



NSW Sentencing Council

Public Confidence in the NSW Criminal Justice System

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Published in Sydney by the:

NSW Sentencing Council
Box 6 GPO Box
SYDNEY

www.lawlink.nsw.gov.au/sentencingcouncil

Email: sentencingcouncil@agd.nsw.gov.au

ISBN Print: 978-1-921590-03-0

Online: 978-1-921590-06-1

Editors: Anna Butler, Katherine McFarlane

Graphic design and typesetting: Lorraine Beal

Printed by: Scott Printing Pty Ltd

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Acknowledgments

The authors wish to thank Pauline Kearney for her contribution to the research for this paper.

The authors wish also to acknowledge the comments on earlier drafts provided by the following people:

- Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research;
- Mr Craig Jones, Research Manager, NSW Bureau of Crime Statistics and Research; and
- The Communications Unit, NSW Attorney General's Department.

Introduction

In a democracy, the rule of law is not achieved by raw power but by public acceptance of the law and by public confidence in the institutions which promulgate and administer it.¹

The importance of maintaining and promoting public confidence in the criminal justice system cannot be overstated. The criminal justice system is centrally concerned with securing public order by the exercise of power, however, a system that does not command public trust will fail to establish the requisite legitimacy and authority to fulfil this role.² Its effective operation relies on public confidence in a way that is distinctively different from other services such as health and education.³ While public confidence is undoubtedly an aspiration of such systems, it is not critical in ensuring the public's participation in, or the fundamental legitimacy of, these services. The same cannot be said for the criminal justice system. Victims must have sufficient trust and confidence in the system to report crimes to the police and to participate in the prosecution process. Similarly, confidence in the process, outcomes and accountability of the administration of justice is crucial to ensure the co-operation and participation of jurors and witnesses in court proceedings. Accordingly, it is essential that the issue of public confidence be an ongoing priority for all criminal justice agencies.

In recognition of this priority and as part of its educative mandate,⁴ the NSW Sentencing Council (the Council), together with the Bureau of Crime Statistics and Research (BOCSAR), recently undertook a survey to ascertain community attitudes of NSW residents towards the criminal justice system⁵ ('the survey'). The first of its kind in NSW, the survey was based on the British Crime Survey (BCS)⁶ questionnaire and involved telephone interviews with over 2000 respondents answered questions about their confidence in the criminal justice system, their views about sentencing, their knowledge of crime and justice and how they source information about crime and justice issues.

The survey's findings demonstrate that the majority of NSW residents lack confidence in particular aspects of the criminal justice system, namely the adequacy of sentences imposed by the courts, the extent to which victim's needs are met and the promptness with which

1 Brennan, J., 'The Third Branch and the Fourth Estate' (Speech delivered at the Broadcasting Society and Law Lecture Series, University College, Dublin, 22 April 1997).

2 Hough, M. and Roberts, J., 'Confidence in Justice: An international review' (2004) ICPR Research Paper No. 3, The Institute for Criminal Policy Research, School of Law, King's College, London, 7.

3 Hough, M. and Roberts, J., 'Confidence in Justice: An international review' (2004) ICPR Research Paper No. 3, The Institute for Criminal Policy Research, School of Law, King's College, London, 7.

4 In February 2007, s100J of the *Crimes (Sentencing Procedure) Act* 1999 was amended to extend the Council's functions to include the education of the public on sentencing matters.

5 Jones, C. et al 'Public Confidence in the criminal justice system' (2008) Crime and Justice Bulletin no. 118, NSW Bureau of Crime Statistics and Research, Sydney.

6 A large scale face-to-face survey by the UK Home Office, first conducted in 1982 and continuous since 2001, the BCS asks residents of England and Wales their experience of crime in the past 12 months as well as their attitudes to crime-related issues, <http://www.homeoffice.gov.uk/rds/bcs1.html>, accessed November 2008.

cases are dealt. What also emerges is that the majority of NSW residents possess poor knowledge of crime and justice issues and have significant misperceptions about trends in crime and conviction and imprisonment rates. A further significant and positive finding is that the majority of participants indicated that they would be interested in learning more about the process of how judges sentence offenders.

The aims of this paper are:

- to explore these issues by reviewing the key findings of the survey in the context of the literature;
- to examine existing public confidence initiatives from this and other jurisdictions; and
- to draw on this information for the purpose of considering what strategies might best redress the public's lack of confidence in the NSW criminal justice system.

Part 1: Summary of Findings from the BOCSAR — NSW Sentencing Council Survey

Set out below is a summary of the key findings across the three categories of the survey; public confidence, knowledge, and sources of information about the criminal justice system. A basic overview of the relationship between confidence levels and socio-demographics is also presented.

Public confidence in the criminal justice system

- A majority (66 percent) of NSW residents believe that sentences handed down by the courts are too lenient;
- A majority (62 percent) of NSW residents think that the criminal justice system does not meet the need of victims;
- A majority (65.6 percent) of NSW residents think the criminal justice system does not deal with cases promptly;
- About half (51.9 percent) of NSW residents think the criminal justice system does not deal with cases efficiently;
- A majority (74.5 percent) of NSW residents think that the criminal justice system treats accused people fairly;
- A majority (72.2 percent) of NSW residents think that the criminal justice system respects the rights of accused people; and
- A majority (54.9 percent) of NSW residents think that the criminal justice system brings people to justice.

Public knowledge about the criminal justice system

- A vast majority (over 98 percent) of NSW residents overestimated the proportion of crime that involves violence or the threat of violence;
- 89 percent of NSW residents underestimated the imprisonment rates for home burglary;
- 87 percent of NSW residents underestimated the conviction rates for assault and 86 percent underestimated the conviction rates for home burglary;
- A majority (80.8 percent) of NSW residents mistakenly believe that rates of property crime have increased over the last five years; and
- 81 percent of NSW residents overestimated the imprisonment rates for assault.

Most influential sources of information about the criminal justice system

- Television/radio news (73.9 percent)
- Talk-back radio (21.6 percent)
- Broadsheet newspaper (48.2 percent)
- Personal experience (20.6 percent)
- Local newspaper (41.2 percent)
- Internet (18.4 percent)
- Tabloid newspaper (34.9 percent)
- Books (9.5 percent)
- Word-of-mouth (27.2 percent)
- Government publications (8.2 percent)
- Relatives'/friends' experiences (22.7 percent)
- Educational institutions (7.8 percent)

Correlation between confidence and socio-demographics

Lower levels of confidence in the criminal justice system were most prevalent among:

- Older people;
- Those who are less well educated;
- Those who are less well off; and
- Those who report drawing information about the justice system from talk-back radio, the experiences of others and/or television/radio.

Part 2: Public Confidence Issues

This part reviews the major public confidence issues identified by the survey, namely the public's belief that:

- the courts impose sentences that are too lenient;
- the criminal justice system does not deal with cases promptly; and
- the criminal justice system does not meet the needs of victims.

Perception that sentences are too lenient

As noted by the Honourable Chief Justice James Spigelman;⁷

Sentencing engages the interest, and sometimes the passion, of the public more than anything else judges do. The public's attitude to the way judges impose sentences determines, to a substantial extent, the state of public confidence in the administration of justice.

If attitudes to sentencing are regarded as a barometer of the public's overall confidence in the criminal justice system, the results of the survey raise some significant concerns. Analysis of sentencing outcomes over the past 15 years shows that NSW criminal courts have generally become more harsh, both in terms of the use of imprisonment as a sanction and the length of sentence imposed.⁸ Regardless of this trend towards harsher sentencing, the survey demonstrates that the majority of NSW residents (66%) consider sentences imposed by the courts to be too lenient.

Public dissatisfaction with sentencing is far from unique. Despite differences in geography and methodology, research into public attitudes towards sentencing has consistently found that most people consider sentences imposed by the courts to be too lenient. For example, a 1987 study of public perception of sentencing in Perth revealed that 76 percent of respondents were of the view that sentences were '*not severe enough*'.⁹ The 2003 Australian Survey of Social Attitudes (AuSSA) showed similar results, with 70 percent of respondents agreeing with the statement '*people who break the law should be given stiffer sentences*'.¹⁰

The public's dissatisfaction with sentencing outcomes is also consistent across time. For example, in 1996 the British Crime Survey (BCS) included, for the first time in its history, a module devoted specifically to sentencing issues. In response to questions concerning the

7 Spigelman CJ., 'Free, strong societies arise from participatory legal systems', Sydney Morning Herald, 16 May 2005.

8 Lulham, R. and Fitzgerald, J., 'Trends in bail and sentencing outcomes in New South Wales Criminal Courts: 1993–2007' (2008) Crime and Justice Bulletin no. 124, NSW Bureau of Crime Statistics and Research, Sydney, 6.

9 Indermaur, D., 'Public Perceptions of Sentencing in Perth, Western Australia' (1987) 20 *Australian and New Zealand Journal of Criminology* 163, 171.

10 Indermaur, D. and Roberts, L., 'Perceptions of crime and justice' in S Wilson et al (eds), *Australian Social Attitudes: The First Report* (University of NSW Press, Sydney, 2005), 153.

adequacy of sentences, 79 percent of respondents considered that sentences were ‘*too lenient*’ with 51 per cent being of the view that sentences were ‘*much too lenient*’.¹¹ These figures have remained virtually unchanged in the nine subsequent sweeps of the BCS.¹²

Similar findings were reported by the General Social Survey¹³, one of the longest running national opinion polls in the United States, which asked respondents whether they think courts deal with criminals ‘*too harshly*’, ‘*about right*’ or ‘*not harshly enough*’.¹⁴ Between 1972 and 2006 an average of 82.8 percent of respondents considered that courts impose sentences that are not harsh enough.¹⁵ Public dissatisfaction with sentencing peaked in 1982 with 90.3 percent of respondents considering sentences to be inadequate. This level of dissatisfaction has, however, gradually improved, and by 2006 had reached 68.3 percent.¹⁶

In Canada too, sentencing outcomes have been identified as a concern. Nearly three-quarters of respondents (74 percent) to a 2005 public opinion survey considered that the courts were ‘*too lenient*’.¹⁷ This finding was consistent with Canadian polls over the preceding 30 year period.¹⁸

Public knowledge and perceptions of leniency

The relationship between public knowledge and perceptions of leniency has been considered in a number of studies. A comprehensive examination of public opinion toward sentencing, undertaken by the Victorian Sentencing Advisory Council,¹⁹ suggests that the public has consistently demonstrated high levels of dissatisfaction with sentencing, not because it is substantially punitive, but because of a persistent lack of knowledge and misperceptions about sentencing trends and practices.²⁰

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- 11 Hough, M. and Roberts, J., ‘Attitudes to punishment: findings from the British Crime Survey’ (1998) Home Office Research Study No. 179, 17.
 - 12 Between 1998 and the 2007/08 sweep of the BCS an average of 77 percent considered sentences to be too lenient, <http://www.homeoffice.gov.uk/rds/bcs1.html>, accessed 2 February 2009.
 - 13 A large scale face-to-face survey carried out by the National Opinion Research Centre, the GSS was first conducted in 1972 and there has been 26 subsequent sweeps. The GSS includes a standard core of demographic, behavioural and attitudinal questions, plus topics of special interest, <http://www.norc.org/GSS+Website>, accessed 10 February 2009.
 - 14 Warr, M., ‘Poll Trends. Public Opinion on Crime and punishment’ (1995) 59 *Public Opinion Quarterly* 296, 307.
 - 15 The National Opinion Research Centre (NORC) General Social Survey, dataset from 1972-2006, <http://www.norc.org/GSS+Website/Browse+GSS+Variables/Subject+Index/>, accessed 2 February 2009.
 - 16 The National Opinion Research Centre (NORC) General Social Survey, dataset from 1972-2006, <http://www.norc.org/GSS+Website/Browse+GSS+Variables/Subject+Index/>, accessed 2 February 2009.
 - 17 Roberts, J. et al, ‘Public Attitudes to Sentencing in Canada: exploring recent findings’ (2007) 49(1) *Canadian Journal of Criminology and Criminal Justice* 75, (on-line version) <http://www.cjca-acjp.ca/en/cjc/cjc49a1.html>.
 - 18 Roberts, J. et al, ‘Public Attitudes to Sentencing in Canada: exploring recent findings’ (2007) 49(1) *Canadian Journal of Criminology and Criminal Justice* 75, (on-line version) <http://www.cjca-acjp.ca/en/cjc/cjc49a1.html>.
 - 19 Gelb, K., ‘Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing’ (Sentencing Advisory Council, Victoria, July 2006), 13–14.
 - 20 Gelb, K., ‘Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing’ (Sentencing Advisory Council, Victoria, July 2006), 14.

A 2002 report considered survey findings in England and Wales²¹ and noted the paradox that while much of the criticism of the criminal justice system is levelled at the perceived leniency of sentencing, most respondents significantly underestimated the severity of sentences imposed and had little knowledge of sentencing options.²² The report noted that public knowledge of sentencing issues in England and Wales has been in a poor state for a long time.²³

Similarly, in the United States and Canada, where some of the highest levels of dissatisfaction with sentencing have been documented, research has shown that the public have little awareness of statutory penalties and consistently underestimate the severity of sentences imposed by the courts.²⁴

In an attempt to measure informed public opinion and true levels of public punitiveness, a number of studies have gone beyond the single question poll of whether sentences are 'too harsh, about right or too lenient' to more detailed questions including the use of crime scenarios or vignettes.²⁵

A series of studies conducted by the Canadian Department of Justice used real sentencing matters to compare the impact of information on perceptions of sentencing.²⁶ The first respondent group was given only a brief description of the case (offence and sentence details) while the second was provided with a detailed case summary. The majority (80 percent) of respondents in the first group were of the view that the sentence imposed was too lenient; 7 percent thought it was about right; and only 3 percent felt the sentence was too harsh.²⁷ For the group provided with a full account of the matter, only 15 percent were of the view that the sentence was too lenient, with 30 percent considering the sentence to be about right and 45 percent being of the view that the sentence was too harsh.²⁸

21 Roberts, J., 'Public Opinion and Sentencing Policy' in S Rex and M Tonry (eds) *Reform and punishment: the future of sentencing* (Willan Publishing, Cullompton, 2002).

22 Roberts, J., 'Public Opinion and Sentencing Policy' in S Rex and M Tonry (eds) *Reform and punishment: the future of sentencing* (Willan Publishing, Cullompton, 2002), 23–24.

23 Roberts, J., 'Public Opinion and Sentencing Policy' in S Rex and M Tonry (eds) *Reform and punishment: the future of sentencing* (Willan Publishing, Cullompton, 2002), 24.

24 Roberts, J. and Stalens, L., *Public Opinion, Crime and Criminal Justice* (Westview Press, Boulder, 1994), 44–45.

25 Broadhurst, R. and Indermaur, D., 'Crime Seriousness Ratings: The relationship of information accuracy and general attitudes in Western Australia' (1982) *Australian and New Zealand Journal of Criminology* 219; Doob, A. and Roberts, J., 'Sentencing: An analysis of the public's view of sentencing' (1983) Department of Justice, Canada; Hough, M. and Roberts, J., 'Sentencing Trends in Britain: Public knowledge and public opinion' (1999) 1 *Punishment & Society* 11.

26 Doob, A. and Roberts, J., 'Sentencing: An analysis of the public's view of sentencing' (1983) Department of Justice, Canada.

27 Doob, A. and Roberts, J., 'Sentencing: An analysis of the public's view of sentencing' (1983) Department of Justice, Canada, cited in Gelb, K., 'Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing' (Sentencing Advisory Council, Victoria, July 2006), 17.

28 Doob, A. and Roberts, J., 'Sentencing: An analysis of the public's view of sentencing' (1983) Department of Justice, Canada, cited in Gelb, K., 'Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing' (Sentencing Advisory Council, Victoria, July 2006), 17.

A 2002 study by the UK Home Office found that the number of respondents who characterised sentences as ‘*about right*’ increased with knowledge²⁹ and that respondents’ overall confidence in the criminal justice system improved after being exposed to information about sentencing trends and practices.³⁰

The impact of information on public confidence and attitudes to sentencing was investigated using a subset of respondents to the 2002/03 BCS.³¹ Some of the subset group were given an information booklet about sentencing issues and the remainder were not. All of the subset group were re-interviewed two weeks later and again questioned about their confidence levels in the criminal justice system and their knowledge of crime and sentencing practices. One quarter of respondents had changed their views and there was an overall increase in confidence in the criminal justice system.³² The increase in confidence, however, was not limited to those who had received the booklet. Interestingly, both groups showed improved levels of confidence and satisfaction with sentencing, suggesting that simply engaging the public in discussions about sentencing issues has a positive effect on confidence levels.³³

Advancing public awareness and knowledge in relation to sentencing issues is, therefore, essential in bridging the perceived gap between the public’s expectations and the reality of sentencing practices.

Perceptions of leniency and public understanding of crime causality

Perceptions of undue leniency in sentencing have a further deleterious impact on confidence in terms of the public’s understanding of crime causality. Findings of the 1996 BCS revealed that respondents saw a direct causal link between lenient sentencing and increasing crime rates.³⁴ Of the 76 percent of respondents who incorrectly perceived crime rates to be rising, nearly all (94 percent) cited lenient sentencing as a cause of the increase, with 26 percent regarding it to be the most important cause and 48 percent regarding lenient sentencing to be a major cause of rising crime.³⁵

The most recent sweep of the BCS revealed that 11 percent of respondents were of the view that lenient sentencing is the main cause of crime and 40 percent considered it to be a major cause of crime.³⁶

29 Chapman, B. et al, ‘Improving public attitudes to the criminal justice system: the impact of information (2002) Home Office Research Study no. 245, Home Office, London, 32.

30 Chapman, B. et al, ‘Improving public attitudes to the criminal justice system: the impact of information (2002) Home Office Research Study no. 245, Home Office, London, 33–35.

31 Salisbury, H., ‘Public attitudes to the criminal justice system: the impact of providing information to British Crime Survey respondents’ (2004) Home Office Online Report No. 64/04, Home Office, London.

32 Salisbury, H., ‘Public attitudes to the criminal justice system: the impact of providing information to British Crime Survey respondents’ (2004) Home Office Online Report No. 64/04, Home Office, London, 24.

33 Salisbury, H., ‘Public attitudes to the criminal justice system: the impact of providing information to British Crime Survey respondents’ (2004) Home Office Online Report No. 64/04, Home Office, London, 11–12.

34 Hough, M. and Roberts, J., ‘Attitudes to Punishment: Findings from the British Crime Survey’ Home Office Research Study No. 179, London, 31.

35 Hough, M. and Roberts, J., ‘Attitudes to Punishment: Findings from the British Crime Survey’ Home Office Research Study No. 179, London, 32.

36 Mole, S., ‘Chapter 5: Public perception’ in Kershaw C. et al (eds), *Crime in England and Wales 2007/08. Findings from the British Crime Survey and police recorded crime*, Home Office Statistical Bulletin, July 2008, 131.

Similar findings have emerged from the US where a recent poll found that when asked to identify the main cause of crime, 8 percent of respondents selected lenient sentencing³⁷ and 19 percent selected longer sentences as their top priority for '*dealing with crime*'.³⁸

These studies demonstrate that a significant proportion of the community regard sentencing as an important crime control mechanism. Despite evidence that the factors affecting crime rates lie outside the reach of sentencers,³⁹ the perception of leniency results in public dissatisfaction with judges and magistrates for failing to fulfil their perceived role in preventing crime and contributes to the erosion of public confidence in the criminal justice system as a whole. Advancing public awareness and understanding in relation to sentencing issues must, therefore, be an ongoing priority for all criminal justice agencies.

Perception that the criminal justice system does not deal with cases promptly

A 2007 study by the UK Ministry of Justice sought to examine the process by which people formed their opinions when answering the BCS questions regarding confidence in the criminal justice system.⁴⁰ Respondents were invited to freely name the various agencies which make up the criminal justice system. The findings revealed that respondents most frequently identified two agencies, namely the police and the courts.⁴¹ The criticism by BCS respondents that the criminal justice system fails to deal with cases promptly or efficiently⁴² can, therefore, be regarded as a lack of confidence in the ability of the police and the courts to deal with matters in a timely and effective manner.

The NSW survey differs from the BCS in that the promptness and efficiency with which cases are dealt are considered separately and as such a direct comparison of findings in relation to these issues cannot be made. There is, however, no reason to consider that the Ministry of Justice findings in relation to the public's understanding of the agencies that make up the criminal justice system would be markedly different in Australia. Accordingly, the survey's findings that a majority of respondents (65.6 percent) are of the view that the criminal justice system does not deal with cases promptly raises the issue of delay within the court system.

The adage that 'justice delayed is justice denied' has worldwide resonance and criticism of courts for the time taken to process matters is apparent in research from numerous countries.⁴³

37 'The NCSC Sentencing Attitudes Survey: A Report on the Findings' (online) http://www.ncsconline.org/D_RESEARCH/Documents/NCSC_SentencingSurvey_Report_Final060720.pdf, 19.

38 'The NCSC Sentencing Attitudes Survey: A Report on the Findings', (online) http://www.ncsconline.org/D_RESEARCH/Documents/NCSC_SentencingSurvey_Report_Final060720.pdf, 20.

39 Gelb, K., 'Myths and Misconceptions: Public Opinion versus Public Judgments about Sentencing' (Sentencing Advisory Council, Victoria, July 2006), 14.

40 Smith, D., 'Confidence in the criminal justice system: what lies beneath?' (2007) Ministry of Justice Research Series No. 7/07.

41 Smith, D., 'Confidence in the criminal justice system: what lies beneath?' (2007) Ministry of Justice Research Series No. 7/07, 14.

42 An average of 38 percent of respondents that they were very or fairly confident the criminal justice system deals with cases promptly and efficiently.

43 For example, a 2004 study by the American Bar Association revealed that 75 percent of respondents thought that the court process takes too long and almost all (97 percent) of respondents to a 2003 survey in Belgium considered that criminal court cases proceeded to slowly.

As a criminal matter proceeds through the court system, delay affects the accused who may or may not be guilty, the victims and their family who have been aggrieved by the offences against them, and the community which demands justice, safety and protection.⁴⁴

The validity of using delay as a benchmark against which criminal justice performance is measured has been the cause of considerable debate.⁴⁵ In response to suggestions that judicial work should be the subject of performance indicators the Honourable Chief Justice James Spigelman made the following comments;⁴⁶

Our system of justice is not the most efficient mode of dispute resolution. Nor is democracy the most efficient mode of government. We have deliberately chosen inefficient ways of decision making in the law in order to protect rights and freedoms. We have deliberately chosen inefficient ways of government decision making in order to ensure that the government operates with the consent of the governed ... A critical reason why a consumer focus is inadequate, and indeed borders on the irrelevant, for the administration of justice is because courts are not merely a publicly funded dispute resolution service. To treat them as if that is all they are is far too narrow. Indeed, in my opinion, it is potentially subversive of the rule of law. It sets at nought the constitutional function of the courts to protect the integrity of institutions, especially the mechanisms of governance. It sets at nought the role of the courts to protect society. It sets at nought the role of the courts to prevent abuse of power.

While performance indicators may not be an appropriate measure, the operation of an efficient and effective court system is crucial to the administration of justice and egregious examples of are delay are an anathema to justice.⁴⁷

Delay is generally measured by examining the time taken for cases to progress through the court system from initiation to finalisation on the basis that the concept of total duration is quantifiable and statistically measurable.⁴⁸ Other relevant factors such as the number of new cases, the number of dispositions, and the pending caseload are also measured to provide a more complete picture of delay within the court system.⁴⁹ Analysis in these terms reveals that there has, in fact, been significant improvements in delay in NSW courts over the past two decades.

In 1988 it took more than 500 days for a trial to proceed from committal to outcome in the NSW District Court.⁵⁰ This figure was reduced to 329 days by 1998 and further reduced to

44 Payne, J., 'Criminal trial delays in Australia: trial listing outcomes' (2007) Australian Institute of Criminology Research and Public Policy Series No. 74, 2.

45 Zdenkowski, G., 'Magistrates' courts and public confidence' (Paper presented at the Confidence in the Courts conference, Canberra, 9–11 February 2007), 5.

46 'Citizens and courts' (Address delivered at the International Conference on Regulation Reform Management and Scrutiny of Legislation, Parliament House, Sydney, 9 July 2001).

47 Zdenkowski, G., 'Magistrates' courts and public confidence' (Paper presented at the Confidence in the Courts conference, Canberra, 9–11 February 2007), 6.

48 Payne, J., 'Criminal trial delays in Australia: trial listing outcomes' (2007) Australian Institute of Criminology Research and Public Policy Series No. 74, 7.

49 Callinan, R., 'Court Delays in NSW: Issues and Developments' (2002) NSW Parliamentary Library Research Service, Briefing Paper No 1/02, 6.

50 Kuan, Y., 'Long term trends in trial processing in New South Wales, (2004) Crime and Justice Bulletin No. 82, NSW Bureau of Crime Statistics and Research, Sydney, 1.

238 days by 2007.⁵¹ Similarly, the median delay from committal to outcome for finalised trials in the NSW Supreme Court has gone from 593 days in 1998 to 300 days in 2007.⁵²

In 2006/07, for the fifth year in a row, the NSW Local Courts achieved the lowest backlog of criminal matters older than six months.⁵³ For non-appeal matters the NSW District Court ranked first in the country and the Supreme Court ranked second in terms of backlog for matters older than 12 months.⁵⁴

The survey suggests that the public is largely ignorant of the many improvements that have been made in relation to court delays and again makes clear that communication from within the criminal justice system and the promotion of public knowledge is crucial in restoring and maintaining public confidence.

Perception that the criminal justice system does not meet the needs of victims

In the 1970s researchers began to draw attention to the plight of crime victims, describing them as the 'forgotten party' in the criminal justice system.⁵⁵ Since that time, victimology has developed into a complex and diverse field which has produced a significant body of theoretical and empirical work.⁵⁶ It is now acknowledged that victims are not simply witnesses to a crime against the State but are central to the effective operation of the criminal justice system.⁵⁷ Victim cooperation is essential for reporting incidents to police, providing information for the investigation and participating in the prosecution process. Victims also provide information which is crucial for the development of crime detection and prevention strategies.⁵⁸

If the system fails, or is perceived to fail, to adequately recognise and meet the needs of victims, there is a risk that they will cease to cooperate and participate, rendering absent a critical element of a legitimate, functioning criminal justice system. The survey's finding that 62 percent of NSW residents feel that the criminal justice system fails to meet the needs of victims is, therefore, of considerable concern.

51 NSW Bureau of Crime Statistics and Research Summary statistics, http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_court_stats, accessed 13 March 2009.

52 NSW Bureau of Crime Statistics and Research Summary statistics, http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_court_stats, accessed 13 March 2009.

53 Productivity Commission's Report on Government Services 2008, Court Administration, 7.26; NSW Attorney General's Department, *Annual Report 2007/08* (2008), 12.

54 Productivity Commission's Report on Government Services 2008, Court Administration, 7.26; NSW Attorney General's Department, *Annual Report 2007/08* (2008), 12.

55 Wemmers, J., 'Where do they belong? Giving victims a place in the criminal justice process' (Paper presented at the National Victims of Crime Conference, Adelaide, 23–24 September 2008).

56 Wilson, P. et al, 'Strategies to Integrate and Co-ordinate Victims of Crime Services' (2001) Report for Families, Youth and Community Care Queensland, Bond University, 5.

57 Wemmers, J., 'Where do they belong? Giving victims a place in the criminal justice process' (Paper presented at the National Victims of Crime Conference, Adelaide, 23–24 September 2008).

58 Holder, R., 'The Quality of Justice: Operation of the Victims of Crime Act 1994 in the Australian Capital Territory 1996–2007' (2008) Victim Support ACT, Canberra, June 2008, 27–28.

This figure represents a slightly higher level of public confidence when compared with BCS, where between 2001 and 2007 an average of 67 percent of respondents were of the view that the criminal justice system does not meet the needs of victims.⁵⁹ It is otherwise difficult to place this aspect of the survey in an international context as most of the research, for example the International Crime Victimization Survey (ICVS), has focused on the experiences of people who identify as victims of crime, and their satisfaction with the system measured in terms of the adequacy of support services and the response by police.

The ICVS commenced in 1989 to meet the need for reliable crime statistics that could be used for international comparisons and is regarded as the most far-reaching and reliable source of information about householders' experience of crime in different countries.⁶⁰ In terms of the needs of the victim being met by the criminal justice system, the ICVS measures victims' satisfaction with police response and support received after reporting to the police rather than a general question about satisfaction with the criminal justice system.

In the most recent sweep of the ICVS, Australian victims of crime reported high levels of satisfaction with the way their matter was handled by police and with the level of support received.⁶¹ This finding of victim satisfaction is seemingly at odds with the dissatisfaction reported by respondents to the present survey.

Respondents to the present survey were not categorized as victims or non-victims of crime however it is interesting to note that only 20.6 percent cited 'personal experience' as the most influential source of information about the criminal justice system. It is suggested that this gives rise to the possibility that a similarly small proportion of respondents identify as victims. This, in turn, suggests that the apparent disparity set out above demonstrates that the general (non-victim) community is unaware of the significant progress that has been achieved in this State towards better meeting the needs of victims of crime.

Victims are critical stakeholders in the criminal justice system and the perception that it fails to meet their needs has the potential to significantly erode public confidence. Meeting the needs and rights of victims as they progress through the criminal justice system has been a priority for criminal justice agencies for some time and has resulted in the development of numerous victim's services in this State. The value of these services is, however, limited if the public is not aware of them. Accordingly, promoting public understanding about victim's issues and the range of services available to assist victims is vital in restoring and maintaining public confidence in the criminal justice system.

59 Jansson K. et al, 'Extent and Trends' in Kershaw C. et al, *Crime in England and Wales 2007/08. Findings from the British Crime Survey and police recorded crime*, Home Office Statistical Bulletin, July 2008, 121.

60 Dijk, J. van et al, 'Criminal victimisation in international perspective: Key findings from the 2004-2005 ICVS and EU ICS' (Boom Juridische Uitgevers, The Hague) 2008, 5.

61 Johnson, H., 'Crime Victimization in Australia. Key Results of the 2004 International Crime Victimization Survey' (2004) Research and Public Policy Series No. 64, Australian Institute of Criminology, 45.

Part 3: Public Knowledge of the Criminal Justice System

One of the consistent findings of the research examining public opinion of criminal justice is that people have very little accurate knowledge of crime and the criminal justice system.⁶² In particular, people have extensive misperceptions about the nature and extent of crime, court outcomes and the rates of imprisonment and parole. Despite this lack of knowledge, people maintain strong and steadfast views about crime and justice issues and these views play a critical role in shaping law and order policy.⁶³ Government spending priorities are undoubtedly influenced by public opinion and when governments increase their investment in law and order to address a non-existent or misapprehended problem it will inevitably leave genuine public policy issues underfunded or overlooked.⁶⁴

The survey reveals a discouraging picture of public knowledge and demonstrates significant disparity between what the public believes and the reality of crime and justice in NSW. While comparable with the findings in other jurisdictions, such disparity should be of serious concern to both criminal justice agencies and the government as a whole.

Misperception of increasing crime rates

The NSW Recorded Crime Statistics for 2008 revealed that with the exception of fraud and shoplifting, recorded incidents of crimes in NSW have either declined or remained stable between January 2007 and December 2008.⁶⁵ Responses to the present survey demonstrated that the public is largely unaware of this downward/stable trend and revealed widespread misperceptions in relation to crime rates, with 80.8 percent of respondents mistakenly believing that property crime rates had increased in the past five years.

The gap between respondents' belief and the reality of crime is consistent with the findings of previous studies, both in Australia and internationally.

The Australian Survey of Social Attitudes 2003 (AuSSA) asked respondents whether crime had increased or decreased over the previous two years, and reported that more than two thirds of respondents believed it had increased, with over one third believing it had increased 'a lot'.⁶⁶ In fact the rate of crime reported to police during the relevant period had declined across the six major categories of crime.⁶⁷

62 Gelb, K., 'Myths and Misperceptions: Public Opinion versus Public Judgment about Sentencing' (Sentencing Advisory Council, Victoria, July 2006), 13–14.

63 Gelb, K., 'Myths and Misperceptions: Public Opinion versus Public Judgment about Sentencing' (Sentencing Advisory Council, Victoria, July 2006), 14.

64 Weatherburn, D. and Indermaur, D., 'Public perceptions of crime trends in New South Wales and Western Australia' (2004) Crime and Justice Bulletin No. 80, NSW Bureau of Crime Statistics and Research, Sydney, 2.

65 Goh, D. and Moffatt, S., 'New South Wales Recorded Crime Statistics 2008' NSW Bureau of Crime Statistics and Research, 2009, 11.

66 Indermaur, D. and Roberts, L., 'Perceptions of crime and justice' in S Wilson et al (eds), *Australian Social Attitudes: The First Report* (University of NSW Press, Sydney, 2005), 142.

67 Indermaur, D. and Roberts, L., 'Perceptions of crime and justice' in S Wilson et al (eds), *Australian Social Attitudes: The First Report* (University of NSW Press, Sydney, 2005), 142–143.

A 2004 study of public perceptions of crime trends in NSW and Western Australia reported the results of telephone interviews conducted with 857 New South Wales residents and 252 Western Australian residents. Respondents were asked about crime trends over the previous two years in six common offences: home break-in, motor vehicle theft, robbery with a firearm, sexual assault, murder and shoplifting.⁶⁸ In New South Wales, respondents mistakenly believed that every category of crime had been rising during the previous two years. In fact, the incidence of each category of crime had declined or was stable, except shoplifting, which had increased.⁶⁹ In Western Australia, where the rates for all categories of crime remained stable, except that shoplifting had increased in one survey period and car theft had declined in the other, respondents also perceived crime rates to be rising.⁷⁰ The authors surmised that the level of public misapprehension about crime is unlikely to differ markedly in other Australian states and territories.⁷¹

In England and Wales the recorded rate of crime increased steadily through 1980s and 1990s, peaking in 1995.⁷² Since then, crime rates have been steadily declining with the most recent BCS sweep revealing crime to be at its lowest ever level since 1981.⁷³ Despite this decline, which has now been apparent for over a decade, respondents to the BCS continue to believe that the rate of crime is increasing.

Similarly, a 2002 review of crime trends in five countries (the United States, Canada, the United Kingdom, Australia and New Zealand) demonstrated that in all five countries crime rates rose in the 1980s, began to decline by the early or mid-1990s, and by 2000 were either continuing to decline or were stable.⁷⁴ When asked about rates of crime, however, the majority of respondents from all five countries continued to believe that crime rates were escalating.⁷⁵

68 Weatherburn, D. and Indermaur, D., 'Public perceptions of crime trends in New South Wales and Western Australia' (2004) Crime and Justice Bulletin No. 80, NSW Bureau of Crime Statistics and Research, Sydney, 2.

69 Weatherburn, D. and Indermaur, D., 'Public perceptions of crime trends in New South Wales and Western Australia' (2004) Crime and Justice Bulletin No. 80, NSW Bureau of Crime Statistics and Research, Sydney, 3–6.

70 Weatherburn, D. and Indermaur, D., 'Public perceptions of crime trends in New South Wales and Western Australia' (2004) Crime and Justice Bulletin No. 80, NSW Bureau of Crime Statistics and Research, Sydney, 6–7.

71 Weatherburn, D. and Indermaur, D., 'Public perceptions of crime trends in New South Wales and Western Australia' (2004) Crime and Justice Bulletin No. 80, NSW Bureau of Crime Statistics and Research, Sydney, 7.

72 Jansson K. et al, 'Extent and Trends' in Kershaw C. et al, *Crime in England and Wales 2007/08. Findings from the British Crime Survey and police recorded crime*, Home Office Statistical Bulletin, July 2008, 21.

73 Jansson K. et al, 'Extent and Trends' in Kershaw C. et al, *Crime in England and Wales 2007/08. Findings from the British Crime Survey and police recorded crime*, Home Office Statistical Bulletin, July 2008, 21.

74 Roberts, J. et al, *Penal Populism and Public Opinion: Lessons from Five Countries* (Oxford University Press, Oxford, 2002), 12.

75 Roberts, J. et al, *Penal Populism and Public Opinion: Lessons from Five Countries* (Oxford University Press, Oxford, 2002), 12–15.

Misperception of violent crime rates

Research has demonstrated that the public not only mistakenly believes that crime is increasing but consistently overestimates the amount of crime that involves violence.

A 1987 survey of 554 Perth residents found that the majority of respondents overestimated the proportion of crime involving violence and that public perception of crime is dominated by images of violence.⁷⁶ Similarly, respondents to the 1996 BCS substantially overestimated the extent of crimes involving violence.⁷⁷

A report by the Victorian Sentencing Advisory Council found that people tend to think about violent offenders when considering crime and justice issues when in fact, no more than about 10 percent of reported crimes in the United States, the United Kingdom, Canada and Australia involve violence.⁷⁸

These findings were consistent with the survey, where nearly all the respondents (98 percent) overestimated the proportion of crime that involves violence or threat of violence.

Aside from potentially steering public policy in the wrong direction, the public's misapprehension about the rates of violent crime significantly increases fear of crime⁷⁹ which in turn contributes to the erosion of confidence in the criminal justice system. It has been suggested that:⁸⁰

If fear becomes extreme and residents retreat from public spaces, the result may be a gradual decline in the character of communities, which in turn can lead to disorder and crime.

Misperceptions of conviction and imprisonment rates

The survey revealed a poor level of public knowledge regarding conviction and imprisonment rates. Eighty-seven percent of respondents underestimated the conviction rates for assault, and 86 percent underestimated the conviction rates for home burglary. Similarly poor levels of knowledge were demonstrated in relation to rates of imprisonment, with 89 percent of respondents underestimating the imprisonment rate for home burglary.

The 1996 BCS revealed a significant degree of public ignorance in relation to knowledge of conviction and imprisonment rates.⁸¹ Just over half of the respondents (56 percent) were aware that there had been a very substantial increase in the custodial population and a corresponding reduction in community penalties, about one quarter (27 percent) believed

76 Indermaur, D., 'Public Perceptions of Sentencing in Perth, Western Australia' (1987) 20 *Australian and New Zealand Journal of Criminology* 163, 175.

77 Hough, M. and Roberts, J., 'Attitudes to punishment: findings from the British Crime Survey' (1998) Home Office Research Study No. 179, 7–9.

78 Gelb, K., 'Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing' (Sentencing Advisory Council, Victoria, July 2006), 12–13.

79 Johnson, H., 'Crime Victimization in Australia. Key Results of the 2004 International Crime Victimization Survey' (2004) Research and Public Policy Series No. 64, Australian Institute of Criminology, 31.

80 Johnson, H., 'Crime Victimization in Australia. Key Results of the 2004 International Crime Victimization Survey' (2004) Research and Public Policy Series No. 64, Australian Institute of Criminology, 29.

81 Hough, M. and Roberts, J., 'Attitudes to punishment: findings from the British Crime Survey' (1998) Home Office Research Study No. 179, 7–16.

there had been no change; and 15 percent believed there had been a fall. In relation to imprisonment rates for rape, mugging and home burglary convictions, large majorities of respondents nominated imprisonment rates that were much too low for all three crimes.⁸²

Observations

The findings set out in Parts 2 and 3 paint a troubled picture of the state of public confidence in the NSW criminal justice system. People are dissatisfied with fundamental aspects of the system and this has the potential to seriously undermine the legitimacy and authority of the administration of justice. Much of the public's dissatisfaction is, however, due to misperceptions and ignorance about crime and justice issues. Each of these issues fuels the other and unless the situation is appropriately addressed there is the risk of a crisis of confidence in the criminal justice system of this State.

Understanding the origins of public misperceptions and the reasons for such low levels of public knowledge about the criminal justice system is the essential first step in addressing the problems highlighted by the survey. Set out in the Part 4 is an examination of the survey findings regarding the ways by which people access information about crime and justice, together with a consideration of the role of the media in the provision of information.

82 Hough, M. and Roberts, J., 'Attitudes to punishment: findings from the British Crime Survey' (1998) Home Office Research Study No. 179, 12–13.

Part 4: Sources of Information About the Criminal Justice System

This part reviews the survey's findings in relation to how people obtain information about crime and justice issues and considers the impact of the media on public confidence levels.

Survey findings on sources of information about the criminal justice system

Respondents to the survey most commonly nominated television and radio news programmes as sources of information about the criminal justice system (73.9 percent). Broadsheet (48.2 percent), local (41.2 percent), and tabloid newspapers (34.9 percent) were the next most influential sources of information. Word-of-mouth (27.2 percent), the experiences of relatives and/or friends (22.7 percent), talk-back radio (21.6 percent), personal experience (20.6 percent) and the Internet (18.4 percent) were less persuasive. Only a small proportion of respondents stated that they gained information about the criminal justice system from books (9.5 percent), government publications (8.2 percent) or an educational institution (7.8 percent).

These findings are in keeping with a considerable body of research which demonstrates that the news media is the most significant source of information about the criminal justice system used by the public.⁸³

The survey also examined the relationship between sources of information and levels of confidence and found that respondents who reported drawing information from the experiences of others, television or radio news or talk-back radio tended to have lower levels of confidence in the justice system. Respondents who reported drawing information about the justice system from broadsheet newspapers, government publications, the Internet and educational institutions demonstrated higher levels of confidence in the justice system. Again, these findings are in keeping with the literature.⁸⁴

The impact of the media on public confidence in the criminal justice system

The news media, by its very nature, does not look at the whole spectrum of criminal offending, but rather aims to provide the public with information that is new, or out of the ordinary, and therefore newsworthy.⁸⁵ However, as most people do not have first hand experience with the criminal justice system and are only exposed to crime and justice issues through this medium,⁸⁶ selective presentation of the bizarre, the unusual and the macabre distorts the

83 Broadhurst, R. and Indermaur, D., 'Crime Seriousness Ratings: The Relationship of Information Accuracy and General Attitudes in Western Australia' (1982) *Australian and New Zealand Journal of Criminology* 219, 229; Indermaur, D., *Perceptions of Crime Seriousness and Sentencing* (1990), 53.

84 Indermaur, D. and Roberts, L., 'Perceptions of crime and justice' in S Wilson et al (eds), *Australian Social Attitudes: The First Report* (University of NSW Press, Sydney, 2005), 148.

85 New South Wales Law Reform Commission, *Juries and Sentencing*, Issue Paper 27 (2006), 3.19.

86 Gelb, K., 'Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing' (Sentencing Advisory Council, Victoria, July 2006), 15.

public's perception of the general state of crime in the community and, therefore, has a negative impact on the public's levels of confidence in the criminal justice system.⁸⁷

There are a number of features of news media coverage that have the potential to contribute to the public's misperceptions of crime and justice issues. These include:⁸⁸

- an emphasis on violent crime;
- the absence of coverage of statistical trends to place incidents in context;
- an emphasis on street crime, and burglary rather than other forms of criminality;
- an emphasis on the failures of the system, regarding arrests or prosecution, suggesting to the public that either the framework of justice is failing or that criminal justice professionals are not doing their job;
- an emphasis on sentences that appear unduly lenient or disparate;
- an emphasis on crimes by offenders with extensive criminal histories; and
- coverage of victims who have had bad experiences within the criminal justice system.

These features combine to promote the public perception that crime is spiralling out of control and that the criminal justice system is failing to adequately fulfil its duty to the community.

Given the inherent 'newsworthiness' of criminal trials and sentencing, it is unsurprising that this aspect of the criminal justice system attracts significant media attention. It has been suggested by many commentators that media coverage of sentencing is the most probable cause of public misperceptions about crime trends and sentencing issues.⁸⁹ The media has been criticised for rarely making any attempts to explain the judicial reasoning underlying the decision, or to place the sentence imposed in some statistical context.⁹⁰

In relation to media coverage of the High Court, the Honourable Justice Michael Kirby has made the following comments:⁹¹

A few years back several of the major news outlets employed dedicated journalists who covered accurately the decisions of the High Court. Today, virtually no newspaper and no television network has such a special correspondent.

...

The hard yards of understanding, analysing and constructively criticising the decisions of the High Court are, it seems, often beyond the interest or talent of the Australian media.

87 Casey, S. and Mohr, P., 'Law-and-order Politics, Public Opinion Polls and the Media' (2005) 12(1) *Psychiatry, Psychology and Law* 141, 146–147.

88 Hough, M. and Roberts, J., 'Confidence in Justice: An international review' (2004) ICPR Research Paper No. 3, The Institute for Criminal Policy Research, School of Law, King's College, London, 83.

89 Roberts, J. and Doob (1989); 499-501; Roberts, J. and Stalens, L., *Public Opinion, Crime and Criminal Justice* (Westview Press, Boulder, 1994), 216–217.

90 Roberts, J., 'Public Opinion and Sentencing Policy' in S Rex and M Tonry (eds) *Reform and punishment: the future of sentencing* (Willan Publishing, Cullompton, 2002), 25.

91 Kirby, M., 'Media and Courts – The Dilemma' (Speech delivered at Southern Cross University Graduation Ceremony, 27 April 2002).

However, his Honour went on to say:⁹²

To some extent, the blame for this neglect must be shared by judges themselves. Their reasons are detailed. They make few concessions to easy communication. They are in writing, not oral. There are no summaries. No interviews. No press conferences. No “angles” or “spins”. Decisions tend to come down together, often in large numbers. It is all too difficult to digest and communicate them.

This acknowledgment is an important one and while his Honour was referring specifically to the relationship between the media and the courts, the potential for improving communication and co-operation with the press needs to be considered by all criminal justice agencies.

The Honourable Chief Justice Spigelman once commented that complaining about the media is like complaining about the weather.⁹³ The news media is a reality that is never going to abate. Rather than adopting a combative standpoint, the criminal justice system, and the courts in particular, need to improve relations and promote a more open dialogue with the media. This issue is considered in more detail in Part 6.

92 Kirby, M., ‘Media and Courts – The Dilemma’ (Speech delivered at Southern Cross University Graduation Ceremony, 27 April 2002).

93 ‘A new way to sentence for serious crime’ (Speech presented at the Annual Opening of Law Term Dinner, Sydney, 31 January 2005).

Part 5: Criminal Justice Resources, Services and Programs in NSW

Parts 2 and 3 of this report focused on the issues raised by the survey that have contributed to declining levels of public confidence in the criminal justice system in New South Wales. It is, however, important to note that the survey also demonstrates the strength of public confidence in relation to other aspects of the criminal justice system, such as respecting the rights of the accused, treating people fairly and bringing people to justice. It is suggested that this strength is partly attributable to the substantial efforts that have been made in this State to improve access to a diversity of criminal justice resources, services and programs.

In recent years criminal justice agencies in NSW have worked to improve the production and dissemination of relevant, accessible information, particularly through the development of interactive websites. Such sites constitute an ideal medium for rendering complex, detailed information about crime and justice in an accessible way and for providing it in a way that is convenient to a large proportion of the public. As a result of this effort, a vast and comprehensive array of criminal justice resources are now available to the general public. A number of the key resources, services, and programs are set out below.

Criminal justice resources

LawLink NSW

Hosted by the Attorney General's Department, LawLink NSW is an umbrella site to more than 40 law and justice agencies, providing access to an enormous variety of crime and justice websites that provide specific information and assistance on legal issues.⁹⁴ A full list of the LawLink agencies is set out in Appendix A.

NSW Sentencing Council

The NSW Sentencing Council was established in February 2003 to advise and consult with the Attorney General in relation to sentencing matters. The first agency of its kind in Australia, the Council prepares research papers on subjects in connection with sentencing and advises the Attorney General on sentencing trends and practices.

All reports, references, papers and information packages produced by the Council are published on its website, providing detailed and comprehensive information on a broad range of sentencing issues, including:

- penalties relating to sexual offences in NSW;
- periodic detention;
- how to promote consistency in sentencing in the Local Courts; and
- the effectiveness of fines as a sentencing option.

⁹⁴ <http://www.lawlink.nsw.gov.au/>, accessed 10 March 2009.

In February 2007 the function of the Council was extended to include an educative role. This has seen the Council collaborate with other agencies to produce the *Sentencing Information Package*, an information booklet that explain the sentencing process in Plain English. As part of its educative mandate the Council will continue to work with various groups to update existing resources and produce new material addressing issues relevant to the community. For example, the Council is in the process of preparing a booklet on what it means to receive a sentence, which will involve an explanation of parole, employment restrictions, and alternatives to custodial sentences.

NSW Bureau of Crime and Research Statistics (BOCSAR)

BOCSAR is a statistical and research agency within the NSW Attorney General's Department. Established in 1969, the Bureau produces information relating to the distribution, frequency and trends in crime and criminal justice with a view to supporting the implementation of strategies to reduce crime and provide a more efficient, effective and equitable justice system.⁹⁵ The Bureau maintains statistical databases on crime and criminal justice in NSW, conducts research on crime and criminal justice issues and problems, monitors trends in crime and criminal justice, and provides information and advice on crime and criminal justice in NSW.

The Bureau publishes regular reports which summarise statistical information on recorded crimes and criminal court appearances and identify trends in crime and justice. Publications and statistical information dating back to the 1990s are available on the Bureau's website.

Courtwise

Launched in October 2007, Courtwise is an interactive website designed to assist witnesses and victims of crime to navigate the criminal justice process.⁹⁶ The site was developed by Victims Services and other AGD Business Centres, in cooperation with various departments including the NSW Police Force, NSW Health and the Director of Public Prosecutions. It provides comprehensive information for court preparation and includes a tour of a typical courtroom with details about the legal system throughout the journey. The website was carefully designed for relevance to people of all ages and backgrounds, including people with a disability.

Caselaw NSW

Caselaw is an online service providing published judgments and decisions of New South Wales Courts and Tribunals.⁹⁷

Judicial Commission of New South Wales

Established by the *Judicial Officers Act* 1986, the Judicial Commission is an independent statutory corporation and forms part of the judicial arm of government.

95 http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_aboutus, accessed 10 March 2009.

96 http://www.courtwise.nsw.gov.au/lawlink/victimsservices/ll_courtwise.nsf/pages/courtwise_about_us; NSW Attorney General's Department, *Annual Report 2007/08* (2008).

97 http://www.lawlink.nsw.gov.au/lawlink/caselaw/ll_caselaw.nsf/pages/cl_index, accessed 10 March 2009.

The Commission's principal functions are to:⁹⁸

- assist the courts to achieve consistency in sentencing;
- organise and supervise an appropriate scheme of continuing education and training of judicial officers; and
- examine complaints against judicial officers.

To meet these objectives, the Commission provides relevant information on-line, undertakes original research and publishes material which covers criminal law, sentencing, judicial administration, practice and procedure and social context issues.

The Judicial Information Research System (JIRS) is an online source of primary, secondary and statistical reference material for judicial officers, the courts, the legal profession and government agencies that play a role in the justice system. Developed by the Commission, JIRS contains case law, legislation, principles of sentencing, sentencing statistics and other information.⁹⁹

Legal Information Access Centre (LIAC)

The Legal Information Access Centre (LIAC) is a specialist information service of the State Library of NSW which provides access to information about the law for all members of the community in NSW. Based in the State Library of NSW, LIAC:¹⁰⁰

- publishes the series Hot Topics: legal issues in plain language;
- coordinates the Find Legal Answers service available in NSW public libraries and online;
- provides a targeted service to assist HSC legal studies students and teachers;
- provides legal research assistance and access to the State Library's extensive legal information resources (including current and historical legislation and case law); and
- has produced an information package.

Criminal justice services

LawAccess NSW

LawAccess NSW was launched in July 2002, the result of a partnership between the Attorney General's Department of NSW, Legal Aid Commission of NSW, Law Society of NSW, and NSW Bar Association. Acting as the 'first port of call' for legal assistance, LawAccess NSW:¹⁰¹

- provides legal information, managed referrals and legal advice to members of the public who have a legal problem in NSW;
- works with other legal assistance services to streamline the provision of services to customers; and
- collects data on legal problems in the community.

98 <http://www.judcom.nsw.gov.au/>, accessed 30 April 2009.

99 <http://www.judcom.nsw.gov.au/research-and-sentencing/judicial-information-research-system-jirs>, accessed 30 April 2009.

100 <http://www.liac.sl.nsw.gov.au/about/>, accessed 10 March 2009.

101 <http://www.lawaccess.nsw.gov.au/>, accessed 10 March 2009.

Through its call centre and website, LawAccess provides effective high volume legal assistance to the community and prioritises groups traditionally disadvantaged in accessing free legal services, such as:

- people from rural, regional and remote areas;
- Aboriginal communities;
- people from a non English speaking background;
- people with a disability; and
- people at risk (eg. victims of domestic violence, people in custody, homeless people).

LawAccess NSW has assisted over 531,000 customers and provided over 63,600 legal advice sessions since it commenced in September 2001. In 2006 LawAccess NSW assisted over 117,500 customers, provided 13,838 advice sessions and received 202,900 visitors to LawAccess Online.

Services for victims of crime

Victims Services

Victims Services New South Wales administers the Victims of Crime Bureau and the Victims Advisory Board which provide crucial services to victims of crime in NSW. Victims Services also provides information sessions and forums about the Charter for Victims Rights, services, and entitlements for victims of crime across NSW to a range of service providers including; migrant resource centres, local courts, Office of the Director of Public Prosecutions, Department of Community Services, sexual assault services, university students, volunteers, lawyers and school counsellors.¹⁰²

The Victims of Crime Bureau

The VCB is a support and referral service which provides a critical link between victims of crime and service providers throughout NSW.¹⁰³ The VCB is administered by the NSW Attorney General's Department and provides crucial support to victims of crime through:

- a 24 hour Victims Support Line;¹⁰⁴
- the Approved Counselling Scheme and accrediting counsellors;¹⁰⁵
- monitoring the Charter of Victims Rights;
- hosting an Interagency forum of key stakeholders in victims' services;
- publishing the newsletter, the Victims of Crime Chronicle; and
- providing information and developing resource materials relating to support services for victims of crime.

102 'Key Fact 2006/07' The Victims of Crime Chronicle, Victims Services, Attorney General's Department of NSW, Vol 12 No. 1, May 2008.

103 Victims Services NSW, The Victims of Crime Bureau http://www.lawlink.nsw.gov.au/lawlink/victimsservices/ll_vs.nsf/pages/VS_aboutus#bureau, accessed 2 February 2009.

104 In 2006/07 over 38,000 calls were received by the Victim Support Line, Key Fact 2006/07.

105 Under the Approved Counselling Scheme 4,767 applications for initial counselling were approved in 2006/07, Key Fact 2006/07.

The Victims Advisory Board

The VAB was established to advise the Attorney General of NSW on policies, practices and reforms relating to victims compensation and support services, and to consult victims of crime and community and government support agencies on issues and policies concerning victims of crime.¹⁰⁶ The VAB also hosts the *Victims of Crime – Advice and Information* website¹⁰⁷ which provides practical information for victims of crime and service providers assisting victims.

The Charter of Victims' Rights

In New South Wales, the *Victims Rights Act* 1996 reflects the obligations under the 1985 United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. The Declaration is regarded by many commentators as a watershed in the debate about victimization and the responsibilities of the State and provides a framework for jurisdictions to acknowledge and act upon victim interests within the criminal justice system.¹⁰⁸

The Charter is the guiding principle for all NSW government employees who are in contact with victims of crime and places a statutory obligation on all government agencies to ensure victims are:¹⁰⁹

- treated with courtesy, compassion, respect and cultural sensitivity;
- provided with information about, and access to, welfare, health and counselling services;
- protected; and
- kept informed and, where appropriate, given the opportunity to participate, throughout the criminal justice process.

Legislative provisions

Over the past three decades various legislative amendments have also been enacted to try and minimising the distress of victims giving evidence in criminal proceedings. These include:

- limitations on the cross-examination of complainants and the admission of evidence relating to a complainant's prior sexual history in sexual assault matters;
- the use of non-publication orders in certain matters;
- allowing a witness to be accompanied by a support person;
- the use of screens to obscure the witness's view of the accused;
- allowing pre-recorded interviews to be used as evidence in chief;

106 Victims Services NSW, The Victims Advisory Board http://www.lawlink.nsw.gov.au/lawlink/victimsservices/ll_vs.nsf/pages/VS_aboutus#advisoryboard, accessed 2 February 2009.

107 http://www.lawlink.nsw.gov.au/lawlink/victimsservices/ll_voc.nsf/pages/voc_index.

108 'The Quality of Justice. Operation of the *Victims of Crime Act* 1994 in the Australian Capital Territory' (2008), ACT Victims of Crime, 1; Wemmers, J., 'Where do they belong? Giving victims a place in the criminal justice process' (Paper presented at the National Victims of Crime Conference, Adelaide, 23–24 September 2008).

109 Victims Services NSW, The Charter of Victims Rights – Summary, http://www.lawlink.nsw.gov.au/lawlink/victimsservices/ll_vs.nsf/pages/VS_victimrightscharter, accessed 2 February 2009.

- recorded evidence in chief and cross examination in re-trials; and
- the introduction of closed circuit television or remote witness video facilities for particularly vulnerable witnesses.

Witness Assistance Service (WAS)

The Witness Assistance Service (WAS) is part of the Office of the Director of Public Prosecution and provides a range of services to meet the needs of victims of crime and witnesses appearing in court matters prosecuted by the DPP. The WAS provides victims and witnesses with information about:¹¹⁰

- what to expect at court;
- their rights and entitlements such as victims compensation;
- the progress of a matter in the court system;
- information about victim impact statements; and
- other services and support available

Crime and justice programs

Law Week NSW

Law Week was established in New South Wales to promote greater understanding within the community of the law, the legal system and the legal profession. The Attorney General's Department of NSW participates in Law Week each year and this year's program, titled 'The Law in Your Community', is designed to engage local communities in a series of events to promote a greater understanding and awareness of a legal and justice issues. The 2009 program includes:¹¹¹

- information session addressing legal issues for older people;
- information session addressing legal issues for young people;
- information sessions addressing legal issues between neighbours; and
- mock trial events including the 'Clued up kids' program at Belmont Court

Law Week provides an opportunity for legal professionals to become involved in the community and demonstrate their skills, and for the community to learn about the law and the legal system. It is a week-long campaign that provides numerous learning opportunities for both the community at large and the legal profession in what is generally considered to be one of the best legal community education programs offered annually.

Public Justice Forums

A significant and positive finding from the survey was that most respondents indicated an interest in learning more about the sentencing process. In February 2009 the Attorney General responded with the announcement of a series of justice information forums to be conducted across NSW.

110 <http://www.odpp.nsw.gov.au/was/was.html>, accessed 10 March 2009.

111 <http://www.lawweek.com.au/>, accessed 10 March 2009.

The first of the forums was held at Parramatta in April 2009 and provided members of the community an opportunity to hear first-hand, expert accounts of crime and justice issues, and to participate in a Q&A session. The panel membership for the first sentencing forum included:

- NSW Attorney General, John Hatzistergos;
- Mr Ian Pike, Retired Chief Magistrate and Chair of the NSW Parole Board,
- Dr Don Weatherburn, Director of BOCSAR;
- Howard Brown from the Victims of Crime Assistance League; and
- Luke Grant, Assistant Commissioner of the Department of Corrective Services.

Additional forums will be conducted across NSW throughout 2009.

Supreme Court Public Education Program

Each week the NSW Supreme Court's registrars address high school students and community groups in relation to the Court's jurisdiction and daily operations. After the lecture, the group is taken to an appropriate courtroom to observe a Supreme Court trial. Demand for these groups remains high, particularly amongst high school legal studies students.¹¹² More than 1,300 students and members of the public attended these lectures in 2007.

Toronto Courthouse Workshop

In November 2008 Toronto Courthouse hosted a Community Engagement Day which included mock trials, information stalls and workshops for high school students and their parents. Participating organisations included the NSW Attorney General's Department, the NSW Police Force, the Salvation Army, and others.¹¹³

Observations

It is clear that an enormous amount of work has been done by numerous criminal justice agencies to provide the residents of NSW with some of the best possible resources, services, and programs in relation to crime and justice. It is suggested that this effort is reflected in the positive aspects in the survey. Any person actively seeking information or assistance in relation to a particular crime or justice issue would undoubtedly have their query satisfied by one of the agencies set out above. However, it is suggested that the negative findings of the survey indicate that the general public, most of whom have never had or sought contact with the criminal justice system, are largely unaware of the efforts made in this regard. There is, of course, little value in resources and services about which the general public has no knowledge and it is suggested that greater promotion, together with the development of additional programs, is crucial to begin redressing the negative public confidence issues identified by the survey. This issue is considered in more detail in the next section.

112 Supreme Court of NSW, *Annual Report 2007/08* (2008).

113 The Hon John Hatzistergos MLC, Attorney General, (Media Release, 13 November 2008).

Part 6: Strategies to Restore Public Confidence in the Criminal Justice System

As has been noted, aspects of the BOCSAR – Sentencing Council survey present a troubled picture of public confidence in NSW. We are, it would appear, a community that believes that crime is escalating, violent crime abounds, offenders are unpunished or under punished, and that the needs of victims are disregarded. While these perceptions of crime and justice are misguided and largely unjustified, nonetheless the problem this presents for the criminal justice system is very real and requires an immediate response.

The key to addressing waning public confidence is improving the public's knowledge and understanding of crime and justice issues. The positive impact of knowledge on public perceptions of sentencing has already been discussed and provides an excellent example of how the perceived gap between public expectations and reality is closed by the provision of information.

Without adequate knowledge of crime and justice issues or the way in which the criminal justice system operates, the general public is left unarmed against the selective and sensational reporting of the news media which is, for most people, the primary information source about crime and justice issues. The news media depiction of crime and justice becomes the public's 'reality' and dissatisfaction with the criminal justice system escalates. While the media must accept some responsibility for this, it is within the purview of the criminal justice system itself to begin redressing the current state of public confidence through clear and meaningful engagement with the public.

In order to develop, maintain and promote public confidence in the criminal justice system a three pronged approach is suggested, comprising:

- ongoing public consultation by way of regular surveys;
- improving and promoting public knowledge of crime and justice issues through the development of public education programs and ongoing provision of readily accessible and up to date information; and
- development of a dedicated media strategy to promote cooperation and open dialogue between the criminal justice system and the press.

Ongoing public consultation

The essential preliminary step in addressing the issue of public confidence in the criminal justice system is the ongoing production of qualitative local data through which the community sentiment can be gauged.¹¹⁴

Whether members of the public do in fact have confidence in their criminal justice institutions will depend in large measure on what they expect of those institutions and whether they are satisfied that their expectations are being fulfilled.¹¹⁵ Creating a source of independent high-

114 New South Wales Law Reform Commission, *Role of Juries in Sentencing*, Report 118 (2007), 5.9.

115 Campbell, E. and Lee, H.P., *The Australian Judiciary* (Cambridge University Press, 2001), 278.

quality information enables the efficacy of crime policies to be evaluated and is the essential first step in advancing appropriate crime and justice policies and implementing meaningful programs to improve and promote public confidence.¹¹⁶

As the survey revealed, the majority of respondents (60%) wanted to know more about the criminal justice system. The desire for information exists: the challenge for criminal justice agencies is how to make that information available and accessible.

Improving and promoting public knowledge of crime and justice issues

Addressing the public's lack of understanding and promoting knowledge of crime and justice is a multifaceted endeavour which requires appropriate outreach and education to various sectors of the community. As much of the public's dissatisfaction with the criminal justice system has been directed at the courts, it is unsurprising that many public confidence initiatives have developed from within the court system.

While not an exhaustive catalogue, the following initiatives have shown some promise.

US court based initiatives

As noted earlier in this report, throughout the 1980s and 1990s the United States criminal justice system, and the courts in particular, experienced extremely low levels of public confidence. In an attempt to redress the crisis of confidence, this jurisdiction has developed a broad and diverse range of public education strategies. These efforts have included:¹¹⁷

Court sessions 'on the road' and in schools

- The 'Justice on Wheels' programs gives people in outlying regions of Wisconsin the opportunity to hear oral arguments of the Supreme Court.
- Colorado's Supreme Court and Court of Appeals travel twice yearly to high schools throughout the state to hear oral arguments as students observe. Attorneys from the local Bar Associations visit classrooms to discuss the judiciary, the law, and the cases in order to prepare the students for the experience.

School education programs

- The 'Judges in the Classroom' program is a law related education curriculum for high school students in Hawaii. The students learn about the juvenile justice and family court systems, the disposition process and sentencing options and have the opportunity to chat online with a State judge.
- The New York higher courts have prepared a set of teaching tools for elementary, middle, and high school students to help them better understand the role of the judiciary in society.

116 Indermaur, D. and Hough, M., 'Strategies for changing public attitudes to punishment' in J Roberts and M Hough (eds) *Changing attitudes to Punishment: Public Opinion, Crime and Justice* (Willan Publishing, Devon, 2002), 214.

117 National Centre for State Courts – Public Trust and Confidence Forum. http://www.ncsconline.org/projects_initiatives/ptc/publicunderstand.htm, accessed 12 November 2008; Hough, M. and Roberts, J., 'Confidence in Justice: An international review' (2004) ICPR Research Paper No. 3, The Institute for Criminal Policy Research, School of Law, King's College, London, 92–93.

- In Kentucky, lawyers are given CLE credits for presenting legal information sessions to high school students.
- In Massachusetts the state courts host the Judicial Youth Corps, a Summer mentoring program for high school students. The program includes discussions with judges, attorneys, probation officers, court personnel and law enforcement officers as well as mock trials, visits to courthouses, jails and law firms.

Public awareness programs

- Hawaii's State judiciary sponsors 'Lunch 'n' Learn the Law' sessions once a month in a courtroom of the Supreme Court. Participants bring their lunch and a volunteer presenter (eg judges, attorneys) discuss specific areas of the law and courts.
- Nearly all states have implemented a Judicial Speakers Bureau which involve members of the judiciary speaking at public meetings and community group forums on a variety of court and justice topics.
- 'Meet Your Court' is a television show aimed at increasing public knowledge about Minnesota's courts. The show, hosted by the presiding judge, explains the issues that confront the Hennepin County District Court and describes how courts assist with community problems.
- 'Meet Your Judges' programs in Arkansas offer an evening of dialogue with members of the judiciary giving the audience an opportunity to question panellists regarding court policies and procedures.

With so many varied public education programs implemented across the US, it is difficult to measure the success of any one project. What is apparent, however, is that there has been a steady improvement in levels of public confidence in US courts since programs of this kind have been put in place.

Australian court based initiatives – the South Australian Courts Consulting the Community program

While Australia has not, to-date, experienced the kind of crisis in public confidence seen in the US, in 2000 the Courts Administration Authority (CAA) in South Australia developed the Courts Consulting the Community program to investigate the community's attitudes towards the justice system.¹¹⁸ The initiative of Chief Justice John Doyle, the project commenced with the development of a survey to ascertain public trust and confidence in the courts of South Australia. A total of 1,000 telephone interviews were conducted and the results discussed at a two day conference workshop attended by around 100 delegates.

Out of the conference a series of strategies were developed to improve public attitudes towards the justice system. Three themes were identified; better communication with the community about the work and decisions of the courts; better understanding of the needs of people attending court; and improved continuing education for judicial officers and staff.¹¹⁹

118 http://www.courts.sa.gov.au/community/conference_2006/survey_results.pdf, accessed February 2009.

119 http://www.courts.sa.gov.au/community/conference_2006/survey_results.pdf, accessed February 2009.

As part of the first theme of improved public communication about the work and decisions of the court, a number of strategies to educate the public and raise awareness of crime and justice issues were developed and implemented. These strategies are ongoing today and incorporate many of the kinds of programs developed in the US, including:¹²⁰

Court open days

Court open days provide the general community the opportunity to take a tour of the courthouse, attend mock trials and mock family conferences, and participate in information sessions.

Formation of a Community Reference Group (CRG)

The CRG is made up of representatives from 11 community groups and actively offers suggestions and comments to the CCA Community Relations Committee on the effectiveness and appropriateness of its activities.

Public education sessions

Over 32,000 students and 3000 teachers have taken part in face-to-face workshops; mock court hearing role-plays which are presented at various locations around the state including Kangaroo Island, Peterborough, and the mid-North and West Coast; and the Courts Challenge which is an inquiry based approach to learning and is run within various high schools.

Ask the Judge

This is a tool on the CAA website that allows students to ask questions about the courts. The site can also be accessed by the general public who can view the questions and answers that have been given.

Workshops

Around 30 general court information workshops are conducted each year for community groups like Probus and Neighbourhood Watch etc. The workshop cover a range of topics such as 'who does what' in the courtroom and the sentencing process

Establishment of Information Stations

Over 30 computers have been installed in public waiting areas around the courts providing interactive information on court processes.

Resources for litigants

A number of resources have been produced to assist self-represented court users including videos, web-based information and a guide for people appearing in the higher courts.

In 2006 the original Courts Consulting the Community survey was replicated and the results again workshopped at a conference. While the results between 2000 and 2006 were largely static, there were some significant improvements in public perceptions of the South Australian Courts, including:¹²¹

- a 12 percent decrease (to 68 percent) of respondents who agreed with the statement 'the courts are too soft on offenders';

120 http://www.courts.sa.gov.au/community/conference_2006/survey_results.pdf, accessed February 2009.

121 http://www.courts.sa.gov.au/community/conference_2006/survey_results.pdf, accessed February 2009.

- a 12 percent decrease (to 61 percent) of respondents who agreed with the statement '*it is about time the Courts caught up to the real world*'; and
- a 12 percent decrease (to 53 percent) of respondents who agreed with the statement '*victims of rape and physical abuse do not have their emotional wellbeing considered during Court cases*'.
- an 11 percent increase (to 44 percent) of court users who described their court experience as good;
- a 16 percent increase (to 74 percent) of court users who reported a good or satisfactory understanding of what was happening in their court matter; and
- a 19 percent increase (to 60 percent) of court users who identified being able to access useful and relevant information.

The results of the South Australian project clearly demonstrate that notwithstanding the fact that public attitudes towards the criminal justice system may be firmly entrenched, with concentrated effort over time, the community can be educated and negative misperceptions can start to be overcome.

It is suggested that there is a dearth of public education programs within NSW. While programs such as Law Week and the recently developed sentencing forums are an excellent starting point to improving public awareness, additional community outreach programs along the lines of those implemented by the US and the South Australian courts would, in time, have a positive impact on public confidence in this criminal justice system of this state.

Improving access to crime and justice information

As noted in Part 5, this State already has the benefit of excellent criminal justice resources and services, however their value is limited if the general public is unaware of their existence.

It is suggested the communication strategy employed by LawAccess NSW provides a good framework for community outreach, aspects of which could be incorporated into all criminal justice agencies. Their communication activities include:¹²²

- White pages listings, including a listing in the Community Services section throughout NSW;
- posters and wallet cards in courts, local libraries and legal aid commission offices;
- the LawAccess website and links from other criminal justice agency websites;
- inclusion in the Depart of Education and Training 'Next: Life after school' magazine which is distributed to 70,000 school leavers each year;
- presentations to staff of stakeholder agencies such as the courts, Legal Aid, Office of Industrial relations and Centrelink; and
- targeting of local assistance services through mail-outs, presentations, training sessions, agricultural fairs and Law Week events.

122 [http://info.lawaccess.nsw.gov.au/lawaccess/lawaccess.nsf/files/Communications_Strategy.pdf/\\$FILE/Communications_Strategy.pdf](http://info.lawaccess.nsw.gov.au/lawaccess/lawaccess.nsf/files/Communications_Strategy.pdf/$FILE/Communications_Strategy.pdf), accessed 10 March 2009.

Improving the relationship between the media and the criminal justice system

As the primary conduit of crime and justice information for the general public, the mass media undoubtedly influences the public's confidence in the criminal justice system. It has been suggested that the most effective way to ensure accurate and balanced portrayal of the criminal justice system is to improve dialogue with the news media.¹²³ Further than that, it has been suggested that on the basis that the community has a right to accurate information, the criminal justice system has a responsibility to assist the media.¹²⁴ Accordingly, in order to promote public awareness and confidence, the justice system, and in particular the courts, need to take account of the significance of the work of the media and the constraints on legal journalists and take steps to facilitate the dissemination of information about their work.¹²⁵

The Honourable Justice Michael Kirby, who has long advocated improving dialogue with the news media, has suggested that if the relationship between the courts and the media is to be improved:¹²⁶

- judges need to appreciate media pressures such as deadlines and the need for brevity;
- judicial reasons need to include concise summaries that readily provide clear and comprehensible information to the public;
- media liaison officers need to take on a more proactive role;
- judges should reconsider the use of cameras in the courts under strict conditions.
- specialist court reporters should be reinstated; and
- the judiciary needs to take advantage of advances in technology to explain and promote the work of judges.

Public Information Officers

In New South Wales, the appointment of a Public Information Officer (PIO) has been seen as a welcome development to improving the relationship between the media and the courts.¹²⁷ The PIO is the principal media spokesperson for the superior NSW courts and provides a professional court-media liaison service. The major role of the position is to provide the media with information about the NSW court proceedings in the NSW Supreme Court, the Land and Environment Court, the Industrial Relations Commission of NSW and the District Court of NSW.¹²⁸ The PIO works with the media to ensure that judicial decision are correctly interpreted and reported to the community, and that initiatives taken by the courts

123 Doyle, C.J., 'The Courts and the Media: What reforms are needed and why' (1999), 1 *UTS Law Review* 13.

124 Doyle, C.J., 'The Courts and the Media: What reforms are needed and why' (1999), 1 *UTS Law Review* 13.

125 Keyzer, P., 'What the Courts and the Media Can Do To Improve the Standard of Media Reporting of the Work of the Courts', 1 *UTS Law Review* 150.

126 Kirby, M., 'Improving the Dialogue Between Courts and the Media' (Speech delivered at the Victorian Law Foundation Legal Reporting Awards, Melbourne, 8 May 2008).

127 Keyzer, P., 'What the Courts and the Media Can Do To Improve the Standard of Media Reporting of the Work of the Courts', 1 *UTS Law Review* 150.

128 Supreme Court of NSW, *Annual Report 2007/08* (2008).

to enhance access to justice are widely promoted. The PIO is also responsible for ensuring that media outlets are alert to any suppression orders issued in proceedings, and that they are familiar with the terms of these orders. During 2007 the PIO handled 2,004 enquiries from the media.

While the establishment of the PIO is indeed a positive step towards improving the relationship between the media and the courts, it is suggested that a more wide-ranging and comprehensive media strategy is required to promote a better working relationship between the criminal justice system and the press.

US court media strategies

Again, the dire state of public confidence in the US courts through the 1980s and 1990s, coupled with the recognition of the extent of the power of the media, has seen this jurisdiction develop a comprehensive strategy aimed at improving the relationship between the courts and the media.

The National Centre for State Courts (NCCS), in consultation with various justice agencies, has developed a seven point plan for promoting co-operation between the courts and the media.¹²⁹

1. Identify and educate one or more court contacts for the media

The majority of US state courts designate an office or an individual to liaise with the media. The role of the media officer is to provide information, keep court communications consistent and facilitate relationships with the local media engendering trust and credibility.

2. Prepare and periodically update a media policy

A media policy establishes the objectives, methods, and ground rules through which the court seeks effective relationships with the print, electronic, and other media. NCCS set out that a truly effective media policy should be made public.

3. Actively foster good relationships with the media

Many US state and local courts foster relationships with the media by soliciting feedback, being receptive to suggestions to improve policies, working with media representatives on joint committees, and providing educational programs.

Judicially sponsored educational programs, media conferences, and seminars are held to be useful tools for the promotion of mutual understanding between the courts and, ultimately, the general public. Periodic meetings with the editorial boards of local newspapers and newsrooms also promote accurate and fair coverage of the courts. In addition, the NCCS sets out that a well-rounded media policy incorporates outreach to the minority media.

¹²⁹ National Centre for State Courts, Public Trust News, Vol 3 No. 1, Fall 2004, http://www.ncsconline.org/projects_Initiatives/PTC/PublicTrustNews6.htm, accessed 1 February 2009.

For example:

- Colorado’s Judicial Branch and the Colorado Bar Association organize and conduct a seminar/workshop for reporters to increase reporters’ knowledge of the judicial system and the law. The workshop features several judges and a session on the laws and guidelines for open records in Colorado. The workshop is said to have opened up many lines of communications with reporters, helping to ensure more accurate stories.
- The Delaware Bar Bench Media Conference consists of representatives of the Delaware media, judiciary, and legal community. The program was designed to develop and foster the judiciary-media relationship by serving as a forum for discussion of matters of concern for all aforementioned parties. Meetings are open to all members of the public, and records of proceedings are available for public inspection.
- The Michigan Judicial Institute offered “A Journalist’s Guide to Michigan Courts” in September 2004. This workshop covered topics such as the challenge of covering the courts; an overview of Michigan civil, criminal, and family proceedings; an overview of federal and appellate criminal proceedings; the setting of precedents; and media law.
- The Louisiana Supreme Court, the Louisiana State Bar Association, and the New Orleans Press Club cosponsored a “Law School for Journalists” to help the press become better informed about the judicial system.

4. Provide easy access to electronic and written court information

Court Web pages provide a powerful vehicle for making readily accessible to the media explanations of the court system, immediate access to court decisions, speeches by judges, and press releases. Web sites also help familiarize media representatives with court procedures and policies. The NCSC notes that some US state and local courts have compiled media reference kits and published guidelines for media.

5. Generate good publicity and address negative press

The NCSC sets out that courts should actively publicise the ways in which they serve the public and should respond to criticism by addressing problems and righting inaccurate perceptions. It is suggested that special events can help focus media attention on positive and ongoing programs and that op-ed pieces by judges offer a further opportunity for the courts to promote their accomplishments and educate the public through the media.

6. Educate the bench and court staff on the media

The NCSC Working effectively with the media requires that judges and court staff be somewhat conversant with the process by which topics for news stories are selected, investigated, and turned into an article or news segment. They also need to understand the timelines under which different media operate. As appropriate, individual judges and court staff should be trained in the skills that are conducive to accurate and persuasive coverage of the court.

7. Prepare for high profile cases

The NCSC identifies high-profile cases as complex media events. Public understanding of how and why the courts handle cases and make information public or keep it confidential depends largely on how the media cover the case. Media and public perceptions of court performance will be coloured by how well courts handle these cases. Careful preparation of and timely distribution of material to the media explaining court procedures and processes, always important, are critical in a high-profile case.

In the US, intense debate in relation to the media and the courts followed the OJ Simpson trial and the US National Judicial College, in 1996, to hold its first national conference on media and the courts.¹³⁰ As a result of the conference the National Judicial College and the Reynolds School of Journalism established the Reynolds National Centre for the Court and Media (RNCCM). The role of the RNCCM is to facilitate:¹³¹

- ongoing debates and discussions among journalists and judges on the relationship between the two;
- courses and seminars, publications and research activities that address areas of controversy between the media and the courts;
- national conferences that bring together journalists, judges and attorneys; and
- problem-solving sessions between judges, journalists and other media representatives to discuss such issues as suppression orders, cameras in the courtroom, access, and confidentiality of sources.

It is suggested that the criminal justice system in this state should actively seek to improve its relationship with the media. This could be assisted by the implementation of a comprehensive best practice plan for to promote co-operation and communication. The establishment of a court media committee that could facilitate activities such as those of the RNCCM, would constitute a promising first step.

The discussion here has focussed on the relationship between the courts and the press as it is this aspect of the criminal justice system attracts a great deal of media interest. The comments are, however, applicable across all criminal justice agencies. Fostering a better relationship with the media is the best way of ensuring that the public have access to accurate and even-handed information about the criminal justice system, which in turn will have a positive impact on public confidence.

130 <http://courtsandmedia.org/about-rnccm/>, accessed 10 March 2009.

131 <http://courtsandmedia.org/about-rnccm/>, accessed 10 March 2009.

Summary and Conclusion

The BOCSAR – NSW Sentencing Council survey provides invaluable information about the present state of public confidence in the criminal justice system in New South Wales. While the current picture is not particularly positive, identifying the core issues as they are perceived by particular sectors of the community enables criminal justice agencies to develop targeted strategies to improve and promote public confidence.

The literature reveals that many of the issues and concerns raised in the survey have worldwide resonance. This provides criminal justice agencies in this state the opportunity to consider the public confidence strategies that have been effectively employed in other jurisdictions and, where appropriate, adopt them in our region.

In order to develop, maintain and promote public confidence in the criminal justice system a three pronged approach is suggested:

- ongoing public consultation by way of regular surveys;
- improving and promoting public knowledge of crime and justice issues through the development of public education programs and ongoing provision of readily accessible and up to date information; and
- development of a dedicated media strategy to promote cooperation and open dialogue between the criminal justice system and the press.

To achieve this it is suggested:

- a commitment be made to repeating the survey at least every other year;
- a commitment be made to further developing and implementing a range of public education programs in line with the court based initiatives from the US and South Australia;
- a commitment be made to ensuring the existence of relevant, up-to-date, accessible information and services which are thoroughly and appropriately promoted to the general community; and
- a commitment be made to improving the relationship between the criminal justice system and the news media by developing a best practice strategy and by establishing an appropriately appointed committee to address justice system-media issues.

Public confidence is not a static or finite concept and must be viewed as an ongoing priority for criminal justice agencies. It is critical that public opinion in relation to crime and justice issues continues to be measured so that appropriate strategies to address the concerns of the public are further developed and fine-tuned. A failure to do so will see an unremitting erosion of public confidence in the criminal justice system which will ultimately fail to establish the requisite authority and legitimacy to function effectively.

Appendix A: Lawlink Agencies

Aboriginal Justice Advisory Council (www.lawlink.nsw.gov.au/ajac)
Administrative Decisions Tribunal (www.lawlink.nsw.gov.au/adt)
Anti-Discrimination Board (www.lawlink.nsw.gov.au/adb)
Attorney General's Department – corporate website (www.lawlink.nsw.gov.au/agd)
Attorney General's Department – Criminal Law Review Division (www.lawlink.nsw.gov.au/clrd)
Attorney General's Department – Law Libraries (www.lawlink.nsw.gov.au/agdlib)
Attorney General's Department – Legislation and Policy Division (www.lawlink.nsw.gov.au/lpd)
Attorney General's Department – Crime Prevention Division (www.lawlink.nsw.gov.au/cpd)

Births, Deaths & Marriages, Registry of (www.bdm.nsw.gov.au)
Bureau of Crime Statistics and Research (www.lawlink.nsw.gov.au/bocsar)

NSW Caselaw (www.lawlink.nsw.gov.au/caselaw)
Chief Industrial Magistrate's Court (www.lawlink.nsw.gov.au/cim)
Children's Court (www.lawlink.nsw.gov.au/childrenscourt)
Children's Court Clinic (www.lawlink.nsw.gov.au/ccc)
Community Justice Centres (www.cjc.nsw.gov.au)
Community Relations Unit (www.lawlink.nsw.gov.au/cru)
Copyright Unit (www.lawlink.nsw.gov.au/lpd)
Coroner's Court (www.lawlink.nsw.gov.au/coroners)
Criminal Law Review Division, NSW Attorney General's Department (www.lawlink.nsw.gov.au/clrd)
Crime Prevention Division – NSW Attorney General's Department (www.lawlink.nsw.gov.au/cpd)
Criminal Justice Research Network (www.lawlink.nsw.gov.au/cjrn)
Crown Solicitor's Office (www.lawlink.nsw.gov.au/cso)

Date Rape, About (www.aboutdaterape.nsw.gov.au)
District Court (www.lawlink.nsw.gov.au/dc)
Diversity Services ([www.lawlink.nsw.gov.au/diversity services](http://www.lawlink.nsw.gov.au/diversity%20services))
DNA Review Panel (www.lawlink.nsw.gov.au/dna)
Drug Court (www.lawlink.nsw.gov.au/drugcrt)
Drug and Alcohol Court for Youth (www.lawlink.nsw.gov.au/youthdrugcourt)
Dust Diseases Tribunal (www.lawlink.nsw.gov.au/ddt)
Domestic Violence Interagency Guidelines (www.lawlink.nsw.gov.au/dvig)

Graffiti Information, NSW (www.graffiti.nsw.gov.au)

Industrial Relations Commission (www.lawlink.nsw.gov.au/irc)

LawAccess NSW (www.lawaccess.nsw.gov.au)
Land and Environment Court (www.lawlink.nsw.gov.au/lec)
Law Courts Library (www.lawlink.nsw.gov.au/lcl)
Law Reform Commission (www.lawlink.nsw.gov.au/lrc)
Legal Services Branch (www.lawlink.nsw.gov.au/lrb)
Legal Profession Admission Board (www.lawlink.nsw.gov.au/lpab)
Legal Management Services (www.lawlink.nsw.gov.au/lms)
Legal Representation Office (www.lawlink.nsw.gov.au/lro)
Legal Services Commissioner, Office of the (www.lawlink.nsw.gov.au/olsc)
Local Courts (www.lawlink.nsw.gov.au/lc)

Magistrates Early Referral Into Treatment Program (MERIT) (www.lawlink.nsw.gov.au/merit)
Missing Persons Unit, Family and Friends of (www.lawlink.nsw.gov.au/missingpersons)

Office of the Legal Services Commissioner (www.lawlink.nsw.gov.au/olsc)
Office of the Public Guardian (www.lawlink.nsw.gov.au/opg)
Office of the Sheriff (www.lawlink.nsw.gov.au/ots)
Office of the Protective Commissioner (www.lawlink.nsw.gov.au/opc)

Privacy NSW (www.lawlink.nsw.gov.au/privacynsw)
Professional Standards Council (www.lawlink.nsw.gov.au/psc)
Protective Commissioner (www.lawlink.nsw.gov.au/opc)
Public Defenders Office (www.lawlink.nsw.gov.au/pd)
Public Guardian (www.lawlink.nsw.gov.au/opg)

Sentencing Council of NSW (www.lawlink.nsw.gov.au/sentencingcouncil)
Sheriff of NSW (www.lawlink.nsw.gov.au/ots)
Special Commission of Inquiry into Acute Care Services in NSW Public Hospitals (www.lawlink.nsw.gov.au/acsinquiry)
Special Commission of Inquiry into Medical Research and Compensation Foundation www.lawlink.nsw.gov.au/mrcf
Special Commission of Inquiry into Child Protection Services in NSW (www.lawlink.nsw.gov.au/cpsinquiry)
Special Commission of Inquiry into Sydney Ferries (www.lawlink.nsw.gov.au/sfi)
Supreme Court (www.lawlink.nsw.gov.au/sc)

Understanding Your Legal Rights: A Guide for Lesbians and Gay Men in NSW (www.lawlink.nsw.gov.au/samesex)
Uniform Civil Procedure Rules (www.lawlink.nsw.gov.au/ucpr)

Victims Services (www.lawlink.nsw.gov.au/vs)
Victims of Crime (www.lawlink.nsw.gov.au/voc)

Youth Drug and Alcohol Court (www.lawlink.nsw.gov.au/youthdrugcourt)
Youth Justice Advisory Committee (www.lawlink.nsw.gov.au/yjac)

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