‘uncertainty was the enemy of policy making’ (Stevens 2010, p.243).

7.6 Research & evidence as a moderating influence

Interviewees from both government and non-government organisations saw that the kinds of criminological research in reports like *Kids In Justice*, parliamentary reports, or research evidence were really useful as a base for policy work and practice and could offer resources for providing a counter argument to more punitive policy agendas⁵⁷. Ultimately though, P5 felt that research evidence provided very weak ammunition when battling with the power of media campaigns and lobbying from the police, victims’ rights groups and conservative local governments. As she said of research findings, *...it did feed into policy but there was a sense of banging a drum and no one was listening over time*’ (P5). For example, on occasions, the department tried to counter letters to the Minister complaining about juvenile crime with facts and figures. As P5 told me, *‘some member of the public would write to their local MP but it’d come to you as “Juveniles out of control!” You’d write back a letter “Thank you for your letter...” We just need to say that young offenders are not on the rampage in NSW and quote all these statistics*’ (P5).

For P11, a former community based youth advocate, crime statistics provided a way of challenging the misrepresentation of juvenile crime especially during elections, *‘the public were being made to feel scared of young people and the media was feeding into the fear, that means that there were a lot of myths around*’ (P11). Consequently, the youth sector published media releases to distribute to journalists and then on to the public *... we needed to debunk these myths...so there were a lot*

⁵⁷ See Loader (2010) on the importance of research and engagement in public criminology as a technique of penal moderation.

of fact sheets being produced (P11). P1 and P11 both mentioned how crucial the fact sheets on juvenile crime developed by the Youth Action Policy Association (YAPA) had been as resources to draw on during elections. Criminal justice and juvenile factsheets provided easily accessible statistics, research evidence and case studies to counteract what community and non-government organisations saw as election misinformation. In 2002 a coalition of academics and advocacy groups came together to form the *Beyond Bars Alliance*⁵⁸ - a web based group, supplying the media with factual information and access to media friendly representatives as a means of counteracting law and order political campaigning. The members of the *Beyond Bars Alliance* lobbied politicians, gave talks and were proactive with the media in an effort to counter ‘law and order’ style election commentary.

7.7 Discussion

In practice, all policy making is subject to political and bureaucratic influences which can challenge the adoption of research’ (Ransley 2011, p. 225).

This chapter has identified that the role research and evidence play in influencing policy decision-making is what Sanderson (2003) describes as ‘slippery’ (p.341). By this he means that the institutional context and broader policy setting shape how evidence is viewed and how judgments are made about its value. Research evidence is not causal it does not have an immediate policy outcome (Hughes 2000). As Banks (2009) argues, research and evidence can only ever be one consideration in the policy process, stating that policy ‘ is influenced by a range of competing interests such as political ideology, values, political lobbying, intuition, conventional wisdom, personalities, fiscal and personnel constraints, timing and circumstance’ (Banks 2009 cited in Allard & Manning 2011 at p. 188).

In adult criminal justice and juvenile justice the selective use of statistics and avoidance of established criminological evidence to support particular policy trajectories, especially more reactionary or populist policies has troubled criminologists for many years (see for example Cunneen & White 2011; Goldson 2010; Hogg & Brown 1997; Lee 2006; Mukherjee 1985; Noetic Solutions 2010; NSW Youth Justice Coalition 1990; O’Connor 1998; Weatherburn 2004). And, as

⁵⁸ The *Beyond Bars Alliance* regrouped in 2007 and then reformed in 2011 as the *Crime and Justice Reform Committee*.

Hudson (2000) argues that, the moral and political stances taken by governments on crime often ride roughshod over the available research and evidence tending to give undue influence to one off exceptional events (Hudson 2000, p.176).

This chapter has shown how, in a deliberative decision-making setting like the parliamentary committee there is a greater possibility that a wide range of research and evidence will be incorporated into the development of recommendations and policy options. However, there may not be any direct policy outcomes from the process, indeed, unless there is the political will to follow inquiries through to implementation they can appear to be purely symbolic, defraying criticisms of inaction and frustrating those participants who are looking for effective results. Yet, the committee/inquiry was also seen by some participants to have a wider educative and transformative function leading to other indirect positive outcomes.

The chapter has argued that the increasing demands during the 1990s for policies to be evidence based are themselves imbued with the ontological position of those making the demands. We have seen how EBP eschews adopting normative positions, or promotes itself as combatting ideology to advocate for objective, outcome focused, evaluative studies yet in doing so it privileges certain kinds of policy agendas and options over others in the name of science. Sanderson argues that the emphasis on rationality and on formal and scientific technical knowledge neglects the key role played in problem solving by ‘practical wisdom’ and ‘informal’ tacit knowledge as well ignoring the moral-political dimension of problem solving (2012, p.340). From the insights from interview participants this was certainly the case in NSW.

It can be argued from the findings in this chapter that knowledge and evidence have specific functions. On the one hand, evidence produced through deliberation was used to establish policy aspirations and options, whereas evidence produced through empirical studies of organisational and intervention outcomes were being used to monitor and measure the operationalisation of policy. As EBP began to displace the kinds of consultative deliberative knowledge processes that had underpinned aspects of policy development in the early 1990s, the kinds of research ‘facts’ produced through in –depth research and consideration of issues of justice were

supplanted by managerial, auditing and individual risk focused concerns where a different set of ‘facts’ began to drive agenda setting and outcomes.

It can be seen that research and evidence on youth offending only constitute a small part of the myriad of influences on decision – making (Fishwick & Bolitho 2010; Freiberg & Carson 2010; French 2012; Goldson 2010; Richards & Lee 2013; Sanderson 2002 Stevens 2010). As Freiberg and Carson point out ‘in reality policy-making is a process that involves the art of persuasion and ‘evidence is used to make a particular case or to support a particular theory (Freiberg and Carson 2010, p.159).

The next chapter will explore how the media and government media management strategies engage in this art of policy persuasion where selected issues appear on agendas and politics informs the policy response.

Chapter 8. ‘In the court of Carr’: media, politics and policy

8.1 Introduction

The following chapter attempts to unravel the knots and contradictions of the relationship between media, politics and policy and their influence on decision-making in New South Wales. Many of the interview participants highlighted how law and order discourse influenced the development of the more reactive aspects of juvenile justice policy development outlined in chapter six. They also provided examples included in this chapter of its impact at other key moments like elections, or during the passage of legislation. However, another significant factor that came through the interviews and from the examination of contemporary commentary at the time was that the successive Carr governments’ investment in media management played a hugely important role in creating the conditions where the particular intersections of politics, policy and the media allowed for the dominance of some views over others in the shaping of policy decisions. The chapter has focused on the data from one particular interviewee, who was an experienced media communications officer, to provide a unique insight into how these conditions were generated.

The chapter begins by examining in detail the media management strategies implemented during the years of the Labor governments under the Premiership of the Hon. Bob Carr, as well as the reaction of journalists and of Opposition politicians to them. In doing so it argues that the personal influence of the Premier the Hon. Bob Carr (who had been a journalist), was significant in shaping the media strategy of his governments. The discussion then moves on to looking at the dynamics of the intersections of policy and spin, and its impact on decision-making especially at election times. The chapter also highlights the influential role of ‘shock-jocks’ and the tabloid media, in shaping agendas and policy options. And, provides details of the day-to-day pressures that the media had on those working in the Department of Juvenile Justice.

8.2 NSW a PR state?

8.2.1 Public Relations, media management and policy

You have to remember that in many ways this is not a government, but a PR agency with fabulous offices. And as with all PR, you are at the mercy of public opinion as it shifts course. Sometimes it tugs you both ways, and you end up doing the splits, very painfully (Hoggart 2012, Simon Hoggart Diaries *The Guardian*).

Although this somewhat cynical comment was directed at the UK's Cameron government in 2012, it could quite easily sum up one of the emerging characteristics of government in New South Wales from the 1990s onwards, where public relations, media management and the marketing of government became an integral part of day-to-day governance (Ward 2003). Neville Wran, the Labor Premier of NSW from 1976-1986, has been credited with being the first premier in Australia to realize the potential of media management as a way of marketing government to the public (Tiernan and Weller 2010; Young 2004). Since then, the expansion of public relations and communications into day-to-day policy and politics in Australia has led some commentators to say that Australia has been in danger of becoming a PR state, 'characterised by an army of media advisers and the siphoning of public money into polling, marketing, advertising and media monitoring' (Young 2004, p.1; see also Ward 2003).

In NSW a further significant expansion of media management practices took place under the successive Premierships of the Hon. Bob Carr (1995 – 2005), mirroring the media strategies of the UK Labour governments led by Tony Blair and his Communications Director, Alistair Campbell (1997-2007).⁵⁹ The NSW Premier was seen by this project's interviewees and by political commentators alike to be a very skilful and astute media relations' manager who believed that control over both politicians' and public servants' communications and 'staying on message' was vital to successful government and administration. Clune (2005) in his review of the Premiership of Bob Carr remarked that 'his desire to lead, shape – and his critics say - manipulate the public debate, is inexhaustible. He had a strong media team and

⁵⁹ The extent and ferocity of media management in the UK was satirised in *The Thick of It* a British political comedy that centred on role of political media advisers and was supposedly based on Alistair Campbell who was the UK Prime Minister Tony Blair's Director of Communications. An Australian version *The Hollow Men* was equally scathing about the superficiality of public relations experts and their influence on policy.

each minister had a strong army of specialized press secretaries' (p.51). Clune argues that the Premier took a hands-on approach to his ministerial team and their dealings with the press. Young (2004) states that the Premier, along with his chief of staff Bruce Hawker and head of communications Dave Britton, managed a tight, centralized communications strategy.⁶⁰ During this time media advisors became central to governance. According to Ward (2003), advisers 'occupy a key role between the ministers, government departments and the media, they overview the monitoring of media output, any oral and written information from policy stakeholders and from all of this put together information for policy and political responses' (p.30).⁶¹

A 2002 feature article by journalist Paola Totaro (aptly titled *Come in Spinner*) provides details of the input of the Premier on the media strategy and how it worked in practice. She describes how his concerns with the media shaped the Premier's day:

In less than an hour, he devours the day's newspapers, follows radio talkback debate, formulates - and rehearses - a junior minister's radio response to a controversial issue and rings another senior minister to discuss yet another controversy (Totaro 2002 p.1).

According to Totaro (2002), the Premier's staff were actively engaged in ringing news rooms, talkback radio and individual journalists to offer a 'grab' on current issues as well as occasionally suggesting an introductory print paragraph. Clune (2005) also argues that the Premier himself took an interest in monitoring all ministers to make sure they performed well, which involved keeping a diary of their media performances and commenting on them (p.51). However, media monitoring was not confined to watching over individuals but included all aspects of policy, it

⁶⁰ Bruce Hawker has a long association with both the NSW and Federal Labor Party. He left Carr's team in 1997 and established his own private PR consultancy firm with Dave Britton - Hawker-Britton, specializing in 'government relation, financial communications, strategic advice, and issues management' (Young 2004, p.63). Young notes that Hawker and Britton in 1999 were described as two of the best political strategists in Australia, and as two of the most influential people in politics (Young 2004: 63).

⁶¹ A number of Labor party political careers were also launched from working as a media advisor Graeme Wedderburn (who is still one of Bob Carr's senior political advisors) joined Hawker Britton for a while in the late 1990s before he returned to work for Carr (Young 2004). By 2002 Amanda Lampe, had become the Premier's principal media adviser. She eventually moved on to become Prime Minister Gillard's chief of staff, and then was considered for the position of ALP National Secretary (Totaro 2002; Coorey 2011). Walt Secord who became Director of Communications held the position from 1997-2003, he then joined Hawker Britton and was later to become chief of staff for Hon Kevin Rudd in his move to head the Labor Party and then Prime Minister, and Secord himself is now a Member of New South Wales' Legislative Council (Keane 2008).

covered departmental activity, and in many government departments media units were consolidated and professionalised to engage in proactive media strategies (see the discussion of the work of media units in chapter three). The media monitoring service *Rehame* provided twenty-four hour monitoring so that media advisors, teams and politicians could be ready to react to any news both positive and negative (Totaro 2002). By 2002 the Sydney Morning Herald reported that the government had 19 ministers who between them had 23 media advisors (Totaro 2002). Media advisors, formerly called press secretaries, were generally either ex political journalists, or were from corporate marketing and advertising, or from public relations (Totaro 2002; Young 2004). Although it appears no precise figures were available publicly in 2002 Totaro calculated that ninety nine media and marketing positions in the public service - costing \$7.63 million a year - were advertised and filled in NSW in 2001/2002 (Totaro 2002)⁶². Totaro describes in detail the expansion of media management across public service departments:

...each of the big four departments - transport, police, education and health - has an executive director of communication and each earns between \$138,000 and \$160,000 a year. Many of them head up PR branches of 30 or more media people. Employed as public servants (their contracts are not tied directly to the life of the Government), they nevertheless play pivotal political roles because they are often the main contact point between the ministerial press secretaries and the bureaucracy (Totaro 2004 not paginated).

In Clune's opinion the Carr government became a 'media machine' which 'pounces on stories...to either give early extra oxygen to positive stories' and or 'suffocate the negatives', where the media staff, 'maintain a steady stream of stories trying to take up all media time and marginalize other views' (2005, p.51). Premier Carr was described at the time in the media as a 'master of damage control by distraction', who was able to pull 'out a controversial new policy or appointment to divert the public spotlight from the drama' (Sydney Morning Herald 9th September 2002, cited in Clune 2005, p.58). And, that, 'when a decision is badly received or a crisis emerges, the government's first response is a barrage to soften opposition or deflect the electorate's attention' (Clune 2005, p.52). Tiffen (2004) in his analysis of media coverage of police corruption in the 1980s and 1990s in New

⁶² The comparative value placed on a good communications officers can be gauged by the salary of Paul Willoughby, Director of the NSW Police Media Unit who earned far more than senior police officers during his brief term of office in 2005/2006 (Sunday Telegraph 16th July 2006).

South Wales says that the scandal and drama surrounding the police and revelations from the Royal Commission Into Police put a lot of pressure on the Carr government after it took office to contain the damaging fall out, and in turn provided opportunities to positively promote the police and the criminal justice system in general (Tiffen 2004, see also McGovern 2005 for her history of police/media relations in NSW).

8.2.2 Criticism of the government's tight media management

The Carr government's tightly controlled media strategy was criticised by politicians, political commentators and sections of the media. For example, it was at the same time admired and disliked by Quentin Dempster (a senior political journalist with the ABC, the public broadcaster). On the one hand, Dempster (2005) saw Carr's leadership as commanding respect, as he states:

In the court of Carr, management of the media is a particularly prized skill. The Premier, himself a former journalist, is without doubt one of the most skilled media managers ever to occupy public office in this country (2005, p.5 of 13).

Yet, on the other he hand he felt it stultified in-depth debate making political reporting difficult. As he continues:

Issues management is now dominating public administration...For the author, covering state politics has become a process of engagement with 'spin doctors' who now outnumber accredited journalists. Such is the level of Cabinet, departmental and agency secrecy and paranoia that only those with time to develop back channel sources of information can hope to discover what is really going on (Dempster 2005, p.5 of 13).

Other journalists were also sceptical about the contribution made by media advisors, spin-doctors and speechwriters to politics and policy during the period. David Penberthy, a senior journalist on the Daily Telegraph at the time (who then became its editor), questioned whether the growth in the numbers of media personnel working for government during the 1990s and 2000s, actually contributed in any way to the quality of government and to political debate. In a recent article he states:

It is highly debatable as to whether the proliferation of all these positions has improved the quality of politics or rather helped ensure that our politicians are increasingly reluctant to run on their own instincts, speak in meaningful

language, retain absolute control over the offices they should run (Penberthy 2012).

And, according to political journalist and commentator Michele Grattan, the spin process could lead to distorted journalism ‘when lines on this or that are uncritically accepted and become orthodoxies’ or ‘when the fashionable spin is strong enough to discredit what might be an alternative, well-based position’ (Grattan 1998,p. 42).

The Carr government’s media strategy also faced criticism from Opposition politicians and minor parties who felt that the government’s saturation had a negative effect on democracy. The Greens considered that the heavy investment in media management resources was prejudicial to their own capacity to engage in political debate and to get their point of view across. Totaro interviewed Greens MLC Ian Cohen in 2002, who stated that he felt the number of press releases was ‘crazy’ and for the Greens ‘it felt as though there was very little opportunity to have much impact’ (Totaro 2002). The Opposition leader in 2002 Hon John Brogden (who was himself a former media adviser to Coalition Premiers Nick Greiner and John Fahey (1989-1995), accused the government of being one that had ‘spin over substance’ and was spending massive amounts of money ‘to influence the media and distort public opinion’ (Totaro 2002 p.6).

P13, one of the participants in this project and an experienced journalist, also felt that the extension of control into the public service had a negative effect on day to day journalism and that the more open access of media to public servants changed over the nineties. As she stated,

I can look back to the 1980s where yes, you could actually talk to public servants who were experts in the field, and you’d get briefed by them not necessarily always on the record....well that has become increasingly difficult over the decades, you get increasingly bland press releases in answer to written questions’ (P13).

P13 also felt that the staff of media units controlled access to information by playing favourites, ‘some journalists were favoured over others (P13), a point that has been made repeatedly in academic studies of media units (see chapter four).

8.2.3 An insider's view: policy and spin, 'from abuser to abused'

The senior media and communications expert (P8) interviewed for this project was quite open about the positive and negative aspects of the Carr governments' media management style and its effects on policy. P8 considered that in the early days of the Labor government the strategy was positive and productive, especially when there was a combination of a clear policy outlook, skilled policy advisors, media advisors and strong Ministers and Attorney Generals committed to positive reform (P8). She argued that when communications staff and policy advisors worked well together they could achieve solid political and policy gains, especially with a coordinated strategy development, which '*allowed Ministers who were strong and skilled enough, to pursue a line that might not be immediately popular with the media*' (P8). According to P8, when politicians were sure of their policy position and were receiving support from the Premier and support from Cabinet, they could stand firm against shock jocks like Alan Jones and Ray Hadley, as well as the tabloid newspapers like the Daily Telegraph. As P8 explains:

To some extent they were happy to stand up to the Jones's and the Hadleys, if they had a good position to stand on. So the difference was that they would go in and say 'oh gosh yes this is terrible I'm going to do something about that I'll fix it! And then maybe a small fix but not a large scale policy thing (P8).

P8 rejected the idea that the media always set policy agendas and directed policy options. She stressed that strong governments with skilled staff do not have to react immediately to strident media demands. She pointed out that '*if you're a very good spin doctor then you can have an immediate response which has no long term effects*' (P8). For example, a confident and strong government would ride out adverse media stories and respond to any criticism with evidence and examples. According to P8 they would respond by saying '*here's a graph that tells you how often it happens, now go away because it's not really true*' (P8). According to P8 when there is a separation of policy and communications, clearly mapped guidelines between the business of politics and policy development and when there are skilled staff, there are few problems: '*when you have very good communications people who understand what they're doing, you can keep those things separate*' (P8).

However, according to P8 problems began for the Labor government when there was a convergence between communications work and policy development, and it

became difficult to draw *'a line between where policy and communication begins and ends'* (P8). It was argued that this happened during the Labor years when political and policy advisors were began to be dominated by media based staff:

The chiefs of staff, chief policy advisors, media advisors and the Premier had all been journalists.... There were very strong policy advisors who had previously been journalists and there were very strong people in the communications area who had reasonably strong opinions on policy as well (P8).

For P8, the convergence of spin and policy happened in NSW for a number of reasons, one was the resignation of both Bruce Hawker and Dave Britton, which meant that *'there wasn't anyone who could actually control what was happening between the spin and the policy stuff'* (P8). In addition, their departure coincided with the resignation of key Ministers that changed the composition and the politics of the Cabinet. As P8 explains *'all of those people went and the next team that came in were kind of the B-team -... you lost that sort of left wing perspective and lost all their staffers in there who were in their fighting the good fight'* (P8). And she continued *'When you have people who are just in the spin cycle the whole time and you have ministers who are, I guess, seeing the downward spiral and seeing themselves as part of it, then you get far too much convergence between the spin and the policy'* (P8). Without strong ministers leading the policy agenda, or pushing the good news out there, P8 recounted how policy in NSW *'got taken over by the right – wing basically'* (P8). Dempster (2005) in his analysis of the Carr government's media management strategy also highlights what he sees as the blurring of the lines between politics and policy during this period and, as will be discussed below, found the willingness of senior public servants to give in to media and to political pressure, to be a worrying trait.

This study suggests that there were different facets of the media management strategy that had a number of implications for policy decisions. For example, if there is a distinct separation between policy development and the business of public relations and spin, then the potential for policies to retain their integrity in relation to the issue under consideration can be maximised. If senior media advisors are skilled at what they do and are also progressive in their outlook on justice issues, there is a greater chance that juvenile justice policy decisions can maintain a more

progressive tone. This requires governments to be committed to the aims and objectives of the policy so that if ministers are prepared to back those policies then the opportunities for progressive policy windows to open and remain so are increased. However, when those ministers and skilled media staff leave then those opportunities diminish.

This last point was raised by another interviewee (P7), who felt that the resignation of the Hon. Jeff Shaw Attorney General in 2000, contributed to the ‘*overall capitulation of the government to the media*’ (P7). As P7 stated ‘*...you start to see once Shaw moved on and Bob Debus was appointed as Attorney, a bit of a pull back by the politicians and much more attention paid to the screeching media and fear about what the media might say. So you see the rise of the “Law & Order politics” and ‘we must be seen as being tough on kids’ (P7).*

P8 also argued that the Labor government began to run out of ideas by the late 1990s, when there was ‘*little policy substance behind media statements*’ (P8) and the ‘spin’ started to look hollow. P8 eloquently charts that shift in approach, as she explained:

to their credit in the early days with Carr they led the news cycle and, from a spin doctors point of view, they were amazing they really were. They had the line-up every day, they were keeping everybody busy, and they did it well for a very long time. There comes a time when that becomes very empty and people are very cynical about you because you’re making the same announcement after four years and they’re all going ‘oh we’ve been here before (P8).

P8 argued that at moments when a government or a Minister is not confident, or feels vulnerable or doesn’t have solid support from their department or Cabinet, ‘*the spin and the reaction pushes policy rather than the other way round*’ (P8). Consequently according to P8 ‘*you get more and more [overreaction] and that’s where you get all the backflips, all the changes, all the things happening which aren’t well thought out policy, because you’re still in that little abusive relationship cycle but you’re not the abuser anymore, you’re actually being abused*’ (P8). P8 explained ‘*if there is a adverse new story that you don’t have control over you panic*’ and P8 stated at that point to regain control governments react with get tough policies. From P8’s perspective, ‘*when you are reacting you can never win it*’ (P8).

In these circumstances, the policy space becomes dominated by spin and by quick fix reactions to media demands. Policy decision-making becomes shaped by how the policy will sell to the media and also by the objective of maintaining good relations with those sections of the media that are seen to have populist credentials.

P8 provided a contrasting example of how the Victorian government responded to similar media pressure. She explained, *'they had a government who was willing to stand up in the midst of some immediate juvenile crisis and say "Oh yes, this is terrible but we're not going to change anything" – whereas in NSW, we increasingly started changing policy on the way we dealt with people in reaction to media hype and outrage'* (P8).

P10 also remarked that in her view, when politics became focused on leaders, politicians would often resort to familiar territory, or rely on 'get tough' statements to boost their individual profile. As P10 stated *'perhaps every leader whether it's the prime minister or premier or whoever, they feel that they are vulnerable and if they are not being seen to be strong on things they may feel at risk'* (P10). P10 also felt that it was the quick pace of the 24 hour news cycle that made politicians look to quick fix solutions, as she stated *'politicians wanted to be to be seen to act decisively before the media moved on to another news story'* (P10).

Young in her book on political advertising also argues that spin becomes more powerful over policy development especially in criminal justice when governments are weakened. She states *'the focus on leadership, or on get tough policies can be seen to be due to the lack of imagination and failure in Labor governments to have the imagination and skill for developing good policy'* (Young 2004, p.249). Tiernan also sees the kinds of negative effects of media management described above happening in other areas of government (2007a, 2007b). In her overview of the growth of media advisors in Australia, Tiernan describes how public servants expressed their concern that the media-conscious, politically focused advice offered by media staff working in close proximity to ministers, began to supplant the more policy focused advice of departmental officials (2007a, 2007b).

8.3 Shock jocks and tabloids

Despite attempting to manage the relationship with the shock jocks and the tabloids the Labor government was eventually seen by political commentators and by interviewees to be in the thrall of a selection of key media identities and outlets. These included radio personalities Alan Jones⁶³, John Laws, Ray Hadley and Stan Zemanek as well as the tabloid media. Paul Kelly, a senior political journalist wrote in 2001 that the shock jock' had become highly influential in mobilizing and setting policy agendas. According to Kelly,

There was once a time when public opinion was mobilised at street rallies, town halls, from the pulpit or around the trades hall. Forget it. Radio jocks are the new mobilisers and organisers of mass opinion (Paul Kelly *The Australian* 2001 March 3rd).

Ultimately, Kelly argues, the shock jocks had a negative impact on Australian politics with what he calls their false claims to representing the Australian public and in the process 'the jocks delegitimise the politicians, to build their own credibility and ratings' (Paul Kelly *The Australian* 2001 March 3rd).

According to P8, the power and the influence of the shock jocks was recognised by Premier Carr, and one of his key political strategies was to build a good rapport with talkback radio as well as tabloid television and news. As P8 observed '*Bob Carr was a skilled journalist and media commentator and could discuss issues with Alan Jones when many others couldn't or wouldn't engage in on air debate*' (P8). Likewise, P8 revealed how senior public servants were encouraged by their departmental communications staff to deliberately build up rapport with talkback radio. Using the example of Ron Woodham, the Commissioner of Corrective Services,⁶⁴ P8 described how the Commissioner regularly appeared on Ray Hadley's radio program. In turn they developed a good working relationship and eventually '*the Commissioner encouraged the broadcaster to take a personal interest in prisoners*' (P8). Talkback radio then, was also seen a way of testing public reaction to issues. As P8 explained:

⁶³ Alan Jones sees his role as being an essential voice of the people as he stated in a profile piece describing his relationship to his audience 'these people rely on me' (Alan Jones 2012 telegraph.com.au 5th February accessed 13.3.2012).

⁶⁴ Ron Woodham was a former prison officer with a hard as nails reputation. This 'blokey' tough persona was used to develop credibility and rapport with 'shock jocks'.

Sometimes they use outlets to test policy giving a suggestion to the Telegraph or Ray Hadley about something that they might do and then these outlets in effect test the public and see what sort of response they get on talkback radio or letters to the editor or whatever it might be (P8).

By using these strategies the government could exercise an element of control over shock jock commentary, promote the government's overall political and policy messages, testing policy waters as well as deflecting criticism.

However, this strategy was not so well received by others. Lee Rhiannon (a Greens Member of the Legislative Assembly from 1999 – 2010) was highly critical of the relationship between the Labor governments and the Murdoch owned Daily Telegraph. In an online opinion piece *'The tale of the media wagging the political dog'* Rhiannon questioned what she called the 'short termism' of successive governments in their immediate reactions to Daily Telegraph campaigns and editorials. She described how the constant media monitoring drove Cabinet Office to respond to issues as they arose, despite whatever policies might be in progress. In the article she accuses the Carr government of 'spineless pandering to the Tele and talkback brigade' and to the 'whim and wiles of the Telegraph's editorial team (2004, p.1). She states that: 'By its actions, the Government gives the Telegraph enormous power to set and shape the agenda in NSW' (Rhiannon 2004, p.1).

P6 also considered that radio presenters began to hold too much power over governments in turn influencing decision-making, *'it was the rise of the 'shock jocks' in the mid 1990s that heralded the retreat from progressive policies' (P6)*. P14 who had been very involved in the development of legislation and policy at a senior level also saw the relationship between politicians, shock jocks and the tabloids negatively. According to P14 politicians, *'see the tabloid press as representative of the views of a significant proportion of the community, and they also recognise that if they take on those outlets they will create a fight' (P14)*. At times, when politicians feel that they have to make quick decisions about controversial issues, P14 argued that politicians use the views expressed on the radio and in the tabloids as a barometer of public opinion and so they make *'decisions that they think are going to be popular with the public, they hope that those outlets will then praise them for having done what they suggested was a good*

idea. And so they win - it's a circular thing, and there is a real symbiotic relationship between ministers and the tabloid media' (P14).

Another interviewee participant P12, a former senior officer with the police, had considerable media experience including appearances on talkback radio but, was also very critical of the power that politicians gave to talkback radio hosts. P12 felt that some politicians (the example used was a former Police Minister) '*tended not to look beyond what the 'shock jocks' said' (P12)*. This, P12 argued, severely limited the Police Minister's understanding and capacity for policy making, or for in depth thinking about policy. As P12 commented '*You can't amend your thinking if the basis is Alan Jones and Ray Hadley' (P12)*. According to P12 shock jocks really did not want anyone on their programs who might challenge the views that they were putting forward. For example, P12 revealed how despite having been a regular on the Ray Hadley program they were dropped after insisting that young people should be referred to conference rather than be arrested for the majority offences (P12).

The capacity of the shock jocks and the tabloid media to influence politicians and policy formulation was mainly seen in terms of the pursuit of political popularity as P14 reflected:

I think what politicians hope is that by quick reaction to the greatest noise, they will get quick support that people will remember and that will resonate in votes at the next election. It's all about getting re-elected (P14).

The findings reveal how influential shock jocks and the tabloids are seen to be in shaping and transmitting 'public opinion'. For politicians and media advisors these sections of the media are considered to be the conduit by which policies can be tested for popularity and if necessary adjusted, as well as being one of the key conduits for governments and individuals to maintain their political profile. Critics argue that, in this process, policies are compromised for the sake of political expediency and the power of the shock jocks and the tabloids over government decisions increases.

Interviewees provided examples of what they considered to be a direct relationship between media campaigns and government actions. From P10's perspective the immediate impact was very clear, *....you have got the Daily Telegraph jumping up*

and down about ...an isolated event and then [P10 bangs seat] you have legislation saying 'no more bail for repeat offenders' (P10). P14 also provided examples from bail amendment legislation, saying 'It became common through the nineties and early 2000s for amendments to the Bail Act to be made in direct response to tabloid media outbursts and to representations made by the Police Association' (P14). For this statutory legal officer, good policy was undermined by political expediency, as they continued: 'So we had the situation where a carefully crafted Bail Act was amended on an ad hoc basis in response to these outbursts' (P14).

P14 also described a situation where they considered that the media had managed to exert an influence on the final drafting of legislation at the very moment it was being discussed in Parliament:

Back in 2001 I think it was, when the amendment to the legislation was introduced on the day the Bill was going through Parliament there was a front page Daily Telegraph report of a sentence imposed on somebody for child sexual assault, which the Daily Telegraph thought was outrageously lenient. So literally as the Bill was going into parliament two additional offences were put on to the schedule (P14).⁶⁵

From P14's perspective it was an immediate reaction to publicity: *'front page of the Tele and someone thinks righto we'll fix that, on the list, boom'* (P14). I did ask P14 whether they thought that the story was deliberately placed to achieve the outcome, to which P14 replied, *'I'm not a conspiracy theorist. I think incompetence beats conspiracy anytime'but it was included in the list of schedules as a way of deflecting criticism (P14).*

In her critique of the Labor government, Greens politician Lee Rhiannon also provided a similar example of political reaction undermining legislative deliberation. Rhiannon argues that Daily Telegraph's P-plate campaign in the early 2000s, which involved a relentless release of story after story of dramatic tragic tales, editorial outrage, big headlines, big photos and emotive pleas from ordinary

⁶⁵ See Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002 No 90 Schedule 2 Amendment of *Crimes Act 1900 No 40* relating to child sexual assault (Section 3) [1] Section 66A Sexual intercourse—child under 10 Omit “imprisonment for 20 years” from the section. Insert instead “imprisonment for 25 years”. [2] Section 66B Attempting, or assaulting with intent, to have sexual intercourse with child under 10. Omit “imprisonment for 20 years” from the section. Insert instead “imprisonment for 25 years”.

people ended up fast tracking and altering a policy decision on young drivers which had been under consideration by government in consultation with key stakeholders (Rhiannon 2004).

8.4 A journalist's perspective

One of the journalists interviewed (P13) argued that journalists could not really know for sure what impact they had on policy. She considered that the influence of the media was more incremental or indirect than direct, and that in reality the work of journalism was more *'like water on stone'* (P13). She discussed how dramatic stories in the newspaper or on a television documentary can have a more immediate impact if they are tackling corruption, but in her field, which she described as *'charting social ills'* (P13), unless there was a major scandal it was much harder to judge its impact. P13 felt that in her work on children and young people the most impact on a policy issue came if it was already under consideration by government. P13 could only think of two incidents where her own work had a direct impact on policy outcomes. For example, she considered that a series of stories on the deaths of children known to Department of Community Services (DOCS) did not in fact kick start the introduction of the Child Deaths Review Team in 1996, but *'made the government probably move a bit faster, but the wheels were already on the train...I think it helped get the idea off the ground'* (P13). P13 argued that what did make a significant impact on policy development was that some of the sources she had used for these stories subsequently moved into positions of influence in the NSW Ombudsman's Office and therefore, were in a situation where they could work from the inside to push for a Review to be established (P13).

P13 considered that the attention of the media could in fact work in a Department's favour. For example, she considered that a series of stories that she published on child abuse, coupled with a program that aired in the ABC's documentary series Four Corners brought attention to the level of crisis in the Department of Community Services and its capacity to act on behalf of young people. As she stated, the focus on DOCS *'helped I think get \$1.2 billion five year funding package'*, but she went on to explain that the story was part of an already established campaign: *'the publicity I gave that issue would have been a small part in the bigger lobbying of the other groups'* (P13).

P13 considered that government media relations' staff could develop a mutually beneficial working relationship with journalists. She explained how departments develop what is called 'a business package' where journalists run a series of stories with support from a governmental department and that this can work to each other's advantage clarifying the policy priorities and day-to-day work of a department and a more in-depth understanding of clients.

8.5 The public service and the media

As we have seen Labor governments implemented tightly controlled media strategies, which included management of the public service. David Penberthy a former journalist and editor of the Daily Telegraph commented on this saying:

When Bob Carr was Premier of NSW he would often say that the only thing you could be sure of while running the state was there were 1000,000 odd public servants and at any given time one of them was doing something completely stupid. (Penberthy *Daily Telegraph* 30/1/2012)

Grattan argues that the tight media management strategies in the 1990s ended up having a negative impact on the public service, as she states 'the public service, increasingly intimidated about dealing with the media, is both discouraged from media contact by the government media advisers and quite thankful not to have to run the media gauntlet, even on a background basis' (1998, p.43).

For interview participants who had been involved with the Department of Juvenile Justice in the late 1990s, there were a number of work demands that resulted from the implementation of the policies and procedures of the Young Offender's Act that made responding to the media very difficult. According to P8 from a media and communications perspective it looked like that as soon as the *Young Offender's Act (NSW)* was enacted NSW juvenile justice dropped from public profile. Consequently, P8 felt that DJJ hadn't proactively engaged in promoting the legislation and setting the juvenile justice policy agenda through the media. According to P8 '*when a department is silent it leaves a gap for the media and critics to fill*' (P8). This resulted P8 argued in the growth of negative media stories prompted by critics of the new legislation, which then began to crowd out the positive policy news. As she explains:

To some extent I think there was risk-averse stuff happening and 'just let's keep our heads down and not talk about it'. So what happens is the public debate gets taken over by someone else and in the case of New South Wales it was the 'law and order' debate' (P8).

P13 also considered that when government organisations were in this kind of coping mode and Director Generals were on the defensive, they retreated from contact with the press: *'a lot of people don't talk to the press when things are in crisis' (P13)*. When departments hunker down, P13 explained, the press become more antagonistic; on the other hand if government departments are more open it *'makes the press less adversarial' (P13)*.

P5 who had been employed in the juvenile justice department considered that due to the fact that the *Young Offenders Act (NSW)* embodied such a strong diversionary philosophy in providing for warnings, cautions and conferences, it transgressed the dominant frames of understanding about young people expressed in the media. This she believed led ultimately to a degree of dissonance between the legislation and how newspapers were able to write about it. She argued that the media could only respond to the legislation by pulling out its standard set of narrative frames, which meant that conferencing was reconstituted as the Labor government being *'soft on crime' (P5)*. As P5 observed *'maybe juveniles were more noticeable by certain elements of the media and the community because perhaps they were perceived to be treated very leniently because of things like youth justice conferencing and being able to be cautioned and warned' (P5)*. And, although P5 absolutely supported the legislation and its overall philosophy she argued that it left the Department with little room to manoeuvre when an incident relating to repeat offenders or serious crime was reported in the press. The Department was left in a situation where it could not respond in a way that could be seen to *'contradict the diversionary and restorative agendas embodied in the legislation' (P5)*.

P5 went on to say that during the late 1990s the department began to feel that it was under attack from the *'shock-jocks and the tabloids' (P5)*. As she told me *'there was this sense of if some dreadful offense happened or a riot happened or something it was like "Oh God". What's going to be happening now? Get the papers, that moment of dread kind of thing' (P5)*. The sensational nature of stories about young people in the press was also seen to contribute to this siege mentality.

P5 recounted how after one event where a young person escaped from Bidura children's court and then hijacked a car: *'there was huge pressure, presumably brought to bear on the Minister but then brought to bear on the Department that we had to come down on the kid like a ton of bricks'* (P5). P5 argued that there was no doubt it was a serious incident but the young person was only 15 and it led to *'pressures on staff in general to lock them up and throw away the key'* (P5). According to P5, it became more and more difficult after the 1990s for public servants to defend their policies, services and clients against media criticism. As she recounted *'...it just got progressively tougher and harder and that sort of the law & order issue was one that was one that was upmost in the state politicians you know "Who could be tougher than the other?" kind of thing'* (P5). The department tried to get alternative stories in the press but to no avail: *'we struggled to get out good news stories about good stuff that was happening within the department but nobody it seemed had really wanted to hear that'* (P5).

The pressure on juvenile justice staff to respond instantly to the media was seen by P7 to dominate the day-to-day governance of the department under the management of one particular senior public servant. P7 explained that, in the mid 2000s this particular executive officer (who had previously been a political adviser) became over sensitive to media comment and in P7's view was too ready react to media criticism. As she recounts:

.... as head of Juvenile Justice you know what they'd [name removed] do? First thing in the morning, very first thing in the morning listen to Allan Jones and as a former political adviser does read all The Daily Telegraph's stories. If there was anything to do with kids or conferencing I would get a really rude email first thing in the morning or a 3am text sometimes saying, "What are you going to do about it?" I'd either ignore it or text back or say well I don't think we should do anything about it (P7).

Clearly public service departments working in juvenile justice faced criticism from the media on a number of fronts in the aftermath of the introduction of the YOA. It would seem that from the data gathered, the Department of Juvenile Justice was itself in need of skilled media staff to stave off the intense scrutiny of the media and to promote the benefits of the legislation in a way that defrayed antagonism and relieved the pressure from staff.

8.6 Framing youth and crime in the news

Interviewees were very aware that the ways in which the media discussed youth and crime had the capacity to impact on the policy process. P3, although critical of the Hon. Bob Carr's approach on many issues appreciated the intelligence and ability of the Premier to see the positive media angle on the way in which policy could be spun. As P3 said: '*Carr was a bright man, and you could point him in the right direction*' (P3). For example, P3 considered that the Premier was at the same time able to appreciate the focus on diversion in juvenile justice and the benefits it had for keeping young people out of detention, but was also able to see that information on diversionary success needed to be reframed to make it more '*media friendly*' (P3). As P3 explains:

He said we've got to be careful how we use this information. We can't sell to the public that we've decreased the number of kids in detention. We've got to say instead that we've got kids now under greater supervision in the community, and they're doing works of restitution like cleaning rail carriages and all that sort of stuff. And I was quite happy with that, as long as they left me alone (P3).

Interviewees felt that the media had a tendency to provide glib explanations for social problems, providing superficial stories that in the end reinforced dominant discourses relating to youth and crime. However, for two interviews the views expressed in the media were seen to also reflect the kinds of views expressed about young people that they encountered in their dealing with members of community (P9, P10). P9 and P10 work day in day out with young people dealing with profound social disadvantage and mental health issues, and were very disheartened about the attitudes to children and young people that exist in many parts of the community and the media. P9 and P10 saw that that tabloid media used stories about juvenile justice to feed the public's need for voyeuristic dramatic entertainment, but they were stories that were framed in a way that failed to provide the context of young people's lives. As P9 explained:

The public gets a distorted view because of the media. They get the 'facts' they get the serious crime that is being committed but they don't get any of the background about the offence and the offender why they may be doing this, the mental health issues, the abuse and when they do get the background they are generally a bit more sympathetic (P9).

Both solicitors accepted that some members of the community were intolerant of young people. They provided distressing stories of parental attitudes to young people's behaviour including the readiness of parents, police and schools to punish young people who clearly were dealing with mental health, learning problems or other psychological or medical problems.⁶⁶ It was these generalised negative attitudes to young people they felt that the media and politicians homed in on. As P9 stated: *'that's why I think the police perspective and the law and order perspective is a vote winner because I think people, the public are not prepared to make allowances for young people'* (P9). Yet, P10 thought that on the whole people might have different attitudes if the story related to someone they knew: *'Of course they make allowances for their own kids because their own kids are special and different'* (P10). P9 and P10 felt that the relationship between the media, popular opinion and politics was mutually reinforcing.

P3 also provided an example of their own experience in trying to counter prevailing media narratives about youth crime. They told me about a time when they had appeared on a tabloid current affairs program to comment on a proposal to re-introduce the stocks for juvenile offenders. According to P3, *'the mayor of Blacktown, who was a Labor man, came out in the press and said that he wanted stocks established, and that kids should have tomatoes and eggs and that thrown at them....and then they'd stop doing the bad things that they were doing'*. The programme makers invited P3 to debate the issue with the mayor and as a result P3 wryly commented, *'It may say something about my debating skills, but Channel Nine claimed that they got more people supporting the mayor in the response, than they got to me (P3)*. P3 believed that if people who supported the introduction of the stocks in Blacktown were asked about doing so for their own kids: *'I just think, if you question those people and ask if it was their son going through this, would they like it, and they'd all say "no" (P3)*.

P13 explained to me the ways in which the *habitus* of journalism and the day-to-day practices of news production worked to inhibit alternative ways of framing stories about young people. According to P13 the editor played an important role in the capacity of journalists to get their stories a run in the news. She pointed out that that

⁶⁶ The details of the stories are not included here but they are day to day experiences for the many clients of the service.

despite the importance of the work she was doing on children in care and her angle on juvenile justice, the stories still had to satisfy elements of *'news worthiness'* and often they were not given prominence in the paper. As P13 recounted she once had to wait till one particular editor went on holiday before she got published, even though the stories were dramatic and in her opinion newsworthy. As she explained *'...it was not quite acceptable to write on those stories because they were about losers'* (P13). This, she said happened again and again when for example she tried to get other stories on overcrowding in juvenile detention centres on to the front page, but *'juveniles –little criminals who go into juvenile detention were less likely to get front page coverage'* (P13). When I asked her what kinds of stories on children and young people would get the attention of the editor she said, *'it would be if there's dead innocent children and a department that is seemingly in crisis and not able to protect them'* (P13). For P13 what was and continues to be considered as news is unsatisfactory and that *'journalists have to try and change attitudes within their own organisations 'to 'sell and shape and work within our own organisations to get backing stories' that are outside the usual story frame'* (P13).

For P3 the obsession by the public for entertainment and the need for newspapers *'to sell papers'* had led to the *'dumbing down'* of crime and policy reporting. As she stated:

That's what I think drives all this stuff....It's like the Roman circus in days gone by, there's got to be entertainment. People who've had a hard day at work want to read drivel in the press. Look at the change in the Telegraph. Most stories now are two column inches, because people don't want to be bothered with detail (P3).

This former public servant who had worked hard over many years to establish progressive juvenile justice reform said that they were getting angrier and angrier about politics and the press, feeling that the tabloid press built on people's fears as entertainment *'and that in doing so the Telegraph is a paper, that demonises people...'* (P3).

8.7 Leaks to the media

On occasions, as Grattan (1998) explains, leaks of policy information to the media are used by governments, oppositions, public servants and policy stakeholders to

gain political or policy advantage. And, as Franklin suggests, media are on occasions used to strengthen policy positions within an organisation where there is conflict, or to strengthen corporate identity (Franklin 2003, p. 49). The media can also become a conduit for policy stakeholders, political oppositions, disgruntled employees or whistleblowers to air issues, or conflicts (Franklin 2003). According to Tiffen, for public servants the leak can be seen as ‘a weapon of disaffection’ and most likely to occur ‘when official actions are running against proclaimed policy with at least some insiders thus aggrieved’ (Tiffen 2000, p.196). Tiffen goes on to argue that despite it being incredibly important to policy making, bureaucratic intrigue and conflict is usually the least newsworthy and will receive little coverage unless of course there is some scandalous element (Tiffen 2000, p.196)⁶⁷. Tiffen also makes the point that with ‘a more politicized, result orientated bureaucracy, with market influenced career patterns’ there will possibly be more short term gains to be made by individuals in the public service by using the media to try and gain advantage (2004).

P13, a journalist, who relied on material being provided to her by public servants and non-government organisations, really valued the flow of leaked information to the media. She recognised that whistleblowers faced a difficult situation, which changed depending on the political climate and the intensity of media management. As she explained ‘*the bravery of these people in those positions has waxed and waned*’ (P13).

Another interviewee, P2, also considered that it was not easy for individuals who were part of a large organisation to use the media to speak out especially if they were putting forward alternative or challenging views. This interviewee related how she was constantly censured for putting forward her viewpoint and that she just ended up being ‘*very dogged - hitting all media, radio and newspaper outlets*’ - and was ‘*personally prepared to wear the consequences*’ (P2).

⁶⁷ Tiffen in a 2004 article discusses the treatment of Police Commissioner Ryan by the press. He argues that the media were used by the Police Association and the Police Minister to make Ryan’s position untenable. Indeed when I undertook a Factiva search from January 2001 to December 2002 the articles revealed a raft of stories especially in *The Daily Telegraph* relating to the Commissioner’s high salary and using information about his family, in association with stories about police failure to deal with crime to undermine his position and he eventually resigned in April 2002.

An ex public servant (P3) described a period of time in the early 1990s where the juvenile justice department had continuing disagreements with the minister about the direction of juvenile justice policy. Both parties to the policy disagreement used the media to claim the moral high ground in their dispute. It was a time when the organisational changes being introduced by the minister in order to achieve budget cuts were being resisted by public servants. As P3 explains, *'I was using reporters in the Herald...to reinforce the good things we were doing, I was leaking stuff, and it was a very naughty thing to do, but I was frustrated'* (P3). In reply to the story leaked to the Sydney Morning Herald by the public service the minister was said to have used the media to attack some staff and to undermine the more progressive philosophy in the department (P3). According to P3:

The minister [name withheld] went to the Herald and said there'd been some bad appointments, and that ...[name withheld] was one of the worst appointments made by the Juvenile Justice branch, and [the Minister] really lampooned him. He subsequently sued [the Minister] for defamation and won (P3).

The interviewee went to describe how the situation went from bad to worse, as the leaks to the newspaper continued as a way for each party to take a stance over policy issues, and in consequence P3 believed policy development suffered.

8.8 Selling policies and politicians at elections

A Recipe for reform: add 2 Daily Telegraph Mirror articles on 'the crime wave'; 1 State election; law and order as required and 1 flying bottle. Half-bake and watch it stir (O'Sullivan 1995, p.94).

Elections provide important political opportunities for politicians to promote themselves, their parties and advertise their policy agendas to the electorate. Young (2004) has outlined the many different ways in which political parties use market research and advertising strategies to sell policies to the public, especially to those people living in marginal electorates. As Rod Cameron, a former Labor politician states:

...rhetoric is more important to the swinging voter than the details contained in policy outlooks. Sloganised epithets, which reduce complex issues to

oversimplified, often distorted, catch cry positions, represent eventually the real reasons why uncommitted, often apolitical swinging voters cast their vote for a particular party (Rod Cameron cited in Young 2004 at p.48).

As we saw in chapter four criminological accounts of elections have argued that on the whole a tough stance on law and order appears to be one of the political strategies adopted by State and Territory political parties⁶⁸ (see Hogg & Brown 1998; Lee 2007; Smith 2001; Weatherburn 2004). And, in their analysis of election tactics in New South Wales Hogg and Brown examine the political messages, sensationalism of crime, tough anti-gang stance of each party. However, from his analysis of NSW elections in the 1990s Antony Green (an Australian psephologist) argues that 'law and order' was only one in a range of issues during the 1988 and 1991 elections. And in fact, education, the state economy, financial management and education funding were equally prominent as electoral issues (2001, p.309). Green argues that it was only during the terms of the post 1988 Greiner and then the Fahey governments that corruption, police accountability, and criminal justice became more prominent issues in election campaigns (2001).

Interviewee participants remembered the 1995 election, especially one particular incident that was seen to have prompted a shift in gear in looking tough on crime. P1 remembered how a doorstep interview in which tomato ketchup was thrown at the leader of the Labor Opposition, Bob Carr, effectively '*sealed the anti-gangs legislation*' (P1). According to an article written in the immediate aftermath of the 1995 election O'Sullivan (1995) describes the same incident. The Opposition leader was holding his press conference on the 21st November 1994 to talk about gang violence when, as O'Sullivan states:

In the middle of Carr's press conference, held on a footpath in Marrickville, someone (a Teen gangster according to media reports) threw a bottle from a car causing him to duck for cover. This well timed display of lawlessness, Carr's get tough media coverage and another Telegraph Mirror article on colour gangs on the same day was enough to send the Fahey Government into a frenzy of reform (1995, p.94).

⁶⁸ It is outside of the remit of this discussion but interviewees remarked how different the 2011 NSW election was, where due to the fact that there was no doubt that the Labor government would be defeated in a landslide swing to the Opposition, the opposition did not engage in the usual law and order politicking, especially since the Shadow Attorney-General had been the deputy of the Office of DPP and liberal lawyer. Whereas, the Labor Party panicked '*I think they realized they were heading for a big fall and so the whole atmosphere became more desperate. Their attempts to try to please the public and to get any sorts of allies on side became stronger and stronger, and it all crashed and burned*' (P14)

The briefing had been called in response to a feature published in the tabloid paper the *Daily Telegraph Mirror* on the 17th November called '*City of Fear*'. The article had highlighted the results of a community survey about fear of crime, conducted by the Police Service (1995). Hogg and Brown also discuss the same incident and point out how it provided good media footage for the Opposition leader to demonstrate how his party would take strong action to fight the threat of LA style gangs doing drive by shootings in NSW (1998). According to Hogg and Brown the Labor Party manifesto pledged that the Carr government would not:

allow roaming gangs of youth, their baseball caps turned back-to-front to stop citizens walking the streets, shopping or using public transport' and would 'banish from our schools emblems and colours which promote gangs (1998, p.29).

From then on, the manifestos of both parties used the key term 'gangs' over again, and employing hyperbole relating to danger and threat to justify proposed 'tough' 'aggressive' policies (Hogg & Brown 1998, p.29). However, as O'Sullivan (1995) explains (and as discussed in chapter six) the manifestos actually built on the public order legislation that was already under consideration by the Fahey government.

One of the interviewees for this project (P9) who had been a Labor Party supporter in the early 1990s, felt that the early promise of juvenile justice reform that was being developed during the Fahey government was undermined by the strategic election decisions taken by the Labor opposition in 1995 which they felt was in essence '*to adopt a harsher stance to law and order*' (P9). P9 also felt that, from the outset the Labor Party had a conservative agenda and were willing to hand too much power to the police, who she reflected, '*became more powerful in that context and in that conversation because they represented the law and order face*' (P9).

Despite the investment in elections and the hard sell, political commentators have argued that they are in fact 'short-lived, unrepresentative political moments in the cycle of government that have little to do with the substance of policy making' (Ward 2003, p.27). Whether the broad policy advertising hyperbole of the election is realizable in practical policy terms is explored in the next chapter. Certainly the anti-gangs legislation promoted in the 1995 election was strongly opposed once the

Labor government was in power. It was not implemented in full and it took until 1998 for the legislation to be realised.

8.9 Playing the game: non-government organisations and media

As Schlesinger and Tumber (1994) remind us, developing media skills has become an important strategy for all policy players. From the 1980s onwards they argue ‘all political actors operating inside a policy arena, and would be actors wishing to enter it – are all obliged to be serious about media relationships’ (1994 p.271). As a number of commentators point out it is harder, but not impossible, for non-government organisations, trades unions, professional associations and individual entrepreneurs to lead news and policy agendas (Schlesinger and Tumber 1994). And, as Tiffen argues non-government organization’s presence in the news tends to be reactive as they respond to events rather than proactive ie in setting the agenda (2000, p.199). Non-government groups therefore need to work harder to develop their ‘cultural capital’ in order to establish and maintain their presence as a reputable news source and valid policy voice (Cottle 2003; Schlesinger and Tumber 1994; Tiffen 2000). According to Ward (2003) non-government stakeholders engage with the media for a number of reasons, these include: attempts to influence policy development, to promote their own policy solutions, to hold government accountable, as well as providing their own range of political and policy information to the public (p.26).

As I recall during the 1990s, organisations like the NSW Youth Justice Coalition and Youth Action Policy Association ran a number of media skills workshops for their members and began appointing media and publications officers. The Public Interest Advocacy Centre also started to run advocacy skills workshops for non-government and community organisations, which included media training. Having a strong media profile was seen to be important, as a former convenor of the NSW Youth Justice Coalition explained, *‘you certainly get to be known, and the position that your organisation takes gets to be known...the media comes back to you so you get opportunities to send out positive messages’* (P1). According to P1, one way that the NSW Youth Justice Coalition did this was by cultivating relationships with particular journalists who would be sympathetic to their point of view (P1). A journalist (P13) considered that this kind of relationship was a two way process and

that, like other journalists, she appreciated the contacts that she had made with non-government organisations. As she stated, journalists '*rely on someone to bring them stories*' and further ...'*we rely on people in the know, good sources who know what's going on who are reliable and accurate and know the lay of the land.... lawyers and public servants and non-government people from the peak groups*' (P13).

Non-government organisation participants in the research realised that they had to be strategic in gaining media attention. As P1 explained individual case studies and '*pretty powerful statistics*' that had '*a dramatic resonance*' could provide a way into media stories. Another interviewee P6, described how creative, attention grabbing media strategies had been really useful for non-government organisations to publicise issues, as well as acting as a conduit for exerting pressure for reform in juvenile justice policy. For example, in the lead up to the publication of the *Kids In Justice Report* in 1990 and during subsequent lobbying for legislative reform, the newly established national youth radio station JJJ⁶⁹ ran a series of programs on juvenile justice. The mainstream media then picked up the issue. P6 considered that the reportage of JJJ played an important role in creating the momentum for the policy process that ultimately led to the Young Offenders Act 1997. The impact of the media campaign was seen to be a result of the innovative opportunities that a new station presented, its counter culture legacy and the impact of one individual reporter in particular. As P6 pointed out, Fran Kelly⁷⁰ was particularly interested in the issues: '*she picked it up and ran it as a public campaign*' (P6).

P6 also provided another example of creative media strategies when the launch of the *Kids in Justice Report* in 1990 took place in the Sydney Police and Justice Museum. The YJC created a photo opportunity for the media by placing the Police Commissioner, Tony Lauer in the dock of the of the old Police Court of the museum (P6). This event she pointed out, was orchestrated by '*an experienced media person with an eye for publicity moments and 'significant policy events*' it was reported on JJJ, the ABC's 7.30 Report and then mainstream media (P6).

⁶⁹ Formerly a publicly funded radio cooperative 2 JJJ became a national station in 1990. There was a strong community based protest about the sacking of existing 2JJJ staff, its alleged shift to mainstream music and its restructure along traditional management lines. The association with youth policy push might well have given the station the street cred it needed at the time.

⁷⁰ Now the host presenter of ABC Radio National's breakfast news and current affairs show

Another ‘*beautifully theatrical moment*’ described by P6 happened at a time when the Labor government were refusing to engage with community organisations campaigning for justice. As P6 recalls:

We had a public meeting at Redfern Town Hall and Tony Vincent agreed to chair the meeting. He spoke to an empty chair as if he were interviewing John Aquilina (who failed to appear) and they [the government] were ropeable about it. It was a delicious moment (P6).

Although non-government organisation participants realised the value of the media as an advocacy tool, they were also cautious about using it due to a lack of trust. Community and non-government organisations felt that the media were on the whole resistant to alternative viewpoints of youth justice and that interviewee participants were wary of being misrepresented. As one children’s solicitor stated:

There are times when you have made a comment and it’s just not been reflected in an appropriate way in the print media. So I’m a bit suspicious. I’m experienced enough to know that sometimes your view might not be appropriately put. I think you have to be well organized and well trained to deal with the media and you have to have a very clear position (P9).

Non-government interviewees who were engaged in frontline service delivery also found it hard to find the time and resources to maintaining an effective media presence. As P10 stated a strong media presence needs ‘*unlimited time*’ which they simply did not have. Often reporters needed an immediate answer or an interview there and then, which was, as P10 observed: ‘*something that experienced solicitors, youth workers, health providers could not do*’ (P10).

8.10 Discussion

This chapter has provided unique insights from interview participants on the shifting relationships between the media, politics and policy. It has explored some of the positive and negative features of the Labor governments’ tight media management strategies and has argued that spin and looking tough on law and order did not necessarily always dictate policy decision-making. Although, it may appear on the surface that that knee jerk, reactive policy drove the more dramatic aspects of policy formation during the Carr government years, at the same time other kinds of policy decisions were being made and implemented, which more often than not took place away from the public glare. As P8 asserted: ‘*to give Labor its due in terms of*

law and order... there was a lot of stuff that went through with Jeff Shaw and Bob Debus the Young Offenders Act, periodic detention, home detention, suspended sentences that were counter to the whole law and order thing (P8). And, as P14 pointed out, *'the more thorough course. ...kicks in' when the 'the media fuss has died away'* and this will inevitably produce *'something good and useful' (P14)*. There are many layers at which policies are developed and decisions taken. From the data presented it seems clear that a large part of 'law and order' talk is about projecting a strong image, during election times and during periods when governments are feeling vulnerable and, as Tiernan and Weller (2010) argue 'in contemporary politics perception is everything' (p.212).

The capacity of the media to influence the policy agenda and decision-making about policy options seems to be dependent on a range of factors, including: the composition of Cabinet; the balance of power between media trained staff and policy experts in senior levels of government and the public service; the popularity of a government with the electorate; the strength of the Opposition; the timing of the policy issue in the political cycle; the strength of the relationship between key policy players with different sections of the media; as well as the kinds of external events that we saw impacting on decisions in chapter seven. There is not one consistent pattern of influence. However, there does appear to have been a tipping point in New South Wales in late 1990s when spin began to drive the government's public policy statements and to some extent its decisions about criminal justice policy. From this moment it seems the views of sections of the media were given more serious attention and wielded more power in relation to the climate in which debates about criminal justice and juvenile justice policy took place and to some extent to have a direct impact on decisions taken.

The public service too appears to have had a fluctuating symbiotic relationship with the media during this period. Media units were established to manage information flow, and leaks were used to gain strategic advantage. However, it seems to be that in the wake of the YOA the Department of Juvenile Justice was not in a position to set the policy agenda, nor to respond to the kinds of constant critique of juvenile justice from the tabloids and the shock jocks. Nor were the media all that prepared to listen to alternative accounts of juvenile crime and responses to juvenile crime.

From what we have seen, the media are skilled at tapping into current policy debates and proposals, and making them their own as well as gauging the zeitgeist to claim their role as representatives of popular opinion. The 24hour news cycle places pressure on politicians and the public service to respond immediately to such claims and to any events that the media identify as needing action. However, as interviewees point out, this is pressure that can be managed and only becomes problematic when governments let it.

Although there are dominant frames and narratives about youth and crime in the media, which are hard to challenge, not all government agencies and politicians run the same message. Non-government organisations and individuals are engaged media participants so there are conflicts and gaps for journalists and media organisations to exploit. Consequently, as Davis (2003) argues, multiple messages do emerge in the media. There are journalists who adhere very strongly to the idea of the independence of the news media and resist the all-encompassing information feeds that come from government and corporate entities; they build their own links with government and non-government organisations.

The chapter has found that, although they are not an equal footing with governments in relation to the media, non-government organisations can nevertheless play a significant and legitimate role in policy debates and draw attention to policy issues. However they simply do not have the same resources as others to do so.

In the next chapter we explore how the very business of government, politics and policy, shapes decision-making, providing the institutional framework and dynamics in which policy decisions take place.

Chapter 9. The rules of the game: government, politics, administration and the work of non-government organisations

9.1 Introduction

The structure of power in the post-industrial democracies, the role of the courts, and the impact of globalization and of multilevel of governance mean that any given government will more often than not inherit only a fragment of a policy problem at a stage in its lengthy 'resolution' (French 2012, p. 538).

One of the key concepts in a critical complex analysis of policy is that decisions take place within a system of negotiated order, where, apart from cataclysmic events there are elements of stability and routine within which a dynamic process of continuing movement takes place. At a broad level, international and domestic, political, economic and social relations, set some of the outer perimeters of negotiated order. At a more local level, features of everyday government, politics and administration provide similar boundaries. Policy analysts identify that the policy process has its own momentum made up of routines, regular events and everyday practices, which shape decision. These have been identified as the 'rules of the game' (see chapter two). The rules of the game have the potential to enable or constrain decision-making opportunities. This chapter examines how the rules of the game have impacted on juvenile justice. It begins with an examination of the domain of politics, and then examines policy administration and implementation before going on to look at the role of lobby groups and interest networks.

The chapter also looks at the relative influence of interest groups on the policy process, before concluding by examining some of the ways in which non-government organisations can establish and maintain their influence on the policy process.

In Australia's federalised system, youth crime is not a national policy concern. The main responsibility for juvenile justice rests with state and territory governments

and other broader youth justice responsibilities are shared jointly with the Commonwealth government. This has meant that there has always been some dissonance between the two tiers of government in relation to child and youth policies constitutionally, politically and administratively. Consequently, decisions on child and youth policy may be less cohesive and interdependent than in other jurisdictions. However, the actions of the Commonwealth do have an impact on the capacity of states to deal with crime. The Commonwealth has shared responsibilities for housing, health (including mental health), income support, indigenous affairs, child custody issues, child support, and a whole host of other policy areas. The following chapter however focuses solely on the State tier of government.

9.2 Politics and governments

Without doubt the very business of what it is to be a politician and the capacity to survive in the political field has an enormous influence on policy decisions. French (2012) argues that this is often not properly understood in academic analysis, but for him, the argy bargy of politics is part of the reality of policy development and that ‘the existential reality of politics is not power, it is the ever-present prospect, under the vicissitudes, of competition, publicity and uncertainty, of its loss’ (2012, p. 534). And further, for politicians, ‘the daily preoccupation of public life is the accumulation and husbanding of a fugitive political capital’ (French 2012, p.535).

Despite French’s protestations that politicians should not be condemned for going about their business, with a few exceptions politicians were not regarded fondly by interviewees, they were seen to be self-serving and often without redeeming features⁷¹. As a former senior public servant made clear, *‘they are there for three years and they know they’ve got to win the next election, most of them are not trained for anything, they will be tossed out’* (P3). Or as P5 a former solicitor observed, politicians were light on ethics in contrast to other policy actors: *‘lawyers see things differently – politicians debate matters in a way to score points not on principle’* (P5). P7 also reflected on the fact that her experience of policy had made

⁷¹ I have very diplomatically all throughout the thesis left out what I shall call ‘the less than generous comments’ made about a couple of particular politicians by interviewees. What was interesting though was the shared passionate disdain for these individuals, expressed by this project’s otherwise thoughtful, considered, participants.

her see that politics was really about winning elections and little more. As she stated:

What I ultimately realised was that for politicians the bottom line is getting re-elected. They will do whatever they need to do for that. If they believe that to get re-elected they need to be seen to be tough on young people then they will be, no matter what they believe in their hearts or what they have supported in previous times' (P7).

The game of politics affected the willingness or otherwise of politicians to support progressive policies on young people and the passage of legislation through parliament. Throughout the 1990s and early 2000s interviewees considered that juvenile justice policy success depended on the balance of political party representation in the house. Data from interviewees and political commentary from the time highlight how, from 1990 to 2005, the political make up of successive NSW state parliaments meant that independents and minor parties held the balance of power in the lower and upper houses (see also Green 2001; Hagan & Clothier 2001). The number of independents in the house meant that parliamentarians had to be strategic about forming alliances and doing deals and consequently, were more open to lobbying and persuasion on major issues including juvenile justice rather than simply voting along party whip lines.

According to Green, after the 1991 election the Greiner government only just scraped back into office and had to depend on crossbench support from independents and Democrats for political survival (2001, p.283). Amongst this group interviewees identified a number of individuals who supported children's rights and a more progressive policy agendas for young people including, Elizabeth Kirkby (Democrats), Ann Symonds (Independent), Clover Moore (Independent), Tony Windsor (Independent), Dr Peter McDonald (Independent). Ann Symonds in particular, was identified by P7 as a critical figure in the development of juvenile justice reforms. She chaired the Parliamentary Social Issues Committee and, according to P7, was and continues to be '*passionate about appropriately working with young people, families and communities*' (P7). Also on the left of the Labor party, the Upper House member Hon. Meredith Burgmann, was publicly outspoken in her support of civil liberties, rights and justice and, as President of the Legislative Council from 1999 until 2007 when she retired, was an influential political figure.

With the independents holding the balance of power according to P6 there was a 'contested political environment', which provided 'an opportunity for community organisations ...to exercise some leverage on policy' and 'the government became more responsive' (P6). And, according to P1, this 'allowed disruptions to occur and windows to open' (P1).

The number of independents in the years after the 1995 election also meant that the newly elected Labor government had to tread carefully on youth policy issues. The first ever Greens MP the Hon. Ian Cohen was elected to the Legislative Council in 1995 - he was also an advocate of human rights and progressive reform. In addition, Alan Corbett, whose party, *A Better Future for Our Children*, also became a member of the Legislative Council. In 1999, despite an increased Labor majority, a number of new parliamentary members also supported more progressive justice reforms, especially for children and young people. These included, an outspoken Independent, Peter Breen of the *Reform the Legal System* party, Arthur Chesterfield Evans who replaced Elizabeth Kirkby for the *Democrats* and Lee Rhiannon for the *Greens*.

9.3 The electoral cycle

It is not just the balance of power in parliament which influences the business of politics and policy, but as Kingdon (2003) highlights, there are key political events such as elections which both create and dampen down opportunities for decision-making. Elections set the different stages of a government's life cycle, which Kingdon (2003) argues, shapes the policy activities of governments and other policy actors.

The chapter on the media, politics and policy demonstrated how during elections debates of criminal justice and juvenile justice intensified. P9 and P10 felt that as elections drew near, governments and oppositions became less adventurous and more conservative in what they were prepared to say about policy. P9 observed that it was only if political parties were confident of a landslide victory that they could become a little more relaxed on criminal justice issues. P11 considered that during elections there were predictable patterns in policy campaigning: 'usually around election time they all [political parties], did the same thing and they all tried to find

something, some way of cracking down on juvenile crime. That was something that was so consistent, whoever was in government' (P11). And, as P11 continued, elections created a highly volatile policy situation '...in a climate like that, pre-election, basically it could be anything; it could be one matter in court or someone on talkback radio saying something. You know, it wouldn't have taken much for some under-developed or ill-developed policy to come up and then just become law' (P11).

The electoral cycle was also seen to play an important role setting the timetable for policy decisions. As Tiernan and Weller (2010) have observed when governments first come into power they tend to be more passionate and committed to issues than later on, especially if they have been in opposition for a long time they are galvanised by 'passion to do well and passion to make a success of it' (p.91). Research participants also recognised how when governments first came into office they were under pressure to introduce the political promises made during the elections. P10 considered that the commitment to be seen to implement electoral promises made it *'difficult to advise new governments that the very same policies that they were enthusiastic about were unworkable' (P10)*. In contrast, P17 who had been involved in research and policy work during the terms of office of numerous governments felt that there was *'potential for reform'*, especially if there is *'a big majority' and the view that there are more terms of government to come, frees up policy agendas to community input (P17)*.

In her experience P6 observed that the willingness or otherwise of governments to introduce reform was not just related to the electoral cycle but was also dependent on how many times they were re-elected. According to P6:

Change was not easy for governments, and the longer governments are in the more ownership they have of the status quo, they have to be accountable for the things that they have and haven't done or the things that have worked well or haven't worked well. Once governments feel like they have weathered a storm and incorporated and done some change then their energy wanes and they're on to the next thing... (P6).

P6 also considered that if governments for one reason or another were finding it difficult to achieve what they wanted to then they lost confidence and fell back on predictable patterns and the policy status quo. P6 continued:

If you have a Liberal-Democratic progressive movement and the promise of it is never realised and it gets partially done, and the inevitable weaknesses in its promise is not matched by the reality....the incentives for politicians to go tough on criminals just becomes the predominant political imperative again (P6).

P17 also expressed the opinion that when governments were under pressure they had less time to think issues through properly and policies were made on the run. This in turn could lead to policies becoming *'inconsistent and antagonistic to prior reforms (P17)*. Other research participants, saw that the longer the NSW Labor Party was in government the worse the situation became for adult and young offenders. As P9 stated: *'they were entrenched in power for so long that the situation for young people and those people alleged to have committed criminal offences just got worse, they didn't use their time well or fairly' (P9)*. According to P2, *'they got arrogant and too busy to listen' (P2)*.

Interviewees were particularly condemning of the NSW Labor Party's last years in government: *'they were ineffectual for the last five years, they were totally ineffectual' (P12)*, and for P14 there were desperate times: *'I think towards the end, they realised they were heading for a fall and so the whole atmosphere became more desperate. Their attempt to try and please the public and to get any sort of allies on side became stronger and stronger, and in the end it all crashed and burned' (P14)*.

As interviewees found the business of politics provides the setting for intervening strategically in decision-making. Having a clear understanding of the ins and outs of politics and the timetable for when opportunities for policy development are created or closed down was seen to enhance the capacity of organisations and individuals to influence decisions.

9.4 The distinctions of politics and administration

Public servants, who often have strong views on law and order policy, can persuade a government to change its course. The experience of being responsible for public safety can exert a sobering influence on politicians who have been accustomed to making extravagant claims while in opposition about their party's ability to 'restore' law and order (Weatherburn 2004, p. 33).

Kingdon (2003) found in his research that there was a distinction between the work of politicians and other policy actors in policy streams. With politicians being mainly concerned with policy agenda setting. Participants in this study also considered that in theory there should be a formal separation of politics and administration, and between politicians and public servants, this it was believed produced better quality policy decisions. As the former minister (P16) interviewed for this thesis believed, these were important distinctions to maintain. As she stated:

I think it helps if both director general and minister understand what each other are required to do. And it also helps if as a minister you understand some of the pressures, complexities and constraints that are on your director general and your department but I think it also helps if your director general also understands what your role as a minister is and what some of the pressures and complexities are on your role as a minister because they are two different roles (P16).

P16 considered that problems occurred when Director Generals and ministers interfered in each other's roles. She described how she dealt with this:

I always say to my bureaucrats. I want you to give me the advice. That's your job. I'll be the person who then looks at that advice and make what I think is the correct decision. But I don't really want you to filter your advice to give me what you think is politically palatable. That's really my job' (P16).

She continued, trouble came about when lines were blurred. *'I think sometimes you get bureaucrats who try to practice politics a little bit too much perhaps.... and politicians interfered in public service decisions'* (P16). This interviewee also saw her role as being a sounding board for the department, whose staff she felt could become a little insular and out of touch with public opinion, and in consequence they could lose perspective on how their client group might be seen by the public. As she explained:

'in an area like juvenile justice where you are dealing with a lot of dysfunctional behaviour ...it can sometimes lead people to see behaviour as less aberrant than your average community member would. And I felt that sometimes my job was to point that out to the department...and explain 'that's not how it would be seen in the broader community' (P16).

P16 felt that one way for politicians to judge the quality of a policy proposal was whether it would pass, what she called *'the common sense test'* (P16). This included whether it could be sold to the media. P16 explained:

I guess the test I always tried to use was if an issue emerged, whether it was in the media or not, and I would ask the department for advice about it. If I felt that that what they were telling me wasn't something I could adequately explain to a journalist then I felt the policy behind it was lacking. I was prepared to have difficult arguments if I felt there were good arguments to put' (P16).

P16 used the example of sensational stories about the conditions in detention centres as an example. She explained how she would defend the conditions in detention centres to journalists on the grounds of improving chances of rehabilitation and that ultimately the community was being kept safe (P16).

For P16, it also helped to maintain a distinction between executive decisions and administration if ministerial portfolios were manageable. A smaller portfolio made it easier to be on top of issues, and to have an understanding of the constraints on what may be achievable in relation to policy. Sometimes, P16 suggested, ministers could be a bit unrealistic in their expectations of what public servants could do. For example, she felt that ministers needed to have respect for the expertise that had developed in juvenile justice. As she argued: *'Often you have senior staff who know all of the detainees almost intimately on a first name basis, they'd been in the system such a long time (P16).* P16 considered that this did have drawbacks, especially if the emotional attachment that bureaucrats developed for their portfolio might *'cloud your judgment a bit' (P16).*

According to P14 there were clear policy boundaries and practices that guided the work of politicians and public servants in the development of criminal legislation and policy. Ideally this would mean that Attorney Generals sought advice from departments and from statutory appointed officers. In her experience, P14 found that *'Debus, Shaw and Hannaford would all write and say what do you think? So I'd consult with my people and we'd send back a submission and that was terrific and good and the way it should have been' (P14).* P14 considered that the kind of advice provided to ministers from a range of sources was thorough and high quality. As P14 stated, *'...the minister is given very carefully crafted and sound advice on policy issues. You have the Criminal Law Review Divisions, you have other parts of the Attorney General's department, you have justice agencies and the courts all providing information to the minister for the formulation of policy' (P14).* This separation of politics, ministerial responsibility and administrative responsibilities

was seen by P14 to be part of the proper governance of the policy process. *‘I remember Bob Debus for instance was very proper in his dealings with all these sorts of policy issues and he didn’t descend to the gutter to fight me or anybody else. Even when there was disagreement it was not taken personally. As P14 recounted even if Debus as Attorney General was criticised by the press for the actions of P14 and of his department, ‘...he would say, “ he’s an independent official, I’m not going to interfere with him. If you don’t like what he’s doing go and beat him up but don’t bother me “ ‘ (P14).*

In P14’s perspective these boundaries allowed for better quality decision-making processes and led to better policy, as P14 argued *‘in consulting with the relevant agencies and people’* politicians *‘take a holistic view and they are looking for a consistent answer that works’ (P14)*. However, P14 thought these conventions were too often disregarded *‘in pursuit of popularity’*, especially when politicians were under pressure and were making *‘policy on the run (P14)*.

P14 continued, that often quick decisions were counterproductive, especially when policies have to be reconsidered. Once, judicial or administrative review procedures point out the problems and according to P14 *‘ the media fuss has died away....they [politicians] go on that more thorough course which is going to produce something good and useful’ (P14)*.

9.5 Budgets, funding, resources

Kingdon (2003) has highlighted how treasury decisions and funding allocations play an important role in shaping decisions. We saw in chapter seven how the NSW Audit Office played an important role in changing the focus of policy development. And in chapter six we saw how the under-funding of the JJAC affected its capacity to act, and resulted in a situation where *the members could sit around the table and identify some problems, or as volunteers for the council do some voluntary work’ (P1)*.

P16 provided details on how important the budget allocation was for achieving success in a ministerial portfolio. P16 highlighted, how in her experience as a minister, it had been vital to increase the department’s budget to ensure that policy

issues could be addressed properly. *'Working well within a budget, and then securing further funding'* was, P16 believed *'an important way developing respect as a Minister (P16)'*. As she continued obtaining, *'significant extra funding which in and of itself was important'*, meant that *'we were able to put in place more professional services in the detention centres, and pay staff a little better too'* (P16). This then led to a knock-on effect where the government was in her words *'receptive to doing more about juvenile justice'*. P16 explained how the increase in resources resulted in *'a kind of good time'* (P16), both personally and politically, and in terms of departmental policy.

As a volunteer organisation, the Youth Justice Coalition has had to rely on the personal resources of its members and support from member organisations to engage in the policy process. Only occasionally, has the YJC had access to specific project funding. The *Kids In Justice Report* did receive external funding and consequently, the YJC were able to engage in a creative and well-financed research and advocacy project. P6 considered that having the reputation and support of the head of the NSW Law Foundation definitely contributed to the success of the project. As P6 explained: *'you had a backer like Terry Purcell at the Law Foundation. Terry Purcell was convinced to put a quite a big amount of money into the youth and justice project and to do fairly innovative engagement with young people'*, such as *'the radio workshops that were done in the Radio Skid Row and the detention centre legal services, with their clients. It was a really early experience of giving the subjects of reform, a role in the reform process'* (P6).

P1 also made the observation that although the membership of the Youth Justice Coalition had waxed and waned over the years, the commitment and persistence of members to the policy issues had always meant that they were able to engage in policy process in some way, even if in a limited capacity. As she pointed out *'it kept going and kept having a say and a voice'* (P1).

9.6 The administration of the Juvenile Justice Department

The administration and management of policy provides the framework in which policies are developed and implemented. The following discussion provides some insights on the ways in which the placing of a public service department within a

government portfolio, and the internal administration and management of people, programs and policies, can have a significant effect on policy priorities and decisions.

9.6.1 Location of responsibility for administration

The discussion of the development of the Young Offenders Act, in chapter six, revealed how important the responsibility for the administration and operation of youth conferencing became to the involved policy parties. In 1994 Alder and Wundersitz had argued that if youth conferencing in New South Wales remained with the police it would provide them with a significant role to play in how conferencing was introduced, implemented and experienced (p.9). Other policy actors, including the Youth Justice Coalition were keen to reduce that influence, and the battle to establish conferencing in a separate independent Directorate within Juvenile Justice commenced. In the final iteration of the YOA, the action of moving the administration of conferencing to an independent Directorate and providing a statutory basis to the procedures, meant that the power and discretion of the police to act in restorative procedures was limited and their decisions became to subject to the review of the court. As Barga, Clancey and Chan (2005) point out the independence of the conferencing directorate meant that the powers of police were restricted to decisions to refer to conferencing, rather than being the adjudicators in the conference process, as had been the case in the Wagga Wagga police cautioning scheme.

On a broader level the placing of juvenile justice administration within ministerial portfolios can be seen to play a significant role in determining the direction of policy priorities and in making a symbolic statement about the values and principles of juvenile justice systems. From 1990 to 2005 (and beyond) the public service section with responsibilities for juvenile justice was relocated a number of times. Before 1992 juvenile justice was a section located within the Department of Family and Community Services, (later to become the Department of Community Services). As such it was philosophically associated with welfare approaches to problem solving and policy reform, but it was only a small section in a large department it had no autonomy and no independent budget and, according to P6 who worked there at the time, it tended to become marginalised. In 1991 juvenile

justice was relocated as an office within the Department of Attorney Generals, alongside adult corrective services (Graham 1994). After lobbying by community groups who felt that the move had weakened the rehabilitative and diversionary philosophy of juvenile justice, a separate office was established reporting directly to the Minister for Justice and therefore was separate from adult prison administration (see Barga 1992). The Department of Juvenile Justice was then established as a separate entity in 1993 (NSW Legislative Council 2005, p. 3). When the Labor government was elected in 1995 and Ken Buttram was re-appointed as Director General, the Department was brought back into Community Services with the Hon. Ron Dyer as Minister⁷² but it retained its independence as a policy area however, it did not have a separate budget. As P5, who worked in Juvenile Justice for a number of years stated, where the department was located was a significant issue. There was always *the promise of a more progressive agenda if the administration of juvenile justice stayed outside of Corrective Services or Attorney Generals* (P5). This was primarily because in family and community or education based departments the kinds of child-focused principles of rehabilitation, reintegration and diversion could be defended more easily.

In addition the appointment of Director Generals of Juvenile Justice who had backgrounds in these areas of the public service, Ken Buttram and David Sherlock meant that they were predisposed to maintaining diversionary juvenile justice policies and to keeping young people out of custody. An examination of the Annual Reports and the strategic plans of the Department during their tenure reflect their commitment to these justice principles and policy priorities (see Department/Office of Juvenile Justice Annual Reports 1995 - 2002).

Despite the location of the DJJ in department of community services, interviewees who had worked with, or for the department, argued that the threat of relocation was used as a tactic to try and force the department to change its policy direction to become more punitive. As one non-government interviewee who had been a member of the Juvenile Justice Advisory Council and other government committees and working parties noted ‘ *we saw the Director General of Juvenile Justice bearing the brunt of the ‘lock ‘em up’ push*’ (P1). P5 felt that the Director Generals

⁷² In 2011 Juvenile Justice was placed within NSW Attorney General’s and Justice.

were always working on a thin line and that *'the axe could come down anytime'* (P5). This led according to P5 to *'a bit of a siege mentality'* within the Department as if they *'battling against the world'* (P5). This was fed, she argued, by constant rumours that they were to be incorporated into Corrective Services, especially after highly publicised media stories about young offenders (see chapters six and eight).

9.6.2 The day to day work of the DJJ

The day-to-day business of administering and implementing policy in the department was seen by ex public servants to play a significant role in shaping policy. For P3, developing cross government departmental agreements and the regular meetings with the minister provided the means to garner support for policies and to advocate for the work of the department. According to P5, departmental representatives sitting on inter-departmental committees or appearing before inquiries played a significant role in advocating for the interests of young offenders who were offenders. P5 explained that in cross government negotiations and policy decisions bargains were made and deals done to achieve policy outcomes, and often *'short term compromises were made to achieve long term gains'* (P5). P5 also described how staff represented the position of the department in commenting on Cabinet minutes and in providing comments on ministerial queries from a range of portfolios. The department's solicitors and youth workers also represented the department in relevant court cases (P5). These were the kind of behind the scenes activities that maintained the Department's policy position and ensured that other public servants and ministers were aware of what they were doing.

However, as discussed earlier in chapters six and eight a number of interviewees felt that the Department of Juvenile Justice became less proactive in pursuing progressive policy agendas after the retirement of Ken Buttram as Director General. P17 also considered that the capacity of the Department to engage in proactive policy work was also constrained in the late 1990s and early 2000s when the department became extremely busy handling the implementation of the YOA. In addition, a major Ombudsman's Office Report on Detention Centres was published in 1999. This carried major implications for the administration of centres and the department had to divert significant resources to addressing these recommendations (P17). P17 also felt that there were new policy problems for DJJ to deal with in the

late 1990s such as the increase in the number of young women being placed in custody for violent offences. As P17 explains, *'I remember opening the young women's centre and when it opened 20-25% of the young women were there for murder or manslaughter, it blew our minds thinking about how to manage that group'* (P17). By 2003, the 2002 amendments to the bail legislation were also beginning to take hold and the number of young people being placed on remand in custody began to increase. According to P17 all these pressures led to the DJJ turning inwards and *'people were less able to do some of that broader work, when they were still so consumed with implementing reform and spending big budgets, building new detention centres creating new programs'* (P17).

According to other interviewees who had worked for Juvenile Justice such as P3 and P5, there were also other organisational and administrative issues that affected the capacity of the department to engage proactively in policy development. Some of this they argued stemmed from the range of responsibilities of the department and the different backgrounds and roles of staff employed. There was also the tyranny of distance presented by managing a huge geographical area with a small client group, who were placed into detention centres a long way from home. Both P5 and P3 outlined how tensions often emerged between employees who were working in detention centres and the rest of the staff, and also between the Sydney central office and the regional offices. P5 suggested that some of the division between departmental staff *'was partly a professional skilled/ unskilled divide, in that juvenile justice offices were 3-4 year out qualified social workers or psychologists, whereas the staff in centres were unskilled'* (P5). They were divisions that proved to have the potential to disrupt support for policy agendas and for the implementation of policies on the ground.

9.6.3 The administration of detention centres

The management, administration and staffing of detention centres had provided a major headache for the department over a number of years. The *Kids In Justice Report* had identified in 1990 that the casualization of juvenile justice workers in detention centres and the failure to provide adequate training and education had affected the capacity of centres to implement rehabilitative programs and to support detainees. Throughout the 1990s there were a number of inquiries into detention

centres (for an overview see NSW Legislative Council 2005), but the problem had not been resolved. For example custodial juvenile detention centre workers, despite having been identified as critical staff in the administration of juvenile justice, were still being appointed on a casual basis by the late 1990s and according the rules of the public service were not eligible to attend training courses (see NSW Ombudsman's Office 1999).

As the following discussion of Kariong Detention Centre shows, the differences between head office staff and the actions of detention centre staff through their union the Public Service Association became critical in the decision to transfer the management of Kariong to Corrective Services in 2004 (*see Appendix*

7 for a detailed overview of Kariong's history).

The NSW Ombudsman's Office had identified Kariong in 1996 as an institution that needed urgent attention, due to the high number of casualised staff, the poor condition of its facilities and the lack of good management practices (NSW Legislative Council 2005, p.12).

As P5 explained *'the kids who went to Kariong were the toughest kids, there was no doubt about that and they were often older and physically big kids and often aggressive, so the staff at Kariong tended to be like that too – big beefy guys'*. P5 felt that some of the push to get tougher on the detainees in Kariong stemmed from the staff's desire to be more like prison guards rather than youth workers, as she explained:

...they were wanting to be paid danger money, they wanted to wear uniforms, one of them got blue shirts and pants things like that were happening. In the end they overplayed their hand because the government said "fine these kids are so tough we better transfer this Centre to Corrective Services"....I don't know that the change was caused by the staff but I think there was a wave happening and they jumped on the wave (P5).

The centre had received a lot of publicity from the media due to the imprisonment of some high profile detainees there, from reporting on a number of disturbances and from information leaked by detention centre staff to the media alleging that inmates were living in 'motel' like conditions (see chapter eight). The bad publicity proved too much for Cabinet, the Minister and the Director General, and in 2004 the

Juvenile Justice Legislative Amendment Act was passed, which transferred the management and administration of Kariong from Juvenile Justice to Adult Corrective Services. In this process Kariong became a kind of hybrid institution and was renamed a juvenile correctional centre. Yet despite the significance of this policy decision, it was taken without consultation with either the JJAC or the AJAC, and was introduced without notification to staff, many of whom lost their jobs as a consequence (New South Wales Legislative Council 2005).

A number of submissions to a subsequent parliamentary Select Committee Inquiry Report suggested that the decision was prompted by expediency and was not based on sound principles (New South Wales Legislative Council 2005). Submissions to the Select Committee Inquiry and the Select Committee Report itself documented how the legislative amendments, as well the Memorandum of Understanding between Department of Juvenile Justice and the Department of Corrective Services, in fact contravened numerous international human rights provisions including the ICCPR, the CROC, the Beijing Rules (1985) and the Riyadh Guidelines (1990), as well as the Australasian Juvenile Justice Administrators Standards for Juvenile Custodial Facilities 1999 (NSW Legislative Council 2005). They also provided a stark contrast to the overall philosophical direction of juvenile justice policy, which had emphasised young people's individual needs and levels of maturity, and were based on diversion, restorative justice, rehabilitation and reintegration. The AJAC and the JJAC also criticised the decision on the basis that the action would also worsen the situation facing young Aboriginal men in custody, propelling them into a detrimental adult correctional environment which increased potential recidivism rates rather than guiding detainees into reintegration and rehabilitation (NSW Legislative Council 2005).

9.7 The police – gatekeepers and lobbyists

There is a substantial literature on the role that police culture, police administration and management, and police discretion play in the implementation of criminal justice and juvenile justice policies and I don't intend to reproduce these here (see for example Brown & Heidensohn 2000; Chan 1997; Cunneen & White 2011; Dixon 1997; Finnane 1987; McLaughlin 2006; Sandor 1993; Reiner 2000, 2010). Historically the Police Commissioner has had a close working relationship with the

Minister for Police (Finnane 1987). The Police Commissioner, his senior officers and the Police Association in New South Wales have been and continue to be, significant and influential policy actors in law and policy reform.

For participants in this research study, the police were seen to be critical players in the ways in which policy decisions were made and outcomes implemented. However, a number of interview participants were of the opinion that the culture and values of police actually hampered the implementation of diversionary principles, especially in conferencing. For example, P10 felt that the police organisation as a whole could not see the value of diversion and conferencing for juvenile offenders: *'conferencing was seen 'as a soft option' (P10)*. And, further P10 found from her experience that the majority of police held the view that the way to deal with juvenile offenders was *'to arrest them and put them before the court' (P10)* rather than pursue other options. Indeed, P10 felt that the police approach on many issues was *'to arrest their way out of a problem' (P10)*. P9, another children's solicitor made a similar point about the policing of bail conditions: *'the police policy of enforcing bail conditions and arrest without the use of discretion, is different from the way it used to be. The police undermine whatever Juvenile Justice is trying to do and whatever the YOA is trying to do' (P9)*.

The police position on bail was considered to be highly influential. P10 thought that the strength of the policy as a lobby group limited the chance of other views being taken into consideration. As P10 explained:

stuff like bail, you know things where the police are heavily invested in it as well, it is more difficult to make changes because the agenda is completely out of our hands, and goes beyond any rhyme or reason (P10).

P10 considered that organisational changes and personnel changes since the finalisation of the YOA had meant that the original cooperation between the police and Juvenile Justice had disintegrated, as she explained:

when the YOA was enacted the police were on board. When Jenny Bagen was involved, massive resources were invested in training and resourcing the police to do it, and then that kind of thing fell away, So we have got great legislation still but it's not being properly utilised partly because the police are not on board with it (P10).

From P12's point of view the architects of the YOA had tried to ensure that the police were on board with the legislation by ensuring that the diversionary reforms of the YOA warnings, cautions and conferencing were embedded in statute placing an obligation on law enforcement officers to enact it. However, P12 felt that the police had lost their understanding of the legislation, and moreover had become arrogant and *'insolent, they think they know it all and in point of fact they don't'* (P12). P12 also considered that the change in senior police personnel had also had an impact on their willingness to implement the diversionary aspects of the YOA, since in a hierarchical authoritarian structure *'if you don't have commitment from the top then there's no commitment there'* (P12).

Another interview believed that it was the role that policing played in society and the public perception of that role that lay at the foundation of their lobbying power, As P1 told me: *'I think the police lobby is very powerful and I can't see that changing. It's got moral and resource authority, ...the police have a "we keep you safe" moral authority'* (P1).⁷³ P14 agreed:

the police are able to sell themselves to the public as their protectors, and so any threats to the police become indirectly threats to the public.. they are able to show the public that if they don't get the support they need then the public is not going to get the support it needs from them (P14).

The *Police Association*, in effect the police trade union, was also identified as a particularly influential lobby group. P17 stated *'I think they were, and always have been and they continue to be, very important players'* (P17). P14 also saw *Police Association* in the same light, as she stated: *'they have over 16,000 or whatever the number is, voters in the police force, and each one of these has his or her own little sphere of influence, as well with other voters and so the government does not like to get the Police Association as a representative body offside'* (P14). P14 also felt that the moral authority of the police and their role as primary definers of crime news, coupled with their heavily resourced media management unit meant that the media relied heavily on the *Police Association* for commentary or as a source for stories. This in turn equipped them with *'a very easy line to the media'* (P14).

⁷³ Recently, Jackson, Bradford, Hough & Murray (2013) examine the role of moral authority in relation to police legitimacy in very similar terms.

The other significant factor that contributed to the capacity of the police to influence policy was identified by P14. She argued that, the changing nature the role of Police Commissioner meant that they had become *'much more of a sort of CEO for the police force, rather than a personal representative or old-fashioned leader of the police officers themselves'* had changed their relationship with the Police Minister. Subsequently the two had developed *'more of business relationship and an administrative relationship'* (P14) and together formed a stronger lobbying team (see also McGovern 2005). The Hon. Michael Costa, who was the Police Minister from 2001 till 2003, was seen by P14 to be a particularly *'bullish'* and interventionist in his support of the police, as well as being very calculating in how he could secure resources for them. P17 also considered that this particular Police Minister was probably responsible for feeding the media stories about crime in an attempt to win support for an increase in police numbers, an expansion of police powers, as well as engaging in a concerted push for harsher penalties.

P9 considered that the police had become a more powerful political presence from the time the Labor government was elected in 1995. She made the point that as soon as law and order became an election issue governments and the electorate symbolically handed over power to the police. As she stated, *'I reckon we gave the police that power all those years ago'* and *'made the police more significant in the political and.... more powerful in that context and in the conversation'* (P9). In turn, P9 believed governments become more and more concerned about whether police agreed with their policy positions (P9).

P8 also believed that the pressure to give in to police demands had grown more pressing as the Labor governments continued. In her experience, ministerial policy advisors began to stave off media and powerful police criticism by forestalling it and pre-empting their demands. This she argued sometimes involved offering policy reform or resource commitments, as part of a bargaining process, agreeing to demands in order to secure support. P8 provided the following example, where at the beginning of one election campaign a policy advisor returned to the department after a meeting with the police, saying:

Oh my god, we just had a meeting with the police and we asked what other powers and weapons they needed and they said 'Nothing' and I'm so ashamed because we've given them everything they ever wanted, and that's police (P8).

The police were seen to operate as a fairly separate, insular organisation and, from P12's substantial policing experience, she argued that *'the police are poor at interacting with other agencies, they're very poor at consultation'* (P12). This was particularly so when it came to working with youth advocacy groups. Consequently, it was seen by interviewees that the police were often not ready to take on board different policy perspectives. In recognition of this, P7, who had been heavily involved in the development of the YOA and conferencing in particular, considered that it was absolutely important for youth advocates and other community organisations to develop working relationships with the police on policy issues to try and influence their views. As she argued:

you stand outside that circle and keep battering them, you are never going to get anywhere. That you have to be in there working with them, having the robust debates and coming to an agreement that you can both live with, yep it is absolutely critical. You can't change the way police, police young people without working with them (P7).

The police were seen to be highly influential policy actors in juvenile justice decision-making, not only from the impact of their interpretation and use of their legal powers to intervene in the lives young people, but also from the moral authority ascribed to them in setting policy agendas and their direct influence on the actions of Police Ministers. In the development of the YOA there was an attempt to regulate the use of discretion and limit their influence by embedding referrals to diversionary schemes in legislation, but as can be seen in the next section it was also believed that education and training could work to change police culture and attitudes to young people.

9.8 Investing in training and education to influence outcomes

The success of youth justice conferencing as a policy option and of the new police referral process was seen by those interviewees involved in establishing provisions of the YOA to be dependant on developing cooperation between police and conferencing staff. Investment in training and education was seen to be a key to the implementation of policy reforms and legislative initiatives. As P3 commented *'you have to get the police... you've got to get everybody headed in the same direction'* (P3). P12 and P7 provided details on the lengths to which the newly established

Conferencing Directorate in cooperation with selected police representatives went in developing specialised training.

P12 recounted how important it had been to design a curriculum that catered for all officers, in order to bring them on board with legislation. She felt training had to engage in particular with those police whose attitudes towards young people may be hardened and ingrained. These officers were described by P12 as '*POPOs*' that is, '*the passed over and pissed off*' (P12). P7 also emphasised how the training package was seen to be '*absolutely crucial for the effective operation of the legislation especially for ensuring that the police, and youth liaison officers in particular, clearly understood their role and were equipped to work with juvenile justice conferencing convenors*' (P7). P7 explained how the initiative for the YOA training came from two experienced rural workers, one a juvenile justice convenor and the other a police officer, who together, had backing from senior staff. The training and education package was seen to be quite provocative as it challenged police attitudes to young people. Its aim was to make the police '*think differently about how they would respond to young people and it was crucial in bringing on board the more cynical of the police (P7)*'. From her experience P7 found that it was incredibly successful: '*in my view [it] was one of the best sets of adult-based learning, that took police with them, you know it was absolutely hands on stuff*' and further: '*the beauty about that training was that it was collaboratively delivered by a conference administrator and the YLO with support from police academy trainers and with support from us and it was done at the local level (P7)*'.

Another aim of the training according to P7 was to try and challenge police attitudes to indigenous young people and their communities, and to combat institutional racism. In doing this it was hoped that referrals to conference would be equally used for indigenous and non-indigenous young people. In addition, there was a need to improve police/community relations, since conferencing depended on cooperation between police, community representatives and victims of crime. However, as P7 explained, the good intentions behind the legislation were almost scuppered at the very beginning. The first training session was held at Goulburn Police academy, and a group of indigenous and non-indigenous Conference Directorate staff arrived at the grounds. P7 was with the group and her words describe the initial difficulties:

I had two or three Aboriginal people appointed at that time and that was really hard for them. To go into one of those dens as they were, and there wasn't complete support at the academies so some of the less sympathetic coppers that were there. The coppers had put up a poster that faced the path that you had to go down to for accommodation, it was a cop standing there with a gun, it was just awful.' And, as P7 continued, the symbolism of the poster was almost too much, 'one senior experienced Indigenous conferencing staff member, said, "I'm going home because I can't bear being here, it's just too hard". To her credit she stayed' (P7).

The legacy of colonial policing still had the capacity to endanger cooperative working between police and indigenous conferencing staff, and although P7 was able to point to some solid working relationships between police and indigenous conference convenors in regional New South Wales. However, P7 described how hard the police made it for indigenous conference convenors to do their job in many areas.

9.9 Courts/Judicial officers

It is interesting that throughout my discussions with interviewees the influence of judicial officers or the courts on policy was hardly mentioned. This may be the result of me not asking more direct questions but considering how important magistrates are in the day to day implementation of juvenile justice policy it was an interesting absence. One interviewee who had been a magistrate did express the opinion that magistrates had a duty to become engaged in policy discussions and on the wider issues that affected the court, but that many were reluctant to do so *'because they felt it was outside of their remit and that their role was to interpret the law not comment on it'* (P2). However, P5 a public servant, who had also worked as a solicitor considered that magistrates were very much concerned with young people's interests and were frustrated by the lack of options open to them in relation to sentencing and other legal avenues available for assisting young people who appeared in their courts.

I asked one interviewee who was currently working as a magistrate what the capacity of children's magistrates might be to influence policy. She told me in terms of decisions that judicial officers had a fair amount of discretion *'to apply the law in the best way you can'* (P11). However as P11 stated the role of the magistrate in the court is to *'apply the law, not to change it'* (P11). On the other hand, she

considered that if a magistrate thought there was a pattern of cases, or issues coming through the court, then it would be brought to the attention of the Chief Magistrate who would then pass it on to the relevant government department or Minister.

9.10. Networking and lobbying: the world of non-government organisations

‘The fabrication of coalitions is at the very heart of democratic politics’
(French 2012, p. 537).

There are a number of non-government organisations that were seen to be important actors in the juvenile justice policy process from 1990 – 2005. These included, the NSW Youth Justice Coalition, Marrickville Community Legal Centre, the Combined Community Legal Centres Group, New South Wales Council of Social Services, Shopfront Legal Centre, the Youth Action Policy Association, the Youth Accommodation Association, the Law Society and the Bar Association.

The participants in this project who were former or continuing members of non-government organisations, were experienced and skilled policy actors, and provided important insights on the ways in which non-government policy players worked to maximise their impact on the policy process. As they stated, non-government organisations needed to employ a range of tactics and to develop solid relationships with those inside government in order to influence decisions. According to P6:

...you need a suite of people, strategies and methods through media, delegations, submissions, evidence, research, people going to see local MPs, going to the 7:30 Report. Lots of levers to pull, whether it was a backbench MP, ALP meetings, getting invited to talk about youth justice...using whatever method you could’ (P6).

P6 also argued that, non-government organisations also needed to focus on broad advocacy strategies including systemic reform, test case litigation and broader policy and reform work ‘*all of which should be grounded in people’s lived experiences’ (P6).*

The day to day work of non-government organisations in trying to influence policy involves writing submissions to inquiries and legislative reviews, taking part in consultations by bodies such as Law Reform Commissions, acting as

representatives on key government consultative committees, engaging in media work, and active lobbying and networking. P9 recounted how individual lawyers could gain representative status on committees of professional organisations like the NSW Law Society, Juvenile Justice Committee, or Criminal Law Sub Committee, all of which had a long established consultative government role, and in this way have a say on law reform. Having good organisational working relationships and good reputations with governments meant that, according to P10, *'when governments instigated working parties on law reform, organisations like the Law Society or the Youth Justice Coalition were invited to participate'* (P10).

Establishing and maintaining communication and good working relationships with individual politicians from both government and opposition and with senior public servants, were also seen to be vital tools for non-government organisations to employ if they wanted to have any impact on the policy process. As P1 stated: *'The Premier may well be influential but if you have a relationship with the Premier you will be influential too'* (P1). P7 also explained how, despite the quality of the work of the KIJ report, it was the active engagement in lobbying and networking that opened up policy windows: *'we spoke not just to the government side but the opposition, cross benches and so on'* (P7). And, as P6 stated: *'Whether you've got to bash to get the door open, you need to be able to walk in and have a dialogue with people who make the decisions'* (P6). P7 also observed that strategic political networking and lobbying were essential means to influencing decisions:

I've learnt you've got to go to a wide range of people and to also be strategic about which types of politicians are chosen and so on. My time on the Advisory Council I think was really um, a very steep learning curve but one that I learnt a lot and made strategic links (at the time) with very key players. (P7).

P6 described how she had used the contacts made in a previous position for her work with the Youth Justice Coalition. As P6 explained:

I was a baby policy officer in government going to meetings with Director Generals, ministers and ministers' advisors. So I'd got a bit of a quick induction on what it take to convince ministers, to convince director generals and make change inside government ... I had some knowledge of what it takes to make change and still had some connections in government' (P6).

Another interviewee P9, who had worked in the community sector for a long time made an interesting observation on the role of political advisors. She described how the nature of lobbying politicians had changed so that, instead of meeting face to face with politicians, non-government organisations had to deal with political advisors instead and in this process the capacity to have *'direct personal influence'* on politicians was reduced (P9).

One interviewee, who was seen to be a skilled advocate by many other interviewees, was clear that non-government organisations needed to operate on a range of levels in order to influence policy. Forming alliances in the policy community and maintaining networks were seen to be essential strategies for enhancing the capacity of members of policy communities to influence decisions. As P7 told me *'The way a group works together may well determine policy outcomesBy the time [the YOA] went through there was a lot of solid support, key people in government and non-government organisations were critical (P7)*. The strength of the coalition of interests lying behind the success of the YOA was also noted by P6: *'there was a genuine coalition of interests and collaborators and people logically and philosophically, holding strong values informed by what was right and decent and articulated in the conventions (P6)*. Building alliances with other members of a policy community and working cooperatively was especially important for individuals or small organisations. P10 said of her own workplace: *'we are so small and by ourselves are not so influential'* (P10).

Participants were very conscious that with limited resources non-government organisations needed to work strategically, choosing campaigns carefully, allocating resources wisely and in turn being creative in lobbying work. P10, for instance, considered that it was better to concentrate on issues that were out of the public eye and not part of a law and order agenda. It was in this behind the scenes work on policy options where P10 felt that community organisations could have more influence. As she stated:

I think we may not have influence on the over-arching policy, but maybe once they have a policy idea and they want to implement it, I think we can have a lot of influence on actually how it is implemented and how it works on the ground because we have that practical experience (P10).

P10 used a long-term coordinated campaign on fines as an example of this kind of policy success. As she explained: *'sometimes in relation to issues like people and fines we try and be a bit more pro-active we will try and drive the agenda and campaign on that to achieve change'* (P10). These campaigns she pointed out were generally done in coalition with others in the policy community. For example, the fines campaign was a joint project between the YJC, the NSW Coalition of Community Legal Centres, the Homeless Person's Legal Service and the Public Interest Advocacy Service. The campaign focused on the work of the State Debt Recovery Service and worked with the Attorney General's Legal and Policy Unit to lobby for change. The community groups came up with new ideas on policy options, which were finally accepted and implemented. As P10 observed: *'I think because fines aren't a sexy issue and a lot of change goes on behind the scenes, it isn't in the headlines and I think that's why were quite successful on that'* (P10). This kind of busy backroom work paid off when consultative opportunities on legislation arose. According to P9, if there was a request by governments for submissions on a policy matter *'there's incredible networking, collecting of views and refining perspectives happening prior to the date that a submission paper is due in'* (P9).

Non-government organisations had to be prepared to work on issues for a long time. For example, As P10 explained, the changes to the fines legislation and administrative procedures were incremental: *'there had been gradual changes over the years'* and *'I think it was the evidence and it was the people in it for the long haul and continued to knock on the door'* (P10). On occasions a policy success had to be counted as maintaining the status quo. P7 argued that when governments are engaged in law and order style campaigns *'...it is often impossible to get anything progressive through'* (P7). In these circumstances P7 observed *'lobby groups and youth advocacy groups are quite vocal but understand that during this period not much is going to change'*. At such times she advised, non-government organisations need to adopt different tactics, for example *'you do what [the Convenor of the Youth Justice Coalition] is doing and be quite strategic in getting onto government committees so that you can sort of try to hold the line in that way'* (P7).

Advocates needed to be ready to be creative in campaigning on policy issues. As P7 explained, it was no use saying the same thing over and over - at times it was important to come at an issue from another direction: *'sometimes it's best not to say anything when you've already said it. You can only say it so many times S. 22A [of the Bail Act] doesn't work for young people for example, if that's not being listened to, then look at ways to come in from the side'* (P7).

P10 also emphasised how it simply did not matter sometimes what non-government actors did or said, she remarked: *'Generally if the government is hell bent on introducing something our view will be irrelevant'* (P10).

During our conversation, I asked P16 as a politician and former minister, how she thought non-government organisations could optimise their influence on the policy process. P16 suggested that they needed to be more strategic and knowledgeable about the business of politics, when decisions are taken, and the need to develop strong relationships with politicians (both government and opposition), political staffers and senior bureaucrats. For example P16 said *'I can remember there would be times when groups would come down and see me, knowing the budget was about to come down, and they'd say, "we need funding for this", and you would be like, "No we made those decisions six months ago"'*(P16). She also pointed out that junior ministers were more able to go and out visit organisations and services than those ministers in charge of larger portfolios. Therefore, smaller organisations and agencies should invite junior ministers in to see how they worked. She explained it was great for ministers and parliamentary secretaries to go and see what is happening in the community on invitation, *'especially if it wasn't attached to the organisation requesting further funding'* (P16).

The information from these experienced policy actors provides important insights on the ways in which non-government organisations can operate to maximise their impact on the policy process both in the short term and the long term. By constant networking, sitting on the right committees it was possible to maintain a voice in the development of proposals, as well as working steadily on policy issues that were important to clients these were seen to be the bread and butter of policy work.

9.11 Discussion

This chapter has offered insights into the ways that the very business of politics and policy, and resources available to policy actors and organisations can shape the setting of policy agendas and policy outcomes, and the capacity to engage in policy and deliver services.

The data has revealed how the balance of political party representation has a significant impact on the success or otherwise of the passage of legislation and policy through the house. It has also documented, how the patterns of the electoral cycle, can determine governments' willingness or otherwise to push for particular kinds of policy reforms. The stages in the electoral cycle also provide varying opportunities for interest groups to maximise their impact on the direction and content of policy. The chapter also highlighted how the length of the term of office of governments can also offer some level of prediction for when governments may open to creative policy propositions or will hold tightly on to the status quo. As Tiernan and Weller argue 'when a government is in decline, when defeat is anticipated then the routines of government can be overtaken by the paralysis of political fear. Cabinet talks more about political conditions than forward plans or detailed proposals' (Tiernan and Weller 2010, p.298).

The chapter has also shown how important managerial and administrative decisions, procedures and practices are to the development and delivery of juvenile justice policies. From the decisions of where to place the department with responsibility for juvenile justice in the governance structure, to the uniforms of staff, the day-to-day administration of juvenile justice is redolent with important moments that shape policy outcomes and discourse.

Data from interviewees has demonstrated how organisational culture, such as that of the police can not only have a major impact on the implementation of new policies, but also affects their capacity to engage in policies that rely cooperation and consultation with external organisations in a policy system.

The chapter has demonstrated how there is disparity in the capacity of organisations to influence decision-making at different points in the policy process. The police have an established authority and privileged status as a lobby group. Whereas non-

government organisations in a policy community have to work hard at maximising their chances of influencing policy decisions, they are not by default in the policy decision-making loop. It is only through constant networking, lobbying and advocacy and by maintaining contact across the policy community that they can maintain a policy presence.

There are delegations of power and authority in governments and institutions, predictable patterns and ordered events that mark stages in the policy process. The day-to-day business of government, politics and policy provide elements of the negotiated order out of which decisions emerge. But they are not mechanical outcomes; the particular configuration of the coming together of routines, institutions, rules, administration and many other factors can trip a flow of currents in decision-making. However, as the next chapter will explore it is in the end people who make decisions. It is individuals, groups and communities with their emotions, skills, experiences and aspirations, in a range of settings who say ‘yes’ or ‘no’ or ‘maybe’ at different points in the policy process.

Chapter 10. Individuals, emotions and relationships

10.1 Introduction

Throughout this thesis it has been argued that there are a number of streams of influence in policy decision-making and that the dynamic relationships between these work to shape policy decisions. Previous chapters have revealed how politicians and other policy actors respond to the media's expression of outrage and emotion about juvenile crime by making instant policy responses through symbolic statements, or quick legislative reaction. Although this is often dismissed in a way as a strategy of pragmatic political enterprise, Freiberg and Carson (2010) argue that policy makers need to be sensitive to the affective and emotional consequences of decisions in order to ensure that policy decisions are based in the real world of those people who will come into contact with them, otherwise policies become in danger of losing touch with reality (p.160). This chapter shifts the focus of the discussion of emotions and subjectivity away from the public sphere to the qualities and personalities of the individuals who inhabit decision-making.

The chapter has emerged out of unanticipated findings from the data. The work of Kingdon (2003) highlights the role of policy entrepreneurs in the policy process so my interview schedule had included questions that asked interviewees to identify key policy entrepreneurs, as well as evaluating their own contribution to the policy field. But what I had not expected (maybe naively so) was how important were the individual personalities and the relationships between people to interviewees' recollections of the policy process (see Croucher 2007, 2011 on the role of personalities and individuals in law reform).

The chapter begins with a quick reprise of what the literature says on the role of individuals in the policy process, but then moves on to exploring the role of key individuals in the policy process.

10.2 Subjectivity and decision-making

As Chan (2005) suggests, rational accounts of the policy process often consider that the use of professional discretion or interpretation of policy are a bar to successful policy decision-making rather than seeing these an everyday part of the policy process (p.25). As Howlett and Ramesh (2003) argue, 'individuals are accorded enough discretion for their individual backgrounds, knowledge and predilections to affect the decisions that they make' (p.164). Individuals also engage in decision-making in different sites, which is seen to shape the tenor and culture of the decision process as well as the types of decisions taken. So, from decisions in Cabinet to working with clients in the youth centre, policy actors utilize what Sanderson (2003) calls 'cognitive heuristics' to engage with a range of policy settings (p.341).

As individuals take part in decisions they are engaged in a subjective enterprise, as Freiberg and Carson (2010) argue:

Practitioners, users and other stakeholders (who are not without their own emotional and value positions) become part of an iterative process within which their knowledge, feelings, needs and perspectives, while not granted unqualified primacy or privilege are nonetheless integrated into the analysis of problems, the analysis of evidence and formulation of relevant policies (p.161).

Colebatch (2006) also argues that people bring to decision-making their own histories as well as knowledge of what has gone before in the policy field and together these shape their outlook on an issue. The iterative nature of the policy process is also recognised in the fact that it is often the dynamic interactive mix of people in different settings, not just individuals that affects the outcome of a policy decision. According to Colebatch (2006) decisions will often be the result of 'many, not all reading from the same script' (p.1). As Keen (2006) also points out, the range of people involved in decision-making in the community sector also has an impact on policy outcomes. She states, 'just as there is a constant turnover of ministerial advisers and government functionaries, the replacement of a CEO in a peak body or a merger of two community organisations can alter the policy thrust or advocacy style' (p.48).

10.3 Limits on decision-making

It is recognised throughout this chapter that decisions are in principle guided by practice directions, regulations, legislation, confidentiality agreements, professional codes of conduct and other organisational aims and objectives. For example, employees of the NSW Public Service are bound by a range of legislative provisions and policies that govern professional and ethical conduct, such as those outlined in the *Public Sector Employment and Management Act 2002*.⁷⁴ In principle, the culture of the public service sometimes described as the ‘public service ethos’ guides decision-making. As P4 a senior staff member for parliamentary committees explains:

‘we work for the parliament itself. We are public servants. So we don’t work for the committee, we don’t work for any members of the committee, either. We work for the parliament....our role as public servants, like it is in the rest of the public sector, is to provide impartial advice, research analysis, developing recommendations, options’ (P4).

Palmer’s (2008) research also reveals how public servants value reason, common sense, ethical values, convictions, commitment, morality and conscience over emotions in the decision-making process. Although, on occasions those interviewed felt that they saw emotion ‘adding strength to their convictions’ (pp. 314/315). Palmer found that his interviewees considered how important guidelines and recommendations, aims and objectives helped to contain unwanted emotional responses (Palmer 2008, p.315). And, according to Palmer the only time when emotions were seen to have a major impact on policy decisions was when ‘ministers’ feelings of frustration, harassment and grievance’ at the actions of some advocacy groups ‘worked to stiffen their resolve to implement tough measures’ (2008, p.315).

10.4 Individuals

As discussed in chapter two, Kingdon (2003) argues that it is possible to identify individual policy entrepreneurs who are highly influential in driving policy agendas

⁷⁴ See also the Personnel Handbook (www.dpc.gov.au/public_employment/ethics_and_conduct) privacy and confidentiality legislation, as well as other professional and occupational codes of conduct, standards and guidelines. The current strategic priorities of the NSW Public Service Commission of integrity, trust, service and accountability (www.psc.nsw.gov) provide an indication of the kinds of values that are meant to guide and inform public service ethics and behaviour.

and in pushing policy options as well as creating opportunities for policy decisions to take place. Partly their capacity to influence decisions can come from their position of power and authority, but it can come also from their individual personality and commitment to issues, and their skills and expertise as an advocates.

10.4.1 The Premier

Success gives authority, strength, further success' (Bob Carr diary entry May 1999 cited by Clune 2005 at p. 43).

Many political and policy analysts agree that there has been a shift in recent years to a more presidential style politics in Australia (see Tiernan 2007a; Wanna & Williams 2005). In this style of politics the character of the leader of the government or of the Opposition is seen to become all important in the presentation of the government to the public but also in presidential style politics they garner more responsibility for the setting the direction of government policy (Tiernan 2007a; Wanna & Williams 2005). This focus on leadership means that the personal style and characteristics of the leader have become increasingly influential on government decision-making, on the creation and management of policy agendas and on the oversight of policy options. In NSW, of the three Premiers in power during the policy period, the Hon. Bob Carr was there for the longest - holding the position for ten years between 1995 and 2005. As an individual, he loomed large over the direction of policy agendas and decisions.

Clune's essay on the Premier Hon. Bob Carr provides us with a good profile of his character and style as a leader (2005). Chapter eight outlined the skills of the Premier in media management but Clune also describes him as being ideologically conservative, politically pragmatic, hard working, ruthless, cunning and in parliamentary debates eloquent, forceful and sarcastic (2005). Clune also argues that Carr had an authoritarian style of leadership and dominated cabinet and generally his views prevailed (Carr 2005, p.43). However, after a number of political crises where the Labor government became really unpopular with the electorate Clune writes that the Premier became much more consultative with his parliamentary colleagues and more responsive to public opinion and less reckless in his decisions (Clune 2005, p.42). Clune considers that he was extremely conservative in his approach to criminal justice policies, which led to 'a succession of measures:

increasing police powers, toughening sentencing laws and reducing judicial discretion, all of which have been heavily criticized by civil libertarians' (2005, p.52). As Clune continues, 'Carr's enthusiasm for such measures is as much a reflection of his deeply conservative views about the preservation of social order as it is vote chasing populism' (Clune 2005, p. 53). Clune illustrates Carr's position by reproducing an entry in the Premier's diary after the introduction of the *Crimes Amendment (Police and Public Safety) Act 1998 (NSW)*. The Premier noted:

I've reached the position where I much to prefer to err [by] giving police too much support. The enemy are crazy-eyed, dope-pumped, knife armed desperadoes. The rest of us have our civil liberties' (cited in Clune 2005, at p.53).

According to one interviewee who had served as a minister in the Labor government, the Premier was not inherently conservative on all issues. P16 provided the example of the Premier's actions in relation to the Drug Summit 1999 and his willingness to promote innovative harm minimisation as '*incredibly brave and no-one has done it since*' (P16). The same interviewee also argued that the decision of the Premier to announce the drop in detention centre numbers as good news and his support of diversion and conferencing as not '*the approach of someone who wanted to bang the law and order drum*' (P16).

In contrast, others thought that the Premier's position on juvenile justice policy was driven by his personal views towards young people. P10 stated: '*I don't think Bob Carr necessarily understood young people; I don't think he even liked young people*' (P10).

Clune argues that Carr was vehemently opposed to proposals to introduce a Bill of Rights because he considered that it would place legislation into the hands of the judiciary, 'where community values are turned into legal battlefields' (*Policy* 2001 vol. 17 no. 2 p. 20 cited in Clune 2005 at p.53). Interviewees who had been advocates of children and young people's rights (P1, P9, P10, P11) also expressed a similar view that the Premier's position on human rights had indeed blocked the incorporation of human rights principles into juvenile justice and other criminal justice legislation. As P1 argued Carr's stance '*meant that nobody mentioned the 'r' word in NSW*' (P1). This, she considered was in stark contrast to the situation in

Victoria where she was struck by the difference in attitude. In Victoria she found that, a senior public servant with responsibility for Juvenile Justice Centres readily talked about the incorporation of human rights in policy development and in practice *'and it was a breath of fresh air'* (P1).

Thus in this study the Premier's values and his leadership style were seen to have a major influence on the direction that juvenile justice policy took, and in particular his attitude to human rights, was believed to have had a major impact on restricting the incorporation of charter principles and standards into the State's policy and practice.

10.4.2 The Attorney General

It was not just the Premier who was seen to influence the direction of policy but also individual Attorney Generals, ministers and the way they worked together in Cabinet.

One interviewee who had worked with a number of Attorney Generals and Premiers stressed how important the role and the personality of the Attorney General was in determining the shape of policy from its formulation to its day to day practice. They were seen to be the lynchpin of justice reform. As P8 stated: *'Whoever is your Attorney General and the way they talk about things can have an effect on how things happen in courts'* (P8). P3 also considered that the individual qualities of the Attorney General played a really important role in framing legislation and other reforms.... *The personal skills and belief systems of the people who were the leaders used to have an influence, a large influence* (P3). P8 expressed the belief that Attorney Generals were likely to be less punitive towards young offenders than towards adults. As she says *'politicians for the most part, (except for [name withheld] don't like locking up kids* (P8). The exception was seen by interviewee participants to be one Attorney General who was appointed after the study period (but had been a minister in previous governments) and who was universally disliked.⁷⁵

⁷⁵ It was very interesting to see how much this particularly Attorney General was intensely disliked and blamed by interviewees for the rolling back of progressive juvenile justice reform. P9 said of him *'he didn't have an ounce of compassion in his friggin' bones'*; another interviewee who had been a senior employee in an executive position said of the same A-G *'I don't know where [name] came from, but it's not from this earth, he*

A number of Attorney Generals were identified as pro-active traditional liberal lawyers, these included the Hon. John Dowd, the Hon. Peter Collins, the Hon. John Hannaford, the Hon. Jeff Shaw and Hon. Bob Debus. Each were considered by interviewees, as P3 stated to understand *'the rights and justice agenda and were receptive to reform'* (P3). Their commitment to legal principles was seen to transcend party political and factional boundaries providing them with the resources to resist 'law and order' pushes. As P6 reminded me Liberal Party Attorney-Generals John Dowd and John Hannaford were active in the International Commission of Jurists⁷⁶ and this was seen to influence their commitment to rights, legal principles, procedures and justice. As we have seen in the previous chapter Hannaford was seen to be of the principal architects and the Young Offenders Act, essentially guiding the legislation to a point where it was ready for the following Labor government to implement (P7). According to an interviewee who had been a senior public servant at the time and who was closely involved in the development of legislation, *Hannaford was more than supportive of the general direction we'd set up...and despite his liberal principleswas respected by the right in the Liberal party* (P3).

P14 who had been a senior statutory legal officer had worked with Hon. Jeff Shaw and Hon. Bob Debus and regarded both of them as having acted professionally and ethically. She commented that they were *'consultative, willing to seek advice from senior law officials on matters of law reform in contrast to others who had been unwilling to accept advice'* (P14).

10. 4. 3. The Minister for Juvenile Justice

The minister with responsibilities for juvenile justice was, throughout the study period, a junior portfolio position. P8 argued that it was used either to test out someone at the start of their political career, or it might be used as a bit of a poisoned chalice in that *'it was given to someone they didn't like'* (P8). The juvenile

came from off another planet really ... he has no personal skills. No capacity to really communicate with real people. I don't know if he has kids but if he has they're probably from another planet too. He doesn't seem to understand the differences between young offenders and adults or the need to behave differently. He doesn't understand Australia's commitments under international instruments or seem to be interested in complying with those. Which are sort of legal requirements. Yes! Worst AG we've ever had (P7).

⁷⁶ The International Commission of Jurists is an independent human rights advocacy body involved in setting and monitoring human rights standards in the member nations of the UN

justice portfolio was, and still is, part of another ministerial portfolio such as Community Services, or the Attorney General's Department. At the times when it was incorporated into Community Services, the minister would be in charge of a wide ranging portfolio with complex and sometimes contrary roles and responsibilities, especially in relation to children's care and protection matters and juvenile justice. For ambitious politicians who wanted to make an impact but who were also cautious about how they would be seen by their Premier and by Cabinet, the department could throw up some tricky situations. As P3 a senior departmental public servant who had to work closely with a number of juvenile justice ministers pointed out despite the junior status of the portfolio: *it was the most complex department, dealing with the most complex group of people, with the most complex set of needs, and to meet those needs, you've got to take risks (P3).*

However, one particular minister, during the years of the Coalition government was described by P3 as *'risk averse'* (P3) and by another as *'giving in too easily to pressure from Cabinet in order to gain and maintain favour'* (P6). On one occasion this particular minister tried to explain to P3 why she was pursuing policies that on the whole, the Department did not want: *'Well if you think I'm right wing you should see what I have to deal with in cabinet. The number of things I've had to do in juvenile justice are not my choice, but I have to face this hostile group of people every day...One of these days you will realize the pressure that I have been under (P3).*

Another Juvenile Justice minister was seen to be much more pro-active and skilful in her dealings with Cabinet. As one former public servant from the Department of Juvenile Justice explained, *'you had a sense with [.....] she really understood what you were about and would really kind of shield the Department and try to promote what the Department was about (P5).* The same minister was identified by other interviewees as being very effective at building up support in Cabinet for the Department and being a strong advocate on behalf of the Department. In contrast, another minister who clearly didn't have these qualities was described by P5 as being *'a bit ineffectual'* and *'a bit scatty'* (P5) and rather scathingly by another interviewee as someone who *'hasn't got a f****g brain in her head. That's what she hasn't got. And she was a control freak'* (P3).

Other ministers weren't necessarily seen to be very approachable or empathic but they were valued for their tenacity and advocacy for their portfolio in Cabinet. As one children's solicitor observed, *'sometimes you get people who are not particularly warm and fuzzy, receptive and nice, but they might be a really good operator and once they are convinced of something they might be able to get it through Cabinet more easily'* (P10).

The senior communications officer interviewed for this project felt that ministers made their positions stronger and increased their political capital if they were seen to have strong media skills and were able to take the lead on juvenile justice issues being *'prepared to challenge dominant narratives about young offenders'* (P8). P8 argued further that *'Ministers needed to establish good working relationships with the media so that editors and journalists could understand the juvenile justice issues 'otherwise the only youth justice stories they do are the terrible ones'* (P8). P8 explained that effective ministers had to be proactive in relation to the press and to understand that *'...they are not your friends, you need your relationships with the media and you build relationships by actually giving them stories'* (P8). For example, *'if you're the minister who goes out and gets four hundred good news stories, he might be a junior minister and they might be smallish stories but you're filling up space with good news government stories'* (P8), a tactic which she argued would have been looked on favourably by a Premier like the Hon. Bob Carr.

For one interviewee who had been a solicitor and judicial officer, politicians' attitudes to children and young people were often the product of their personal experiences (P2). P2 felt that it would benefit politicians to see what happened in practice with children and young people's services and in the Children's Court. She stated. *...often ministers don't have any experience of their portfolio and don't take time out to see what is happening on the frontline – very few politicians go to court for example to see what is happening'* (P2). P2 had become cynical about politicians motives to act and felt that those who had empathy for the situation of children and young people were hard to find, especially as they became career obsessed.... *unfortunately few ministers do care. They just care about their pension'* (P2).

Another interviewee also felt that the capacity of politicians to advocate for children and young people in their portfolios was not simply a result of their values relating

to justice and law, but a combination of their personal qualities, personal experience as well as their capacity to empathize with the situations facing marginalized children and young people in need. As she stated: *'Good politicians were those that were able to find a balance between political acumen, professional values and personal approach having the capacity to distinguish that the needs of children are different from adults and consequently should be treated differently (P11).*

10.4.4 Cabinet

Despite the individual skills and powers of persuasion of ministers, interviewees felt that the power and authority of the Cabinet and the Premier still held sway over the most important policy decisions. Ministers needed to negotiate their way through the politics of the Cabinet and to establish rapport with other members in order to promote policies from their portfolios. This was considered to be true of both Coalition and Labor Cabinets. As French (2012) points out most political analyses of Cabinet meetings overlook the realities of how they operate and pay no attention to: ⁶

the general lack of preparation of members, their constant arriving and leaving, the shortage of time, the phone calls, the reading of and writing of messages, the fatigue and drowsiness, the effects of alcohol and food, the diversions onto the terrain of current crises and tactics...(2012, p. 538).

However, interviewees in this study provided a more realistic take on the interactions of Cabinet. One interviewee, (who had worked closely with Ministers and senior public servants) told me that from the mid to late 1990s when the political composition of the Labor Cabinet included more representatives from the left faction, such as Deputy Premier Hon. Andrew Refshauge, Hon. Jeff Shaw and Hon. Bob Debus, *'progressive reforms were more likely'* (P8). When the composition changed, P8 argued it became more difficult to sustain progressive justice stances and ministers, especially those from the Left of the party, became demoralized⁷⁷. As P8 states, from then on, it was only when individuals were *'tough and strong personalities'* that it was *'still possible to push some changes through and resist others'* (P8).

⁷⁷Clune's essay on Premier Carr (2005) outlines how by 1999 most of the major policy decisions were being made by an inner group of right faction politicians, comprising Bob Carr Michael Egan, Craig Knowles and John Della Bosca (the former ALP secretary).

In chapter six we saw how the Hon. Jeff Shaw, who was Labor Attorney General from 1995 – 2000, was regarded highly by interviewees as being personally committed to a juvenile justice strategy based on rights and diversion. However, he was seen to have had a difficult time convincing Cabinet to maintain this policy direction in criminal justice and juvenile justice. As one interviewee noted he advocated this progressive position till he resigned, *'he was 'willing to push things but always got rolled'* (P7). According to the same interviewee Hon. Jeff Shaw's successor Hon. Bob Debus faced the same obstacles in relation to the domination of Cabinet by the right wing faction of the Labor Party and eventually became reluctant to go it alone: *'I think Debus gave up on getting rolled after a while and wasn't willing'...* (P7)

Ministers with juvenile justice as part of their portfolio had to negotiate Cabinet too. This was seen to be difficult for someone in a junior portfolio. As P8 explained, junior ministers could sustain good political career prospects as long as they were ready to do battle on behalf of their portfolio. If they were strategic, building support in Cabinet, with senior ministers and nurturing good relationships with the senior departmental public servants they could achieve a lot. In P8's words:

if they're smart they can do that and still have whatever their agenda is-but you have to have the balls to go in and fight and have the support within Cabinet so you have to be good at politicking and you have to be very good at standing up to people that might shout at you. So no matter what the individual commitment of ministers is, they need good support and not be scared of a fight (P8).

P16 explained, that early on in her Ministerial career she had been mentored by a senior minister who had then helped her to negotiate Cabinet, as well as the complexities of her portfolio responsibilities. She also considered that the relatively junior nature of the portfolio actually provided her with a degree of flexibility. As she said, *'Senior ministers, the Premier, the Treasurer are caught up with bigger issues of the day so they are not watching over your shoulder looking at what you are doing which I found in other portfolios as I became more senior (P11).*

This study has found that the political composition of Cabinet plays a key role in facilitating or blocking policy development. Individual ministers with responsibilities for juvenile justice had to negotiate their way through Cabinet and

develop good relationships with the Attorney General and with the Premier in order to advance the policy objectives of their departments. As junior ministers they had to have one eye on their portfolio responsibilities, which were often complex and demanding, and the other eye on advancing their own career.

10.4.5. The relationship between the Minister for Juvenile Justice and the Director General

In the light of the responsibilities and pressures on Ministers, their relationship with the Director General of Juvenile Justice was seen to be absolutely fundamental to the success or otherwise of the development of policy agendas and proposals. As P8 explained:

...The dynamic of the relationship of the Director General and the minister has to be good because as a minister you're relying on your Director General to give you advice and to keep you out of trouble basically, and as a D-G you're relying on your minister to go in and fight the good fight in Cabinet (P8).

P16, the ex Minister for Juvenile Justice re-iterated how important it was for that relationship to succeed. As she stated:

'no matter what the initial relationship you have to find a way to build a relationship on trust and respect because you're not going to be able to achieve what you want to achieve as a minister let alone what you need to achieve as a government if you don't have that relationship (P16).

As discussed in the previous chapter, P16 thought that a good relationship primarily rested on the Minister and the Director General respecting each other's values, goals and roles.

For public servants, the personal outlook of their Minister was important to the morale and enthusiasm of the workplace. As one ex public servant explained:

If you feel you have a supportive Minister, there's a sense that certain policy directions can be pursued rather than chopped off. Whereas if you don't have a supportive minister there's a sense there's no point (P5).

Other interviewees felt that the success or otherwise of a working relationship was dependent on the personal qualities and career aspirations of each individual.

Drawing on her wealth of experience in government circles, P8 gave me insight into how the dynamics between the two individuals might work in practice.

If you have a very good working relationship which means that you respect each other, that you will listen to each other's opinions and that you will take advice from both sides, then it can work very well...Now if you have a risk averse D-G and a risk averse minister then you're not going to get any change through. With a good relationship you can ... get stuff put through that you would have never thought possible....you can actually make policy change at that level (P8).

On the other hand, if the relationship between the Director General and the minister is poor then it can hamper policy development and decision-making. P3 describes one such relationship: *'There's got to be a better way to develop policy than the way we did it ... it was affected by the personal relationships that developed, just as the good times had developed from good personal relationships' (P3).*

P3 went on to describe how this particular relationship disintegrated further and in turn how it affected the Department's capacity to make sound policy judgment. As P3 said *'we started to make those sort of tactical errors that reinforced her views, and were more making us more and more angry, and she was tapping into our anger and undermining our credibility as policymakers (P3).* At one point P3 described how the relationship had become so bad that the minister made a drunken, personal attack on a senior public servant, threatening to take juvenile justice into adult corrective services as an act of vengeance. It was seen as an unreasonable personal attack and resulted in the senior public servant applying for a transfer (P3).

On one occasion the relationship between the Director General and the minister were believed by senior department employees to have crossed professional boundaries. P3 who had a long career in the public service speculated that a deep bond had developed between them remarking *'I'm not sure how deep that relationship was, but I've got suspicions. He used to take her flowers when he went to the Minister's meetings' (P3).*

This data has revealed how important both the professional and emotional relationships between the minister and the executive public servant are, to the success or otherwise of policy formulation, agenda setting and policy

implementation. Good relationships enhance decision-making whereas poor ones can stymie policy development and disrupt the smooth operation of a department.

10.4.6 Director Generals of Juvenile Justice

Director Generals of Juvenile Justice not only provide the link to the minister but they are also responsible for setting the overall direction of policy and, according to P5, determined the ‘*way Juvenile Justice was run on a day to day basis*’ (P5). In this sense, the individuals who inhabit it bring the power and authority of the role of Director General to life. The strategic expertise of the Director General was seen to be absolutely vital in negotiating policy decisions. As P8 explained:

the skills of the Director General play an important part in the success of policy reforms some may simply act in accordance with the demands of the minister, others maybe very politically experienced and be strategic in their advice as well as securing resources and support for their department (P8).

The career history of the Director General was seen by interviewees to affect their outlook on policy priorities, as well as their style of management. For example, one Director General from an education background was seen by P5 to be absolutely committed to the welfare of young people and to rehabilitation and diversion as principles of juvenile justice. Whereas, in contrast another departmental head was seen by P5 to have a completely different set of values, as she stated:

...she'd come from another department and she was the director of corporate services and a very good director of corporate services but wouldn't know a juvenile offender if he/she popped up in her corn flakes. She wouldn't have been interested in a review of the Children Detention Centres Act unless it was going to save us money or something (P5).

Another Director General had a personal interest in young people's issues, according to P5, *....[name] was much more interested in the big picture as she'd worked for DOCS, police and health and those agencies around young offenders (P5)*. Yet another Director General who had been a political advisor and according to P5, was ‘*individually politically connected and pragmatic, hardnosed, skilled and competent*’ (P5). One senior public servant was reported to have found the personal characteristics of a particular Director General problematic as P3 explained, – ‘*he was a solicitor who understood nothing about f*****g kids. He was a womaniser, a bad administrator*’ and, according to P3, set departmental policy back years.

Other Director Generals came in for criticism by interview participants mainly because their individual values and aims clashed with the legislative and policy directions of the Department, and in some cases seemed to display a misunderstanding of the field. P5 thought that one Director General had a fixed but mistaken view that the Department should only be responsible for under 18 year olds, and in consequence maintained a fairly hard line on the transfer of 18 year olds to adult detention. P5 also saw that this objective was driven by this particular Director General's concern to maintain good financial management. In the light of this, the transfer of detainees to adult correction was one area where the Department could save money. As P5 pointed out, this policy decision was taken in response to the impact of the bail reforms and the *'pressure on detention centre occupancy rates as more young people were placed on remand and detention centres became overcrowded'* (P5). P5 outlined that the perceived costs of the rising number of detainees led the Director General to announce the transfer of 18 year olds to jail and the transfer of Kariang Juvenile Justice Centre into the management of Corrective Services, despite opposition from those within the Department and external criticism from youth advocates⁷⁸ (see previous discussion in chapter nine). As P5 explained, despite the fact that the CROC and the Committee on the Rights of the Child demands that children should remain in the juvenile justice system if they commit an offence under the age of eighteen, the Director General ignored this and determined that as soon as they turned eighteen, it was expedient for the Department to transfer them to adult gaols.

The Director Generals played a crucial role in setting the policy direction for the Department and for promoting juvenile justice policy across government. As the years passed after the introduction of the YOA interviewees felt that a commitment to principles of justice underpinning the legislation began to diminish and, as P7 argued, *'there are critical people along the way, ... who have contributed to the current state of chaos and increasing number of young people in custody'* (P7).

P3 argued that some of the problems in the way that the integrity of juvenile justice policy was compromised were due to the lack of commitment and passion of senior executives to the fundamental philosophy and principles of juvenile justice. P3

⁷⁸ This was a decision that was later challenged in the Supreme Court and was overturned.

believed that the hallmark of good leadership was dedication and expertise in a chosen field. As P3 explained:

I hate to say this but I think that passion is an important thing. And passion and knowledge combined gives you a credibility, and people listen to what you've got to say.....If that designated leader is a good person, then people will accept responsibility, and they'll have to give less leadership in the end. That was my whole philosophy (P3).

Without that passion, P3 felt that executive public servants were too malleable and would simply accept the views of the Minister, or of Cabinet no matter what. As P3 continued:

I've developed a belief that it's not right that a good manager will be a good manager of everything. I'm one of those old-fashioned persons who believes that unless you've got a real interest in the client group of the department that you're working for, and you've got some sort of passion for them, you will not be able to do a good job. You will just go whichever bloody way the government wants you to go. If you're passionate, and people know that you can't be pushed around, that is the key (P3).

In chapter seven it was argued that, that since the introduction of the SES Executive level in the NSW Public Service, this kind of passion and commitment to policy areas had faded. Instead, departmental heads were seen to have become more self-centred careerists. As P7 explains: *'I think there are some exceptions, people that do have the public service ethos you know the old public 'we are here to serve the people ' but increasingly in NSW we've got people who really are there for themselves' (P7).*

10.4.7 Senior public servants

Interviewees felt that it was not just the executive officers of the Juvenile Justice Department that shaped policy decisions, but also other skilled and experienced public servants with responsibilities in related areas. They played an important role in formulating policy agendas, developing policy options, interpreting legislation and policy, and making change happen.

According to Howlett and Ramesh (2003) state 'bureaucrats are very often the keystone in the policy process and the central figures in many policy subsystems' (p.68). And, effective senior public servants can be seen to share the same kind of

characteristics as Kingdon's (2003) individual entrepreneurs (see chapter two), they are strategic and seize opportunities to advance policy options through opening policy windows. (P3).

One particular senior public servant in the Attorney General's Department was considered to be a strategic and skilled policy entrepreneur. He was identified as being a driving administrative force behind the YOA and as someone who had guided the legislation through to enactment in a smooth and efficient manner. As P7 recounted: *'What he wanted to do, and what his intentions were, was to get the legislation through on the diversion of young people and make sure it was as tight as it possibly could be'* (P7). P7 outlined the skills of this particular public servant in detail. He was described as being *'a very astute public servant'* (P7). He was described as being strategic, skilled at foreshadowing the key points in the policy process and anticipating how they might play out and, from experience, working through what needed to be done and when. As P7 continued:

.... I have a great deal of respect for [name withheld] he is one of the few public servants that I know who has the capacity to smell the political wind and know when it's appropriate to move and when you are going to get something up and when you're not mostly he was able to steer that legislation through in a way which I think other public servants might have found more obstacles in their path (P7).

The same public servant was also seen to be skilled at selecting the right people for committees and boards. As P7 says one particular *'working committee was stacked to allow the right kinds of decision to go ahead & certain individuals included and others excluded'* (P7). P3 also considered that the same public servant was canny about how to achieve change using the committee system strategically. As she explained:

He didn't leave it to the department. You see, if he'd done that, the department would have chosen the most comfortable option. The most comfortable option for the department, I think, would have been to leave things alone, because no-one likes change. He decided he would tell the department, so he wrote letters and told them exactly who he wanted on the committee (P3).

According to interviewees, getting the personnel 'right' for committees also included ensuring that the person chosen to provide administrative support had the 'right' connections and philosophical outlook too and shared a passion for justice.

For example an administrative officer for one committee was described by P7 as someone who had:

...worked for Community Legal Centres and also worked with the Royal Commission into Aboriginal Deaths in Custody, she'd done a lot of work with Aboriginal communities. She had the many connections with those who were outside that inner circle who could potentially pull it all apart (P7).

P7 considered that her appointment was critical to the success of the legislation, *'she was the minute taker, the writer of everything. You know she's put in many unpaid hours doing that work'* (P7). P3 independently mentioned the same person stating that *'she was brilliant, she attended all our meetings and guided us'* (P3).

The stacking of committees could also have drawbacks. As one interviewee noted, on one committee a more conservative senior magistrate was not included in a working group which ultimately meant that the legislative reform that came out of the working party didn't adequately address issues relating to court practices and management (P7). In these instances, policy decisions are affected by those who are at the table negotiating on the outcomes as well as those who are left out.

10.5 Charisma, seniority and the NSW Police

This section focuses on the ways in which individual officers were seen to be able to have an impact on decisions in a hierarchical structure and across government, as well as the barriers that they face to implementing change.

The previous chapter discussed the way in which the policy hierarchy meant that decisions flowed from the top downwards and that support from the Commissioner and senior ranks was essential for the success or otherwise of policy implementation. The flow on effect of this vertical authority structure meant that when one Police Commissioner left it had the potential (as in the case of the YOA), to stymie policy reform. As both P7 and P12 explained, Peter Ryan when he was Police Commissioner had provided full support for the introduction and implementation of the YOA and was highly successful in many other areas of policing including managing the Sydney Olympics in 2000. However, as an outsider coming in to the position from the UK, he had been an unpopular appointment with operational police and the Police Association. Together, placed pressure on the

Police Minister to get rid of him. And, after a concerted disinformation campaign against him in the press, in the words of P7, *'he was rolled'* (P7).

(P12) explained that, in a hierarchy like the police, policy decisions need to come from the top - if the senior command isn't behind a policy or procedural shift nothing changes. So that, according to P12, *'if the boss doesn't push it nobody will'* (P12). The impetus for change also needs an active policy entrepreneur to be ready to advocate for reform and to convince the hierarchy of the need for review and change. P12 argued it needed someone to step forward and be a leader, someone who was willing to drive change, as they said: *'if you don't have someone to champion the cause it won't happen'* (P12). That person not only had to have status and authority, but also needed to be an effective leader. P12 described that to be an effective leader in the police, *'you should have courage. I don't mean physical courage, I mean you should be able to stand up in front of all these people and say "this is it"'* (P12). And, according to P12's own assessment of their role in supporting attitudinal and policy change in relation to the YOA she had those qualities - *'...and being the kind of person I am I got stuck into it'* (P12). Although, P12 admitted that her leadership style was resented by some operational police, P12 told me that she had developed a thick skin commenting *'...well I didn't care how it went down, and that's my nature. I think you'll find that the people subordinate to me thought I was a terrific boss, but the people at the same level as me well....I was very, very, very forthright...'* (P12).

It is clear from the data from P12 and other interviewees. That this former senior officer had used their seniority in the police command structure and their good relationship with Police Commissioners Tony Lauer and Peter Ryan, to implement significant educational, training and procedural change in the wake of the development and implementation of the Young Offender's Act. As P7 observed, [P12] *could walk into their office and say "Hey mate we need to be or be seen to supporting this one" and he'd convince them'* (P7). In order to ensure that there was operational accommodation of the YOA legislation, P12 also convinced the Commissioner to integrate the new reporting procedures on diversionary outcomes into the Regional and District Commander responsibilities ensuring that, each Local Area Commander had to report on the performance and achievements of the newly

created Youth Liaison Officer positions (YLO). This was an important management tactic for P12, since it forced commanders to take the role of the YLO seriously. P12 was experienced enough to see how the police might undermine the introduction of youth liaison officers and in doing, weaken the aims of the diversionary impact of warnings, cautions and conferences. P12 demonstrated how important it was to combine forcefulness with experience and strategic skills:

I was no shrinking violet either because there was some stuff they wanted the police to do that I said no that won't happen. I said if you are going to make this work, you've got to have some operational impact that's why when we were going through the development of the Act I said that warnings had to be recorded, they didn't want any warnings and I said you can't measure anything otherwise and policing is about measurement of effort (P12).

P12 described other ways that the police hierarchy attempted to undermine the impact of the YLOs, *'they wanted to put lame ducks into the jobs, and I said "no" we want good young people into the positions'* (P12). According to P12, initially other police officers called the YLOs *'care bears and kiddy cops'* but that began to change. This was considered to be no mean feat as P12 went on to explain, *'changing the mindset of police in regard to young people is like turning the Titanic in the middle of Sydney Harbour, it took a great deal of effort'* (P12).

P7 who had worked closely with P12 also commented wryly on P12's capacity to effect changes *'... how did [P12] do it? I've got a fair idea but that's part of [P12's] skill'* (P7). P7 then went on to highlight the forcefulness of P12's character, their charisma and their intense commitment to the ethos and content of the YOA.

P7 discussed the resistance from the police to the YOA and the impact that this had personally on more junior officers who had been involved in the development of the legislation, and in establishing policies, procedures and training for youth justice conferencing. The two junior General Duties Youth Officers (GDYOs) were initially seconded to the MOPS Working Party (see chapter six) and worked closely with P7 and P12. P7 considered that the early success of the legislation was not only due to P12 but also due to the work of the junior GDYOs. P7 described how they worked together: *'the combination of the two who did all the work and P12 who did all the talking worked really well'* (P7). The two GDYOs who did not have the

seniority, status and authority of P12, had to try and ensure that the introduction of the newly appointed specialist youth liaison officers was successful in practice. They were responsible for educating other officers about the legal and administrative roles and duties of YLOs. Especially, in dealing with young people in the station. This included responsibility for referral to conferences amongst other more traditional diversionary options. P7 described their role as being *'to try and convince their mates that this was a good thing to do' (P7)*. Unfortunately the resistance from their colleagues and senior staff, and attitudes towards the YLOs, plus trying to support the newly appointed YLOs took its toll, and one of the two junior members of staff *'ended up being psychologically damaged' (P7)*.

P7 argued that, the importance of P12, former senior officers and the GDYOs to the successful implementation of the philosophy, objectives and procedures of the YOA, and on shifting police culture, could be judged by the fact that once they left the organisational support for the legislation weakened. As P7 stated: *'The top level is almost gone now, once P12 left and he did try to do succession planning...but because he was so senior no one had the skills that he had' (P7)*. P12 agreed, stating that the lack of a current *'champion'* for youth issues has led a decline in understanding and action on the YOA within the police force.

From these discussions on the police and the YOA, it became clear that without P12's commitment, their status and respect in the force, their skills and expertise, and their understanding of police culture and structure, and of course their formidable character, it would have been incredibly difficult to introduce the YOA in a way that would be acceptable to police. This provides a clear example of the operation of feedback loops. As Carroll (2009) explains, new information and new attitudes are creative and can contribute towards what are called positive feedback loops (p.35). Negative loops however, dampen and inhibit change or act to restore systems to a former equilibrium. In relation to the police the YOA and the actions of the senior police officer and the GDYOs acted as a positive loop, bringing about positive changes in the way that the police treated young people whereas once they left the momentum was lost and leading to a dampening down of the momentum of change with the reassertion of previous policing practice and older values towards young people.

10.6 Individual entrepreneurs and the non-government sector

From the data gathered, it is clear that there were significant individuals, or entrepreneurs in juvenile justice and related policy that drove particular policy reforms, but also influenced policy in a range of other ways. I wanted to discover from interviewees which individuals (apart from politicians), they considered to be important in juvenile justice policy development and why. Interviewees identified a number of key policy actors, and in fact some of the interviewees who took part in this project were recognised by others as significant policy players.

P6⁷⁹, who was identified by most other interviewees as a skilled and important policy entrepreneur in their own right, chose Professor Tony Vinson, an academic and social justice advocate, as an example of a skilled and experienced entrepreneur, whose support for the Youth Justice Coalition in its early days added credibility and respect to the fledgling non-government organisation. As P6 said:

Tony was another influential person whose continued advocacy and remarkable career in public advocacy and his preparedness to lend the weight of his reputation to the things the Youth Justice Coalition was trying to do...that's worth acknowledging (P6).

P6 also reflected that part of her own capacity to engage effectively in policy development was due to the fact that she had good mentors to learn from in the community sector. P6 identified in particular, a community based social justice advocate Betty Hounslow⁸⁰, who led effective community development, anti-discrimination, anti-poverty and social/legal justice campaigns throughout the 1980s and 1990s, as a significant entrepreneur and leader in the community sector. P6 also recognised the importance of the decision by the Director of the NSW Law Foundation Terry Purcell in the late 1980s to take a chance and to provide funds for the NSW Youth Justice Coalition to research and develop the *Kids In Justice Report* as absolutely fundamental to its success. As P6 says of the Law Foundation:

.... they were the investor, they had a stake in showing that they hadn't wasted their investment. Because it was no point in having a report just done by a

⁷⁹ I have chosen not to discuss the accolades directed at P6 in detail because they could feasibly identify them. Suffice it to say they were seen as a key architect of juvenile justice reform in the many roles they played. In discussing this with P6 they were modestly surprised at this appreciation of their role.

⁸⁰ Betty Hounslow was a senior policy officer and then Director of the Public Interest Advocacy Centre in the late 1980s and early 1990s. She subsequently became the Director of Australian Council Of Social Services during the rest of the study period.

bunch of ratbags that wasn't actually going to engage government and actually add value to public policy (P6).

Terry O'Connell, a police sergeant and John McDonald a civilian employee of NSW Police were identified by P6, P7 and P12 as passionate advocates for youth justice conferencing and they were recognized (albeit not always fondly) for their tenacious and energetic work in bringing conferencing from New Zealand to Australia and for establishing the Wagga Wagga police cautioning scheme. The same passion and drive that they brought to this early work was later seen to be problematic by those interviewees involved in the development of the YOA. This was due to the fact that their commitment to retaining conferencing under police control placed numerous barriers in the way of the transfer of the administration of youth justice conferencing to an independent Juvenile Justice Directorate.

Ken Marslew from the victims rights campaign group *Enough is Enough* was identified by P7 as someone with charisma and the compelling emotional capital that came from the murder of his son. P7 believed that Marslew's work and the attention he received in the media, ended up initially playing an important role in hardening attitudes to offenders and to conferencing, in the process shifting the focus of policy to victims' rights and experiences. Likewise Marslew's later swing in support to restorative justice and his demonstration of compassion for offenders was offenders were seen by P7 to have provided the momentum for the later expansion of conferencing to include a greater range of offenders.

P1 considered that Robert Ludbrook, a former Director of the National Children's Youth Law Centre, and Roger West, the first NSW Community Services Commissioner, were both strong and skilful advocates of young people's rights in the early 1990s. She believed that they managed to maintain a strong position on rights in the face of sustained political attack. Rob Ludbrook's skills as a networker and media communicator were particularly appreciated by P1, who believed that they were absolutely fundamental to the successful introduction of progressive youth justice policies.

Each interviewee was also asked to assess his or her own contribution to the juvenile justice policy process. Some were very modest, or skilfully avoided the question, some talked about their passion for the issue and the impact that this had

on their work, and others tended to reflect on their time working in children's and youth issues as frustrating but productive. Not everyone had held a position of power and authority, but they had seen the importance of establishing reputations and respect in their field in order to facilitate change. They felt that they were very good at making connections, networking and being strategic in their own policy work. For example, one interviewee considered that her own capacity to engage in decision-making was assisted by the fact that she was a member of two organisations that had an established reputation: *'I was in a pretty privileged position to have a job where there was a lot of respect for the Youth Justice Coalition (P1)*. The respect for the YJC and for the children's legal service came from the fact they could speak from experience and from contributing solid research and legal analysis of policy issues, and from the fact *'that we weren't going in and shouting loudly'* (P1). P1 was also incredibly active in the non-government sector. As she recounts:

I suppose I was in a lot of places – it was a period of my working life that was very rewarding, I was well placed to know what was going on in the system because you are either seeing it yourself or you're working with people who've seen it and taking that to a ministerial advisory committee (P1).

From the data it was clear that individual entrepreneurs shared common characteristics such as passion for their work, for rights and social justice, and for improving the situation faced by young people. From hearing about interviewees' contributions and from the qualities they appreciated in others, it became apparent that entrepreneurs need to be very tenacious, working hard to bring their organisations and others along with them and doggedly pursuing goals in the face of opposition from government. Some entrepreneurs were formidable and charismatic individuals who were happy to have a strong public profile, while others were more behind the scenes operators using their skills and expertise to mentor others. Entrepreneurs also had to be good networkers, negotiators and were adaptable, being able to work in a variety of policy settings and with a range of organisations.

10.7 Dynamics of individuals working together

Policy actors do not work alone and one of the issues to emerge from the data was the ways in which policy networks operate together, and how relationships between actors also shaped decision-making.

We have already seen how getting the mix of committee members right was a crucial strategy for achieving what could be considered to be the ‘right’ policy and legislative outcomes in relation to the YOA. It was seen by interviewees that these particular committee members were chosen not simply on the basis of their representational status, but also because of their shared commitment to the objectives of the YOA. This shared vision helped to iron out potential conflict, as P12 explained:

There were a couple of things that I said that other people didn’t agree with and [name] and I had some disagreements over, but we were able to resolve them because at the end of the day we both wanted the Young Offender’s Act to work (P12).

P7 also considered that it was the combination of commitment by many individuals at all levels of a policy structure that contributed to the successful implementation of the YOA: ‘we were able to do it as a focused committed group, all committed to getting young people out of custody’ (P7). P7 also considered that, part of the success of the MOPS work, also stemmed from the good working relationships and emotional bonds that developed with the sense of achievement as the legislation progressed. As P7 states:

I think that no one can take away from me, and others who worked to implement the Act, what we achieved and I’ll always be proud of that. We were able to do it as a focused, committed group who were all committed to getting young people out of court, getting them out of custody. While it was hard towards the end, I’m glad I did it and I’m glad I’ve made so many long term friends. People whose work I really respect and who I’ve worked with closely (P7).⁸¹

⁸¹ Interestingly work undertaken by Telford and Santatzoglou (2011) on the implementation of criminal justice reforms in the UK describes a similar group dynamic and bonding experience, ‘there was a genuine feeling if we all got together and pooled that knowledge, we could actually do something about it and we actually did. Despite the fact that it might seem nostalgic, it was a very good working decade’ (Cited in Telford and Santatzoglou 2011, at p.76).

In contrast the same policy actor found that towards the end of her period in government trying to maintain a progressive juvenile justice policy approach was increasingly difficult but as she said *'while it was hard towards the end I'm glad that I did it and I'm glad I've made so many long term friends'* (P7).

The quality of the relationship between policy actors working towards a focused goal appears to be an underexplored aspect of the policy process, and decision-making. From these findings it could be a really fruitful area for future exploration.

10.8 Creating opportunities: ensuring serendipity happens

During the conversations that took place in the interviews I was constantly reminded of the importance of making the most of unexpected moments and networking opportunities as part of the day-to-day reality of decision-making. For example, one interviewee reminded me how policy decisions can be sparked by chance meetings. P1 reflected on how an issue she raised with a politician at a social gathering eventually led to reform. As she says:

It was from that moment on that I realized how serendipitous a lot of policy initiatives are. Often it is just being in the right place at the right time, taking the opportunity to say something, and that the person is willing to listen and to do something about it (P1).

Clearly in this instance it was not just any two individuals who happened to meet in setting the policy ball rolling. The capacity of these two individuals to influence policy depended not just on their personality traits but also their skills, career history, their career aspirations, their own values, their status through the acquisition of social and political capital, and their access to the sites of power to influence decisions.

P1 reflected that these encounters and relationships between policy actors provided the key to many aspects of policy making, and even when policies might seem to emerge out of nowhere they were generally the product of hard work in establishing relationships. As she explained:

I think ...there are things that you can do to make serendipity happen. I think you have to work hard as a policy worker to maintain relationships with people', because the networking is essential'...you are more effective if you

are working with other people, and it also creates more opportunities for the serendipitous (P1).

She then went on to provide an example: *'if you are going anywhere, if you are going to the Justice Awards dinner, you think about who you're going to talk to beforehand. It's taking that networking liaison seriously' (P1)*. P7 also provided insights into the importance of personal relationships. As P7 says of the NSW Youth Justice Coalition in the mid 1990s: *'We had The Greens on side, as it happened Ian Cohen's principal advisor had been a student of mine, so those connections'* (P7). P4 also explained how even in the parliamentary committee personal connections with ministers could also be useful in lobbying to get matters referred to the parliamentary committee system: *'I guess things like people pushing for a particular issue loud enough and strong enough, or getting the attention of a sympathetic or empathetic minister, it can be as idiosyncratic as that' (P4)*.

Effective entrepreneurs are always on call, see the opportunities for influencing policy agendas and decisions in a range of situations and in so doing, maximise those opportunities.

10.9 Discussion

Although ultimately it is a smaller group of people like the Premier, Cabinet, a Minister and their political advisor, or a departmental Director General who hold the formal authority, power and status to make decisions, the findings from this chapter have shown that policies are more often than not the product of a negotiated process involving many different combinations of people, across vertical and horizontal dimensions of the policy universe (Colebatch 2002; Howlett and Ramesh 2003; Sabatier & Jenkins-Smith 1999). In this sense policy is 'more like diplomacy than architecture' (Colebatch 2002, p.116).

The data also shows that it is the quality of the relationships of the people engaged in the policy process that provides decisions with their dynamic and emergent qualities. Policy making is not simply a result of all players' individual contributions added together, it is the way in which negotiations take place and the ways in which these negotiations are interpreted and used, that also informs outcomes. As Tiernan and Weller (2010) argue, it is the membership of epistemic

communities the ‘mix of personalities, experience, skills and circumstances’ that ‘...at different points in time’ adds to the contingent character of decision-making (p. 271). Further, according to Hollway and Jefferson (2000), it is the way in which each subject’s discursive position plays out that is, how ‘someone’s desires and anxieties, not conscious, or intentional ...motivate their specific positions’ (p.15). It is skills, experience, emotional connection and emotional intelligence, determination, charisma and other personal qualities like those of the senior police officer or the administration support worker that play key roles in decision-making.

However, Callaghan (2008) points out, individuals cannot just do as they like; individual actions are shaped by organizational constraints, and at times these boundaries can limit the possibilities of what members of a policy community, or a committee can individually do and what can be achieved together. The actions of committees, or working parties are also constrained by their terms of reference, their rules of governance and by their delegated authority to act.

The chapter has shown how policy entrepreneurs are active in disrupting or restoring equilibrium in organisations and systems, creating positive and negative feedback loops, and it is their actions that intersect with those of their organisations to effect change.

As Freiberg and Carson (2010) advocate, and the findings from this chapter have shown, recognising values and emotion of individuals and policy communities can lead to a more open, honest debate about policy and a greater understanding of decision-making in the policy process.

Chapter 11. ...when the stars align

It's exactly like when the stars align. You just get moments in public policy and public debate when stars align and the right people and the right things start to happen - you can make leaps. Otherwise it's like pushing everything uphill.... (Participant 6 commenting on the development of the NSW Young Offender's Act 1997)

11.1 Overview

This thesis has mapped the trajectory of juvenile justice policy decision-making in the neo-colonial state of New South Wales through a fifteen-year period of history from 1990-2005. And, in so doing has answered a series of questions about the key constituents of policy decision-making. Using qualitative data from historical documents and rich material from in depth interviews with experienced policy actors, it has charted the intersection of influences on decision-making to examine how and why policy agendas were developed, and what policy options were introduced. Bringing together complexity theory and a dynamic understanding of the policy process, developed from the work of Kingdon (2003), it has explored how structure and agency, order and disorder, systems and individuals, different discourses and strategies of governance have together influenced the juvenile justice process.

The research and analysis have incorporated material from a range of disciplines so that the analysis of the empirical data integrates insights from political science, law, policy studies, media studies, criminology and social sciences. It has attempted to enrich our understanding of the juvenile justice policy process by bridging disciplinary gaps in knowledge. It has also engaged with a critical complex research approach to address the real world of policy development, with the aim of developing an innovative understanding of the juvenile justice decision-making process.

As the quotation above suggests, at moments a multitude of factors were found to coalesce and lead to significant policy changes some of which, like the YOA, could be described as tipping points (Byrne 2011). On the other hand change was also brought about by what Geyer and Rihani (2010) identify as an internal or external, direct or indirect gateway events such as 9/11, public disorder incidents or

significant legislative reform. Policy proposals were also seen to be the result of the actions of policy entrepreneurs (Kingdon 2003; Howlett & Ramesh 2003). However, all decisions emerged in the context of 'rules of the policy game' and negotiated order. That is, there were constraints and structures, fluid but constant relations in the evolving system, that provided limits on what was possible.

The thesis has identified that there are streams of co-existing vertical and horizontal policy negotiations and actions. Some of which are more visible, like the tip of an iceberg they become the focus of political and media attention and rhetoric. Others lie under the surface and provide the deep base where the day-to-day policy negotiations and developments take place. It was here that ministers, public service, non-government organisations and networking amongst policy communities occur. These are the decisions of the everyday, characterised by budgeting, administration, endless meetings, research, refining options, consulting, lobbying and by the implementation and delivery of services.

Finally, the thesis has stressed that it is individuals who in the end make the policy decisions and it has traced how the skills, the expertise and emotions of people are ever present in the policy process.

The rest of this chapter provides some further concluding remarks. It provides an overview of the key findings chapter by chapter. It provides a brief commentary on the potential of a critical complex understanding to provide future insights on criminal and juvenile justice related issues. It finishes by exploring to what extent the findings and analysis from the thesis, can enhance the understanding of policy advocacy and the policy process that already exist in the community.

11.2 Key chapter findings

Part one of this thesis provided the groundwork for charting the policy landscape within which the empirical research took place. Chapter one provided an introduction to the thesis overall; chapter two established a working definition of policy and argued that policy decisions needed to be examined in the context of a dynamic complex system. The chapter highlighted how John Kingdon's work

(2003) on the policy process, policy streams and policy windows provided the policy analytical framework for the thesis to build on.

Chapter three provided an overview of the literature on juvenile justice and neo-colonial discourses arguing that these were endogenous to the problematisation of issues as problems, shaping policy decisions and policy responses. The chapter argued that policies are permeated by a multiple competing and often contradictory constellation of discourses (Fergusson 2007; Muncie 2009). Discourses permeate and shape the active policy making of policy actors but not necessarily in a coherent or systematic way. In countries like Australia neo-colonialism penetrates all social relations and is embedded in the institutional histories and practices. It has led to the continued over policing of many indigenous communities and to the overrepresentation of indigenous young people in policing statistics, court appearances and custodial sentences.

Chapter four reviewed selected literature on the media and policy, identifying how the media are seen to play a significant role in the ways in which policies and politics are presented in the news and in other forms of media. The chapter argued that criminological literature tends to concentrate on the point that youth, crime and criminal justice are represented in the news in dramatic and selective ways, presenting narratives of crime that demand 'law and order' style responses. From this point of view politicians are engaged in responding to this style of framing of stories by appearing to be strong and tough on crime. On the other hand, policy literature is a little more cautious in attributing a major role to the media in other policy fields. Media studies highlight how politics and policy have become increasingly dominated by public relations and spin, and crime and criminal justice are part of the 'mediacracy', where debates about policy and politics are played out in the media rather than directly with the electorate. Chapter four argued that, the practical demands of competition in the news making and entertainment business and the demands of the 24 hour media cycle has meant that there has been a heavy investment in media management by governments and a rapid turnover in the selling of policy and politics. Consequently, politicians, policy actors and journalists are competing for media attention and engage in in-depth policy discussion and debate is marginalised in the process.

Part two of the thesis engages with the empirical research. It opens with chapter five, which examines the methodological and research approaches that underpinned the design, research, analysis and writing involved in the whole research project. The chapter highlights the iterative, qualitative nature of the research process and the interweaving of documentary evidence, interview data and autobiographical insights.

Chapter six finds that there were two key strands of legislative reforms, identifiable during the study period. One strand which was marked by the introduction of the NSW Young Offenders Act 1997 and its related policies, procedures and practices was characterised by consultation and engagement with a selection of government and non-government policy actors: it included an extensive examination of research and evidence, and occurred over a long period of time. In contrast the second strand was seen to be more reactive and propelled by a combination of political pragmatism, symbolic political opportunities, responses to one-off events or dramatic events and the powerful influence of the police as a lobby group. This set of more punitive legislative changes was seen to be characterised by political pragmatism.

Chapter seven explores in more detail, how different sets of information and knowledges as well as decision-making mechanisms inform decisions relating to policy agendas, options and outcomes. It finds that on the whole deliberative policy processes engage with in-depth research and broad consultative strategies but do not necessarily lead to immediate policy outcomes. However, if they do lead to policy outcomes they tend to be more considered, coherent, comprehensive and long-term policy reforms. The chapter documents how broader trends in public policy in the 1990s and early 2000s such as New Public Managerialism and risk-management prioritised different forms of knowledge such as the basis for decision-making, and supplanted the deliberative processes of the 1990s. The more outcome focused, performance based, evaluative base of knowledge production was far more instrumental. Despite its proclamation to be evidence based, this research has found that in practice, the desired policy outcomes led the kinds of evidence used, rather than the other way round. This was particularly evident in the shift in policies that focused on the individual as responsible actor, as well as those policy decisions

driven by the imperatives of cost efficiency and effectiveness. In this policy atmosphere, the specialised experience and skills of public servants in a policy field such as juvenile justice, were seen to be less valuable than the transferable managerialist abilities of the Senior Executive Service recruits.

Chapter eight examines what Lewis (2005) calls the mediatisation of politics and policy, and finds that the juvenile justice policy landscape in New South Wales was altered by the media management strategies of the successive Carr governments. The chapter argues that in the process of developing a pro-active media management strategy, the government ended up handing power to sections of the media such as the shock jocks and the Daily Telegraph, especially in the aftermath of the resignation of key experienced progressive government ministers and media advisors. As the government ran out of ideas and skilled staff, sections of the media were found to gain the upper hand in setting policy agendas. It was spin, rather than considered policy alternatives that began to dominate political decision-making. Media focused policy was considered by interviewees to be antithetical to well-considered, workable long-term policy. The chapter also demonstrates how for public servants, the privileging of media focused policies by politicians created more pressure on their everyday policy work.

The research data reveals that there is a complex relationship between politics, policy and public opinion. For example interviewees felt dominant narratives about youth and crime in the media existed in a mutually reinforcing relationship with public attitudes to youth and crime. Interviewees found it difficult but not impossible to disrupt this cycle with alternative accounts. In contrast, the ex Minister interviewed considered that the media often acted as a barometer of common sense, providing the sounding board by which a policy could be seen to be politically palatable and therefore, acceptable to the public.

Chapter nine is concerned with the day-to-day business of policy making, from the responsibilities of the Premier to the work of service providers. It argues that, the day-to-day realities of the workplace, the humdrum reality of policy maintenance and the 'rules of the game' are significant factors in shaping policy decision-making. It is in these arenas of the policy process that the majority of policy business takes place. The chapter reveals that the day-to-day business of politics is

an absolutely fundamental aspect of policy decision-making. This chapter also provides examples of how policy events such as elections add a different dimension and different momentum to agenda setting and policy option proposals. Likewise the stage of a government in the electoral cycle had a significant influence on politicians' readiness to engage in policy innovation. The chapter draws attention to the ways in which the balance of power and number of Independents in a parliament can steer the course of decisions. One of the key findings that I took away from this chapter was a better understanding of the business of politics. French (2012), argues that academics especially outside of political science, need to develop a more realistic appraisal of the role of politics in order to understand the policy process. As he states, the reality of political life is not a rational considered discussion of each policy decision but 'a blur of activities' where politics and policy depend on how 'individuals respond to crises and tactics' (French 2012, p.538).

Chapter nine found that the constraints of finances allocated and/or the administrative and managerial autonomy of a public service department can enhance or hinder the introduction of new policies or the consolidation of existing policies. And, finally, the chapter reveals the ways in which lobby groups, employee groups and members of policy networks and communities have an input in decision-making. It found that police are highly influential in the policy process, whereas non-government organisations have to work really hard to maintain a policy profile and some status as policy actors.

The most unanticipated findings in the thesis though, are those discussed in chapter ten relating to the importance of emotions, personalities and relationships in the policy process. Although, selected criminological literature is beginning to develop an awareness of the significance of public emotion and the emotional dimension of criminal justice procedures, the findings from this study highlight how the personal qualities of individuals involved in the policy process shape the setting of agendas, as well as how, what, where and when decisions are made. It argues that the subjective interpellation of organisational structure in and through the individual impacts on their engagement in policy. So for example, the same organisations may be represented at a policy decision-making table but it is the particular mix of individuals at that table that can take decisions in a specific direction. This explains

why a skilful, strategic public servant or politician plans the membership of committees carefully if they want to direct a decision to a particular outcome.

In summary, the findings reveal that there are elements of serendipity and unpredictability but also certainty that permeate all aspects of the policy decision-making process. There are so many factors involved in influencing decisions that it is only through empirical investigation that patterns can be found in the way these factors intersect. For example the media can be seen as important policy actors in the policy process, but they only gain significant leverage in particular circumstances. As discussed above, most of the time the bulk of policy decisions take place away from the public gaze. And, from this perspective, studies of moral panic are focusing on the policy exceptions rather than the everyday.

11.3 Critical complexity, policy and decision-making

Critical complexity has provided the overall theoretical framework and conceptual tools for assembling the narrative and analytical content of this thesis. It offers a higher level theoretical setting in which to place the dynamic understanding of the policy process, developed by authors such as Kingdon (2003), Howlett and Ramesh (2003) and Bacchi (2009) amongst others. The value of the approach is that it provides a way of integrating intersecting spheres of global, local, institutional and individual factors both regular and irregular ways, to shape the emergence of policy decisions. Critical complexity can also offer explanations for the ways in which ordered incremental policy making, can co-exist at the same time that one-off, or unexpected events can disrupt the usual patterns of day to day policy development. Critical complexity's capacity to engage with structure and agency, chaos and order, as well as accommodating trans disciplinary analysis means that it has the capacity to integrate the best of structural analyses with insights from more interpretive and post structural theories as a way of addressing 'real world' social, legal and criminal justice policy issues and problems. Its emphasis on addressing 'real world' policy issues has provided me with the capacity to develop an analysis that articulates my own experiences of policy advocacy.

I can imagine that a critical complex approach might frustrate advocates of evidence based policy development due to its critique of absolute statistical predictability

(See Byrne 2011), but its insistence that there is always some level of the unknown in how policy outcomes happen, to me demonstrates a realistic understanding of how policy happens in practice.

Geyer and Rihani (2010) argue that public policy is always in a process of transition and that policy actors, even experienced ones, need to ensure that they are always open to learning more, since the policy project is never finished - it is always in motion. They caution though, that more knowledge does not always mean better policies or more order, social phenomena are characterised by both stability and change. They argue that policy actors should always be flexible about how they understand policy, mixing both rational and interpretive strategies. In this outlook evidence based policy cannot be the only way of approaching policy development and decision-making. Reflexivity and praxis are the basis for good quality policy decisions. Previous policy outcomes are not deterministic. However, if environmental conditions are relatively constant, 'policy actors can obtain probabilistic outcomes' that allows for policies to adapt and evolve (2010, p.34). Public policy actors they argue, should engage in continuous praxis and be open to rational and interpretive strategies in all policy contexts.

11.4 Implications for advocacy

Many non-government organisations have well developed policy advocacy skills, and so the following discussion of the findings from the thesis and especially insights from the interviewees aims to add to the reservoir of understanding of the policy process rather than providing an authoritative view.

As we have seen throughout this thesis policy decisions take place all the time and in different settings. In response to this, non-government organisations like the NSW Youth Justice Coalition have developed a broad repertoire of advocacy⁸² skills and strategies to influence the policy process. Policy advocates understand that policy decisions and responsibility for outcomes are not solely the province of Ministers and the heads of the public service and therefore, as Duffy (2003) argues, directly influencing decision- makers at the top of the policy hierarchy isn't the only

⁸² Advocacy is used here in its broad sense as actions taken by individuals and organisations on behalf of their constituents and client to bring about change or and is directed towards a specific goal or end. It includes systems advocacy, individual advocacy and self-advocacy (see Duffy 2003, p.2).

way to achieve social change. This research has shown that engaging in all parts of the policy process maximises capacity to influence agenda setting, the development of policy alternatives and the implementation of policy in practice.

The thesis demonstrates that policy advocates need to be pro-active in having input into policy decisions. As one interviewee pointed out advocates need to work at making serendipity happen. Successful advocates need to act as policy entrepreneurs pushing for change by becoming adept at reading the political and policy landscape, lobbying and networking, convincing and persuading policy actors of their position including politicians and public servants, working well with the media and being creative in developing campaigning strategies (Duffy 2003).

Although they only form one part of the policy process, ministers, politicians, ministerial advisors and public servants are still key players. Developing good relationships with these influential policy actors is an important element of advocacy. The Youth Justice Coalition for example recognised in the development of the *Kids In Justice* campaign that they needed to bring key players on board with their ideas for juvenile justice. Support from successive Attorney Generals and senior public servants meant that there was a greater likelihood of their proposals being pushed through from 'the inside'. The support for the YJC proposals came from lobbying individual key players and from networking across a community of interests. By engaging influential politicians and public servants in a campaign, this research has shown that in turn they own the ideas and proposals. They develop an emotional and political investment in the issues, supporting them through to implementation.

In their book *Working the System* the Public Interest Advocacy Centre propose that non-government advocates should raise concerns and distribute information about policy issues in a range of political settings, to both government and opposition members, providing briefing notes to all politicians (Duffy 2003). Duffy argues ministerial and political advisors have more time than members of parliament to talk with non-government organisation representatives and are therefore important policy players to target (2003) In addition, politicians and ministerial staffers can also provide inside information 'about what a minister or party or government is thinking on an issue also influence how ministers see issues (Duffy 1996, p.31).

Having strong connections on the inside means that advocates can get access to reports or information that are not usually publicly available. Non-government organisations need to nurture these relationships.

Networking and lobbying can include keeping politicians informed about what is going on in a sector, how policies impact on communities and provide a way for non-government organisations to establish and maintain their profile. As the former minister interviewed for this thesis explained, if politicians in government and opposition are given the opportunity to see for themselves how non-government organisations operate it gives them a better understanding of a policy issue and the impact policies have on clients of systems.

As Duffy (2003) also points out and this thesis has shown, good working relationships with public servants mean that public servants look to non-government policy actors for policy information based on their experience, understanding and skills. By providing this kind of information, non-government advocates can influence background policy option setting and not just when the 'big' decisions happen. As Duffy explains, one strategy for developing a successful relationship with departmental officers is to become useful to them (2003).

Betty Hounslow, a former community advocate and mentor of P6 has said of political contacts:

‘Get to a point where they see you as a repository of useful advice and information on a formal and informal level. What you say will have much greater impact if you’ve developed a mutually respectful relationship in which they know you’re talking from a sound knowledge base and one which complements their own’ (Betty Hounslow quotation cited in Duffy 1996, p. 32).

As the thesis found, members of non-government organisations need to become well known to those with the authority to make decisions and respected by them and/or necessary allies. In this way, individuals and their organisations, become an integral part of the policy network. For example, they become regular members of committees and are invited to participate in policy planning. Becoming known as experts in a field, as the solicitors and youth workers involved in the Youth Justice Coalition were, the capacity of non-government organisations to influence decisions increases.

Networking also needs to take place horizontally as well as vertically. Developing links with other organisations and developing a broad coalition on issues of common interest is also crucial for effective advocacy. As we saw from the data, non-government organisation interview participants considered that coordinated campaigning increases access to decision-making at different points: resources are shared and together a policy community provides a stronger voice on policy issues.

The thesis has also shown how important it is for non-government members of policy communities, to have solid research and information available to them to support lobbying campaigns and to inform the development of policy options. The success of the *Kids In Justice* campaign and the later bail reform campaign depended on having solid research and evidence available to support the proposals for change. Ideally, research needs to be informed by practice and to be based in the real experience of both service providers and the clients of services. Together, these have the capacity provide an alternative in-depth qualitative narrative to counter dominant policy discourse - especially in the area of justice. As P6 reiterated, policy actors engaged in service delivery need to continually ensure that their work is accountable to the needs of their clients, acting in their interest. Case studies offer convincing research and evidentiary material. As we have seen, the evidence of experienced youth workers and solicitors was always welcome in deliberative proceedings. Having research informed, policy positions, with developed policy options means that advocates are ready to step through, whenever a policy window opens.

One of the key issues facing non-government organisations is the lack of resources available to them to engage in policy reform and broader advocacy work. For those organisations involved in delivering services there is often not enough time or people available to engage in non-core work and in addition, research and campaigning cost money. As Duffy (2003) argues, non-government organisations have to think through the opportunity costs and benefits of becoming involved in different kinds of policy development such as government consultative processes like parliamentary inquiries. She argues that they can be expensive for small community organisation in terms of time and money involved (2003, p.36). As this thesis has revealed community representatives became disillusioned with the lack of

direct outcomes from engaging in submission writing and parliamentary inquiries. On the other hand as P4 explained the presence of those with service provision experience was vital to parliamentary committees and indirectly to parliament and could serve to transform and educate those involved in inquiries. As Duffy explains, 'any consultative session no matter how flawed is an opportunity to advocate for better social, environmental, economic or political outcomes' (Duffy 2003, p.36).

From the research findings and the literature it is clear that the media have become a key site of access for influencing policy and politics. Non-government organisations have to develop a strong media profile to be in the policy game. One of the successful strategies of the NSW Youth Justice Coalition during the KIJ campaign was to use the media creatively. This was facilitated at the time, by the fact that radio JJJ was a new station and reporters were keen to place the station on the media agenda. Increasingly, non-government organisations have become skilled in media work and those with an established media presence are sought out by journalists as sources for stories. They will probably never be able to compete with interest and lobby groups with more resources, like the police, but being able to present alternative accounts succinctly with emotional appeal provides an important counter narrative. It helps too to have a charismatic media contact who enjoys media work.

Non-government organisations need to maintain familiarity with the 'rules of the game' of their policy field. As the data for this thesis revealed being familiar with key aspects of bureaucratic decision-making such as departmental budgeting and auditing processes are essential. Also understanding the governance responsibilities and procedures of Federal, State and local government, and non-parliamentary reform procedures such as those involved in delegated legislation are important features of policy work. And, as Duffy (2003) points out, policy advocates can use legal avenues to affect policy outcomes by challenging decisions through administrative review, internal review, externally through the Ombudsman's Office, tribunals, judicial review, Freedom of Information applications. In addition, complaints bodies play a public interest role in law and policy. Finally, another way

to effect policy reform is through public interest litigation, taking on the role as *amicus curiae*, or through class actions⁸³ (Duffy 2003)

Finally, the findings from this thesis also show how non-government policy advocates need to be resilient and be ready to be involved in the policy long haul, developing both short term issues based campaigns and long term strategic policy planning. The impact of the Kids In Justice Report was the result of tireless lobbying and campaigning before the introduction of the YOA and for a long time after. The thesis shows that the introduction of legislation reform is only a small part in a justice campaign. This presents difficulties when members of policy communities and voluntary organisations move on, and the skills and personal connections of individuals are lost.

11.5 Concluding thoughts

This thesis has developed what Byrne (2011) calls a ‘narrative of process’ (p.169). Details from this thesis cannot in themselves provide a template for intervention, but should be seen as part of a broader project where comparative sets of narratives of policy processes and influences on decision-making can be brought together to provide a synthesised study of patterns of the dynamics of policy (2011, p.169). However, since critical complexity sees that social phenomena are in constant motion, research and analysis can only ever provide an examination of patterns of movement since there is no final state to be reached (Byrne 2011). Like many recommendations of research projects, I would like to see more studies in this particular field especially research into a range policy decision-making in criminal justice. In particular, studies that take an open trans disciplinary approach like this one.

One of the most inspiring things that came out of conducting the interviews for this thesis, was witnessing the continuing commitment of many of those interviewed to a social and legal justice agenda. Interviewees were still passionate about the work that they had done in the past, and for some they were still involved in working in the field or if retired or had moved on to different areas of work, they were still

⁸³ See the recent case of *Mussah Konneh v NSW* for wrongful imprisonment of children on bail <http://www.piac.asn.au/news/2013/09/court-win-wrongful-imprisonment-children>.

campaigners for justice. Some were still angry about what they considered to be the failure of governments and organisations such as the police, to act in the best interests of children and young people. Many also felt that juvenile justice had regressed after the first years of the new millennium.

I would like to end the thesis by recognising the commitment of youth justice advocates everywhere and to also express the hope that for those children and young people who do come into conflict with the law, the future might be brighter as the stars align another time - enabling human rights and social justice to guide a future policy trajectory.

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Appendices

Appendix 1: List of key legislative reforms

Crimes Act 1900
Bail Act (NSW) 1978
Intoxicated Persons Act 1979
Drug Misuse and Trafficking Act 1988
Children (Care and Protection) Act 1987
Children (Criminal Proceedings) Act 1987
Children (Detention Centres) Act 1987
Victims Compensation Act 1987
Summary Offences Act (NSW) 1988
Prohibited Weapons Act 1989
Children (Parental Responsibility) Act 1994 (since rescinded)
Victims Support and Rehabilitation Act 1996
Young Offenders Act (NSW) 1997
Children (Protection and Parental Responsibility) Act 1997 (since rescinded)
Summary Offences (Amendment) Act 1997
Crimes Legislation Amendment (Police and Public Safety) Act 1998 No. 38
Police Powers (Drug Detection Dogs) Act NSW 2001
Justice Legislation Amendment (Non-Association and Place Restriction) Act 2001
Law Enforcement (Powers and Responsibilities) Act (LEPRA) 2002

There were **52** amendments to bail related legislation from 1990 - 2005 some minor, but others had significant impact on access to bail, see

<http://cypw.unsw.edu.au/sentencing-and-remand>.

Australia became a signatory to the Convention on the Rights of the Child in 1989, and ratified in 1990.

Appendix 2: Interview Guide

RESEARCH STUDY: On Juvenile Justice Policy Decision-making.

INDIVIDUAL INTERVIEWS

INTERVIEW TOPICS TO BE COVERED

In the context of identifying the major influences on juvenile justice policy development and decision-making in NSW – the following themes will be covered in all interviews.

1. **Participants' perceptions of key juvenile justice policy initiatives, moments in the period under consideration including:**
 - Legislation including white papers, green papers
 - Key cases, precedents
 - Organisational structural changes eg restructuring of departments, ministerial responsibilities, ministerial reshuffles
 - Establishment of committees, advisory bodies, inquiries, commissions of inquiry
 - Adoption of the Convention on the Rights of the Child or other international instrument
 - Initiatives introduced - but not implemented.

2. **Participants' perceptions of the role, power and authority of key players in juvenile justice agenda setting, policy development and decision-making. Including:**
 - Perceptions of influential individuals - politicians, ministers, public servants, legal officers, magistrates, academics, independent activists what they did, how and why
 - Perceptions of influential agencies/institutions for example- police, government departments, non-government organisations, legal institutions , committees, pressure groups.
 - Perceptions of the relative power of organisational cultures, goals and values had on policy directions.

3. **Information about the respondent's individual or organisation's input into policy development and decision-making :**
 - Size of the organisation
 - Primary activity of the organisation

- Resource base of the organisation
 - Role of individual and individual's organisation.
- 4. Identification of characteristics of direction of juvenile justice policy strategies:**
- Perceptions of whether there was a systematic overall goal or philosophy underpinning juvenile justice. If so what was it?
 - Whether there were a range of philosophies, goals underpinning strategies, how was that evidenced ?
 - Perception of any significant shifts in policy directions and reasons.
 - Prompt re. indigenous issues, impact of Royal Commission, overrepresentation etc.
- 5. Evaluation of the impact of planned policy 'events' on policy development and decision-making including :**
- Elections, budgets, release of statistics
 - Role of published/ unpublished research evidence
 - Law reform inquiries, Royal Commissions, Inquiries, Parliamentary Committees, Ombudsman's reports.
- 6. Evaluation of influence of national, international, global events and policy trends:**
- Commonwealth government decisions
 - Other states and territories
 - International policy into domestic policy
 - Global events/One-off incidents
 - Convention on the Rights of the Child.
- 7. Evaluation of the impact of research on policy development and decision-making:**
- Academic research
 - Research from government research bodies eg Bureau of Crime Statistics or Australian Institute of Criminology
 - Research from non-government organisations, or policy institutes
- 8. Impact of one-off events on policy development and decision-making e.g**
- Political scandal
 - Moral panic event
 - Media reported event
 - International incident
 - Ministerial visit overseas
 - Door stop-interview

9. Assessment of how decisions were made in practice:

- Top-down Ministerial authority
- Parliamentary initiative
- Public Service inspired
- Result of pressure group activity
- Political expediency
- Individual ministerial or Premier's initiative
- Inter-departmental cooperation
- Result of consultation between government and non-government sectors
- Flowing upwards from practice.

10. The relative impact of media on policy development:

- Examples of situations where media were influential
- Examples where media's role was minimal or non-existent
- Evaluation of which media were important in influencing policy
- Perspective on government's use of media to provide policy information to the public

11. Constraints on juvenile justice development and decision-making:

- Economics, financial constraints
- Federal structure
- Political popularity
- Legal decisions
- Lack of organisational structure, coherence
- Financial, budgetary constraints
- International obligations.

Appendix 3: Original permission letter from Sydney University Human Research Ethics Committee to proceed with research



RESEARCH INTEGRITY Human Research Ethics Committee

Web: <http://sydney.edu.au/ethics/>
Email: ro.humanethics@sydney.edu.au

Address for all correspondence:
Level 6, Jane Foss Russell Building - G02
The University of Sydney
NSW 2006 AUSTRALIA

Ref: IM/KR

29 July 2010

Dr Susan Goodwin
Faculty of Education and Social Work
The University of Sydney
Email: susan.goodwin@sydney.edu.au

Dear Dr Goodwin

Thank you for your correspondence received on 21 July 2010 addressing comments made by the Human Research Ethics Committee (HREC). The Executive Committee of the HREC, at its meeting of **27 July 2010**, considered this information and approved the protocol entitled "**How did we get there? Juvenile Justice Policy in NSW 1990 - 2005**".

Details of the approval are as follows:

Protocol No.: 12919
Approval Period: July 2010 to July 2011
Authorised Personnel: Dr Susan Goodwin
Ms Elaine Fishwick

Documents approved:
Participant Information Statement
Participant Consent Form
Interviews Topics
Recruitment Circular

The HREC is a fully constituted Ethics Committee in accordance with the National Statement on Ethical Conduct in Research Involving Humans-March 2007 under Section 5.1.29.

The approval of this project is conditional upon your continuing compliance with the National Statement on Ethical Conduct in Research Involving Humans. N.B. A report on this research must be submitted every 12 months from the date of the approval, or on completion of the project, whichever occurs first. Failure to submit reports will result in the withdrawal of consent for the project to proceed. Your report will be due on **31 July 2011**, please put this in your diary.

Chief Investigator / Supervisor's responsibilities to ensure that:

1. All serious and unexpected adverse events should be reported to the HREC within 72 hours for clinical trials/interventional research.
2. All unforeseen events that might affect continued ethical conduct of the project should be reported to the HREC as soon as possible.
3. Any changes to the protocol must be approved by the HREC before the research project can proceed.

Human Ethics Secretariat:
Ms Portia Richmond T: +61 2 8627 8171 E: portia.richmond@sydney.edu.au
Ms Patricia Engelmann T: +61 2 8627 8172 E: patricia.engelmann@sydney.edu.au
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ABN 15 211 513 464
CRICOS 00026A



4. All research participants are to be provided with a Participant Information Statement and Consent Form, unless otherwise agreed by the Committee. The following statement must appear on the bottom of the Participant Information Statement: *Any person with concerns or complaints about the conduct of a research study can contact the Manager, Research Integrity (Human Ethics), University of Sydney on +61 2 8627 8176 (Telephone); + 61 2 8627 8177 (Facsimile) or ro.humanethics@sydney.edu.au (Email).*
5. Copies of all signed Consent Forms must be retained and made available to the HREC on request.
6. It is your responsibility to provide a copy of this letter to any internal/external granting agencies if requested.
7. The HREC approval is valid for four (4) years from the Approval Period stated in this letter. Investigators are requested to submit a progress report annually.
8. A report and a copy of any published material should be provided at the completion of the Project.

Please do not hesitate to contact Research Integrity (Human Ethics) should you require further information or clarification.

Yours sincerely

Associate Professor Ian Maxwell
Chair
Human Research Ethics Committee

cc Ms Elaine Fishwick [Email: elaine.fishwick@sydney.edu.au]

Associate Professor Jenny O'Dea [Email: jennifer.odea@sydney.edu.au]

Appendix 4: Participant information sheet



The University of Sydney

Faculty of Education and
Social Work

ABN 15 211 513 464

Dr Susan Goodwin

Room 730
Education Building A35
University of Sydney NSW 2006
AUSTRALIA
Telephone: 9351 3282

Email:
susan.goodwin@sydney.edu.au

PARTICIPANT INFORMATION STATEMENT Research Project

Title: how did we get there? Juvenile Justice Policy 1990-2005

(1) What is the study about?

The study is aiming to find out more about the ways in which and the reasons why particular decisions were made in relation to NSW juvenile justice policy 1990-2005. It is hoping to discover the major influences on the juvenile justice process by talking to those people who were actively involved in policy reform, or in researching or commenting on policy during the period.

(2) Who is carrying out the study?

The study is being conducted by Elaine Fishwick, PhD candidate at the University of Sydney

(3) What does the study involve?

The study involves an individual face to face or telephone interview. Face to face interviews will be undertaken on campus at the University of Sydney. Alternatively, participants can choose to conduct this interview by telephone. The individual interviews will involve answering a set of open about the juvenile justice policy process in NSW. The interviews will be audio-taped unless the interviewee expressly requests them not to be.

(4) How much time will the study take?

Individual interviews will take approximately 45 minutes.

(5) Can I withdraw from the study?

Being in this study is completely voluntary - you are not under any obligation to consent and - if you do consent - you can withdraw at any time without affecting your relationship with the University of Sydney.

You may stop the interview at any time if you do not wish to continue, the audio recording will be erased and the information provided will not be included in the study.

(6) Will anyone else know the results?

All aspects of the study, including results, will be strictly confidential and only the researchers will have access to information on participants. A report of the study may be submitted for publication, but individual participants or their organisations will not be identifiable in such a report

(7) What if I require further information?

When you have read this information Elaine Fishwick will be available to discuss it with you further and answer any questions you may have. If you would like to know more at any stage, please feel free to contact her on 0403 978285 or at e.fishwick@sydney.edu.au or susan.goodwin@sydney.edu.au tel 9351 3282

(10) What if I have a complaint or concerns?

Any person with concerns or complaints about the conduct of a research study can contact the Deputy Manager, Human Ethics Administration, University of Sydney on (02) 8627 8176 (Telephone); (02) 8627 7177 (Facsimile) or human.ethics@sydney.edu.au (Email).

This information sheet is for you to keep

Appendix 5: Participant Consent Form



The University of Sydney

**Faculty of Education and
Social Work**

ABN 15 211 513 464

Dr Susan Goodwin/

Room 730
Education Building A35
University of Sydney NSW 2006
AUSTRALIA
Telephone: +61 2 9351 3282

Elaine Fishwick PhD candidate
elaine.fishwick@sydney.edu.au
0403978285

PARTICIPANT CONSENT FORM

I,[PRINT NAME], give consent to my participation in the research project

TITLE: *How did we get there? Juvenile Justice Policy in NSW 1990 – 2005*

In giving my consent I acknowledge that:

1. The procedures required for the project and the time involved have been explained to me, and any questions I have about the project have been answered to my satisfaction.
2. I have read the Participant Information Statement and have been given the opportunity to discuss the information and my involvement in the project with the researcher/s.
3. I understand that I can withdraw from the study at any time, without affecting my relationship with the researcher(s) or the University of Sydney now or in the future.
4. I understand that my involvement is strictly confidential and no information about me will be used in any way that reveals my identity.
5. I understand that being in this study is completely voluntary – I am not under any obligation to consent.
6. I understand that I can stop the interview at any time if I do not wish to continue, the audio recording will be erased and the information provided will not be included in the study.

7. I consent to:

- i) Audio-taping YES NO
- ii) Receiving Feedback YES NO

If you answered YES to the "Receiving Feedback Question (iii)", please provide your details i.e. mailing address, email address.

Feedback Option

Address: _____

Email: _____

Signed:

Name:

Date:

Appendix 6: Details of the Children's Court Proceedings Act (NSW) 1987

The Children's Court Proceedings Act (NSW) 1987 (CCPA) also covered the ways in which hearings that involved children were to proceed. The general public were to be excluded (s.10) and the language and the procedures of the court were to be made child friendly (s.12). The CCPA established the age of criminal responsibility for children as ten years old, which meant that no child under 10 could be found guilty of an offence. It also re-confirmed the principle of *doli incapax* that children aged from 10 to 14 years of age are not intellectually and emotionally mature enough to be properly responsible committing an offence, and the onus of proof rest with prosecution to demonstrate that the child is aware that what they have done is serious and morally wrong (see the discussion of subsequent case law NSWAG&J 2011). The CCPA also confirmed that most matters in the children's court should be dealt with summarily by a specialised children's magistrate and appointed a Senior Children's Magistrate to oversee the operation of the courts. The Act also established that the Children's Court had jurisdiction over people who were 18 when they committed a non-indictable offence but under 21 when charged before the Court (s28). Serious indictable offences including homicide were to be transferred to the adult courts (for more details about the exceptions see Attorney General's & Justice 2011 at 41/42). The District and Supreme Courts would then be able to return children convicted of an indictable offence back to the Children's Court for sentencing (Attorney General's & Justice 2011, p. 42).

The CCPA aimed to minimize the intervention of the criminal justice system in young people's lives by arguing that proceedings against children should be commenced by way of summons or citations as opposed to arrest or detention in custody or bail, and that detention should be an option of last resort. The *Criminal Procedure Act (NSW) 1986* (CPA) was subsequently amended so that proceedings were to be commenced by a Court Attendance Notice (CAN) - still in use, which provides information to the accused about their court appearances (NSW AG & J 2011: 35). In principle statements, confessions and information provided to the police by children became admissible as evidence only if a responsible adult or lawyer was present at the time it was taken, unless the court directs otherwise (s.13).

Partly in recognition of concerns about ‘labelling’ and stigma attached to criminal convictions the CCPA also prohibited the Court from recording or finding a plea of guilty as a conviction (s.14). In sentencing there are also restrictions on reference to prior offences committed when individuals are children (s.15) (AG & J 2011).

The legislation consolidated the earlier welfare practices of the Children’s Court by requiring that a background report on a child or young person under 21 be submitted if they faced a ‘control order’ or a term of imprisonment. The report considered the following issues, family background, employment status, level of education, friends and associates, nature and extent of the person’s participation in the community, any disabilities the person may have and any other matters the Court considers relevant (s.25)⁸⁴.¹ In 2011 a regulation was added to the CCPA 1987 at s34 which added to the background information list “other matters the prosecutor considers appropriate to include in the report” (NSW AG & J 2011: n.163 at 38).

⁸⁴ In 2011 a regulation was added to the CCPA 1987 at s34 which added to the background information list “other matters the prosecutor considers appropriate to include in the report” (NSW AG & J 2011: n.163 at 38)

Appendix 7: History of Kariong Detention Centre and administrative transfer to Adult Corrective Services

Overview of an administrative transfer

Kariong had been transformed into a high security detention centre for young men aged 16-21 who had been convicted of serious offences and/or had a history of disciplinary problems whilst in detention, it also acted as remand centre for a small number of detainees (NSW Legislative Council 2005). From 1996 onwards the centre was subject to a number of inquiries and reports relating to staffing problems and detainee discipline, and in 1999 a series of disturbances which took place at the centre,⁸⁵ led to a further Ombudsman's Inquiry in 2000. The 2000 Ombudsman's Report identified a number of problems with 'centre management, intransigence from some staff, proliferation of casual staff and inadequate training, security, detainee management and case management' (NSW Legislative Council 2005, p. 13). Despite the fact that the centre housed some of the more problematic young people in detention centres there appeared to be no budget for program development (NSW Legislative Council 2005). From 2000 until 2004 there were five more reports documenting the problems in Kariong these included the *Council on the Cost and Quality Government Review of Juvenile Justice Centres (2000)*, *Johnston and Dalton Report (2002)*, *Johnston Report (2003)*, *Dalton Report (2004)*, *Statewide Study of Juvenile justice Centres NSW Report (2004)*. In all of these reports there was only one suggestion contained in the Dalton Report 2004 that an option for the centre might be to transfer it to adult corrective services, other recommendations had included closing the centre or a fundamental overhaul (NSW Legislative Council 2005). In 2004 the *Juvenile Justice Legislative Amendment Act* was passed by the NSW parliament transferring the management and administration of Kariong Juvenile Justice Detention Centre to Adult Corrective Services. Kariong became a kind of hybrid institution and was renamed a juvenile correctional centre.

The decision to transfer the centre to corrective services came out of the blue. According to Garner Clancy in a submission to the Select Committee Inquiry noted

⁸⁵ One of the participants in the disturbance Corey Brough, a detainee who was consequently transferred to an adult prison whilst still a juvenile took a case to the UN Human Rights Committee utilizing the Optional Protocol attached to the ICCPR alleging breaches of Articles 2 (3) 7, 10 of the convention see *Corey Brough v. Australia Communication No. 1184/2003 U.N. doc. CCPR/C/86/D/1184/2003 (2006)*.

‘It seems really bizarre that we can have report after report identifying significant problems at Kariong for the past 8 or 9 years, and then the sudden transfer from DJJ to DCS. Why the haste? (Submission 29 at p.11 cited in NSW Legislative Council 2005 at p. 17). The majority of witnesses to the Select Committee considered that the decision to transfer Kariong at that point was a hasty ill considered action that had little to do with resolving the long term problems but was a political decision taken to act as a circuit breaker to deflect criticism of poor management by the Department and by the government, to introduce new systems to quickly assert control amounting in effect to a policy decision made to appeal to media and public concerns (NSW Legislative Council 2005 p. 18). As noted elsewhere in this thesis the numbers of young people in detention had continued to decline from 1995 to 2005 therefore it was not a decision based on overcrowding or overpopulation. The government framed its rationale for the decision as one which was necessary in order to deal with the increasingly hardened serious offenders in detention, rather than as a response to their own mismanagement, as submissions pointed out statistical evidence provided no indication whatsoever that offenders were more dangerous or risky than previously (NSW Legislative Council 2005). As one submission to the Select Committee Inquiry noted ‘rather than solving the problem it shifts it to another department (Submission 13 NCOSS, p.6 cited in NSW Legislative Council 2005 at p. 30). In 2004 a number of high profile detainees had been transferred to Kariong and the media had run a series of articles on the fact that the detainees had access to a swimming pool (which ended up being filled in), had pizza in detention, access to computer games and one detainee was filmed having a sexual encounter with his girlfriend, and the rates of assault were said to be high amongst detainees and staff⁸⁶ (NSW Legislative Council 2005). The Public Service Association had also been agitating for improved conditions for staff and had used case examples from the situation at Kariong to support their lobbying campaign, by leaking stories to the press.

The *Juvenile Justice Legislative Amendment Act* not only transferred management of Kariong to Corrective Services but also gave power to the Director General to

⁸⁶ The rates of physical assault in Kariong did not improve and were reported to be the highest in the state in 2009 see [://www.smh.com.au/national/juvenile-prisoners-the-most-violent-20091230-ljy2.html](http://www.smh.com.au/national/juvenile-prisoners-the-most-violent-20091230-ljy2.html)

order the transfer of anyone over the age of 16 from a detention centre to a juvenile correctional centre, it conferred power on the Minister of Juvenile justice to transfer a juvenile into adult correction centres if recommended by the Commissioner for Corrective Services, or for those under 18 by the Serious Offenders Review Council rather than the Serious Young Offenders Review Panel (established in 1998). These policy changes removed the court's discretion to direct where young people would serve their sentence and also transferred decision-making from judicial authority subject to review, to the administrative sphere where there was less accountability and few guidelines to provide the basis for decisions about the behaviour that warranted a detainee being transferred (NSW Legislative Council 2005, p.44). As many submissions to the Select Committee Inquiry stated and the Select Committee Report itself documented (see chapter 8), together these amendments, as well the Memorandum of Understanding between DJJ and DCS, contravened numerous international human rights provisions including the ICCPR, the CROC, the Beijing Rules (1985) and the Riyadh Guidelines (1990), as well as the Australasian Juvenile Justice Administrators Standards for Juvenile Custodial Facilities 1999. They also provided a stark contrast to the overall philosophical direction of juvenile justice policy, which had centred on young people's individual needs and levels of maturity, stressing systemic responses that were based on diversion, restorative justice, rehabilitation and reintegration. The AJAC and the JJAC also criticised the decision on the basis that the action would worsen the situation facing young Aboriginal men in custody, propelling them into a detrimental adult correctional environment which increased potential recidivism rates rather than guiding detainees into reintegration and rehabilitation (NSW Legislative Council 2005).