

LAW REFORM COMMITTEE

Warrant Powers and Procedures Subcommittee

Inquiry into warrant powers and procedures

Sydney — 31 August 2004

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Ms J. Sanders, solicitor, Shopfront Youth Legal Centre.

The CHAIR — Thank you for coming along to talk to us today. Our committee is a committee of the Victorian Parliament. As such we operate under the Victorian Parliamentary Committees Act. That means that the evidence that we take is subject to parliamentary privilege. We have a practice, having taken evidence, of making it available publicly, but if you did not want that to be the case then you can indicate that to us. You do not have to do that today — you can indicate that subsequently. We will provide a transcript of what has been said, and if you want to correct any errors or perhaps misconceptions that are in it then we would be very happy for that process to take place. Because New South Wales has a warrants act we are interested in the operation of that. Could you start by making some general comments about the operation of warrants in New South Wales?

Ms SANDERS — Can I preface my comments by saying I cannot tell you anything useful about the Search Warrants Act? I think I told Jon that on the phone.

The CHAIR — That is okay.

Ms SANDERS — I really would not be able to give you any useful comments about that. The sort of warrants I can talk about — and I do not know if they are within the scope of this inquiry because certainly they were not really referred to in the discussion paper — are bench warrants that are issued by courts when people fail to appear or are otherwise uncontactable. If you are interested in that I can talk about that. Also, coming from a youth legal service — and I am actually not sure in what capacity I am here — am I here is a representative of the law society or of my legal centre or in my personal capacity? I had not even established that.

The CHAIR — That is really up to you. Whoever you feel you are able to represent, either yourself or any organisation.

Ms SANDERS — Certainly.

Ms MASON — But on the youth aspect you would be the only one representing —

Ms SANDERS — I gathered that is why you did want to speak particularly to me.

The CHAIR — We are particularly interested in the impact of all sorts of warrants on young people.

Ms SANDERS — Given that I do work for a youth legal service I do see a lot of young people coming into contact with the police all of the time. Most of that is completely outside the warrant system. Most searches of young people and arrests and police contacts are done without warrant, based on reasonable suspicion generally. There is some legislation covering that, but there is a lot of common law around what may or may not be a reasonable suspicion and the procedures for searches without warrant are largely unregulated. If they are regulated it is quite piecemeal and it is not really consistent. Depending on what type of search it is there is different legislation that may apply. That is a point I would really like to make in relation to a lot of young people. A lot of searches are going on really without the protection of consistent legislation.

Mr MAUGHAN — Inappropriate searches in your view?

Ms SANDERS — I think a lot are. No doubt there are a lot of searches which are appropriate but yes; there are a number. Also what distinguishes searches of young people is that young people are more likely to use public space than any other age group and so most searches are going to be carried out on the street or in public places. There is no requirement for the police to enter private premises, so there is no need for warrants in that sense.

The CHAIR — So you are principally talking about personal body searches?

Ms SANDERS — Yes, mainly, or searches of vehicles or searches of people's belongings in the immediate area. Young people who are homeless or itinerant, which is the main group of young people I work with, may in essence carry all their belongings around with them. If they have a vehicle — it is usually some beat-up 1980-something model — they might in fact be living in the car and carry all their possessions around there. Police have powers to search vehicles in public places just the same as they have powers to search people and their immediate belongings. So yes, most of the searches I observe do take place without warrant. A lot are in my opinion done without reasonable grounds.

Mr MAUGHAN — Do you think generally speaking that disadvantaged group is disadvantaged compared to more affluent sections of the community?

Ms SANDERS — I think very much so, yes. For a start more affluent sections of the community generally have homes. They are probably more likely to socialise in private premises so if police do want to conduct searches they have to perhaps jump through a few hoops before they can get there. I think that is one point. More affluent people who are out and about in public probably are not going to attract the attention of the police. They are not going to generally raise the suspicion in the eyes of the police officers whereas people of a certain age, racial appearance, general appearance — the way they are dressed, the way they look — tends to attract the suspicion of the police. If the police already know a person, if you have had prior convictions or prior police contact you are likely to be pulled over and searched on what I think is often quite a tenuous suspicion. There are, of course, cases that get to court where courts have had to rule on what is and is not a reasonable suspicion. Evidence has been excluded many, many times because of that. A lot of the cases are not reported because they are only at Local Court level and the court will rule a search unlawful and exercise their discretion to exclude the evidence. But a huge problem lies in searches which are not successful where police routinely pull over young people and do not find anything. So there is no evidence to apply to exclude, which is good really because there does not need to be court proceedings. But young people express a lot of frustration with being routinely pulled over and searched, particularly if they are already known to the police. Once the police know, it seems that they can never really start with a clean slate again; they are always going to be a target and be pulled over. It seems that the complaints mechanisms available through the ombudsman are not terribly effective. I think I am straying a little bit here beyond the scope of what you are asking. Certainly there is a real problem with searches being largely unregulated and being based on a pretty nebulous concept like reasonable suspicion without clear guidelines, and also there not being much protection in terms of the way the search has to be carried out, and people being given the reason for the search.

Of course with search warrants there is a requirement to serve the occupiers with notice. Police have to specify the sorts of things that they are looking for. On the occupier's notice the person is informed of certain rights that they have, whereas for warrantless searches and personal searches there are really no requirements except in the Summary Offences Act, under which if police are searching for a knife or weapon they have to give certain information and request the person to comply and warn them that failure to comply may be an offence. So that is something that gives a bit more protection.

Mr DALLA-RIVA — Would it be fair to say that warrants to search property for things is probably less relevant to young persons?

Ms SANDERS — Yes.

Mr DALLA-RIVA — Specifically to them, but probably more relevant to their parents or people looking after them?

Ms SANDERS — Probably.

Mr DALLA-RIVA — For example, if the police have a reason, whatever it might be, perhaps drugs. If they search and find drugs on a person they would probably have reasonable grounds to then go to an authorised person, which I think is who they use, to then search the home. It would be most likely to be the family home or — —

Ms SANDERS — Yes, that is right. Certainly I have had quite a few clients who live with their parents, and search warrants have been taken out to search the house, and there is real confusion as to who is the occupier and who should get the occupier's notice and who should have the rights. Really the parents are the occupiers because it is their home; they are the owner or the tenant or whatever. But in practice what is being searched is usually the child's room, which is really their own space and they have control over what is in that space. I say this without being familiar with the precise workings of the Search Warrants Act, but I think perhaps there is some confusion when police are searching a person's room within premises that are actually occupied by someone else.

Mr DALLA-RIVA — Are you seeing that young persons are finding their rooms are being searched or that the whole house is being searched?

Ms SANDERS — It really depends.

Mr DALLA-RIVA — But from your experience is the warrant specific?

Ms SANDERS — I think the warrant generally just authorises them to search the premises, so the whole house, but often police have a fair idea that what they want is probably going to be in the young person's room. So they will go in and will certainly concentrate on that room, but they might then do a cursory search of the rest of the house, depending on what they find. So I think perhaps there are some difficulties with young people not being informed of their rights with respect to search warrants if the occupier's notice is served on the parents. There may not be adequate provision for the young person to be informed of their rights under the procedure, and if the police are essentially looking for evidence against the young person, then that needs to be addressed. So I just flag that as an issue where you have premises where the occupier is one person but the target, if you like, is another person, particularly a juvenile. There needs to be some provision for making sure that young person is informed of their rights. Another situation would be in youth refuges or youth accommodation services. Sometimes there is a warrant to search the premises, and it is generally one particular resident that the police are looking to search. Police practice may differ, but the occupier's notice may often be served on the management, whoever is in charge of the refuge for the time being.

Mr DALLA-RIVA — And you find that the warrants are easily granted on that basis?

Ms SANDERS — Certainly I have seen them granted to search premises like that, and they have been executed on those sorts of premises. I am not saying that it is inappropriate; I just think there needs to be some clarity as to who is having their rights explained to them. It is certainly appropriate to explain and to give notice to the owner or to the head tenant, but if there is another person living on the premises, particularly if it is a young person, steps need to be taken to ensure that they are — —

Mr DALLA-RIVA — So you think that the notice paper that is served is probably not sufficient in detail, or what?

Ms SANDERS — I must say that I have not looked at an occupier's notice recently, but in general those notices require a certain standard of literacy which a lot of disadvantaged people — a lot of our clients — do not have, and that is whether they are under or over 18 years. So as well as the notice I think there needs to be a requirement for the police who are executing the warrant to explain a person's rights verbally as well as just handing them the notice.

The CHAIR — That is a good point. Just going back to searches in public places, if you could reform the law in New South Wales in relation to those kinds of searches what would you do, or is it just one of those intractable problems?

Ms SANDERS — Partly it is an intractable problem, and I do not think you can ever completely codify reasonable suspicion; there has to be some room for interpretation and discretion of course. Part of the problem will be fixed when the new Law Enforcement (Powers and Responsibilities) Act is finally proclaimed. It was enacted about two years ago and it still has not been proclaimed. We are told it will be some time next year I think. That partly reforms the law relating to searches in that it requires police to provide certain information to the suspect before conducting a search. I think they have to state the nature of the search they will be performing. I think they have to state the reason for the search. If not, that is certainly something that I would advocate.

There is going to be a prescribed hierarchy of searches in the new legislation — for example, pat-down searches, frisk searches, strip searches, full body searches et cetera. It is going to be written into the legislation that strip searches are to be a last resort. That is currently in the police guidelines or code of practice, but particularly in areas which have a reputation for drug activity like Kings Cross and Cabramatta we find all the time that people are being strip searched, including people under 18 years, often in public places and often in situations where it does not seem that it is really so screamingly urgent that that needs to take place. I think including something in legislation about types of searches rather than just in guidelines will be useful. Also, more strict guidelines on the types of searches that police are allowed to perform and when and where. It is perhaps difficult to attempt to legislate guidelines for what does nor does not amount to reasonable suspicion. I think that is probably best left to the common law. One thing that is a real problem with searches, particularly in relation to the under-18s, is the issue of consent, and I think you can say that about entry to premises as well.

I have had some real ding-dong arguments in court about whether a search was carried out with consent — for example, a young client of mine was hitchhiking on the highway 100 kilometres out of Sydney; he lived in the country and was trying to get home. The police were driving in the opposite direction; they decided they did not like the look of him or did not have anything better to do and wanted to talk to him. They did a U-turn and pulled over, got out of the car, walked up to him and said, ‘G’day mate, what are you doing?’. He said, ‘I am hitchhiking. I have this huge sign that says ‘Portland’, I am trying to get home’. The police said, ‘Have you got anything on you that you should not have?’. He did not know what to do; he had been searched by police before and he knew from bitter experience that if he said, ‘Well, no, what right have you got to search me?’, that the police might often say, ‘We do have the right to search you because we suspect that you might have something on you so we are going to search you’. Wanting to be cooperative he said, ‘Oh no, I have not got anything, search my bag if you want’. They found a knife, a kind of Celtic-looking, ceremonial-type knife which was part of a collection he had.

We had an argument in court about the legality of the search. The prosecutor conceded that they had no reasonable suspicion to search him. The prosecutor was relying on his consent and saying it was not a forcible search and they did not need reasonable suspicion. All they asked was, ‘Have you got anything on you?’, and he consented; he voluntarily let them search his bag. I find that really artificial. I find that very problematic, particularly where the person is under-18 or Aboriginal or otherwise disadvantaged. I think this idea that people freely consent when they are asked by two police officers, ‘Have you got anything in your bag which you should not have?’, most young people — I know because I talk to them and this is what they tell me — interpret that as a demand, not as a request. They think if they do not willingly empty their pockets or open their bags, the police will force them — ‘I have to do it because they are telling me. Even though they might be asking me politely and saying “Would you mind opening your bag?”’.

The CHAIR — Most people think, ‘I should cooperate, I have nothing to hide’.

Ms SANDERS — That is right. I think that is a real problem and I would like to see something in the legislation, particularly if it relates to those under-18, that consent to a search is not valid unless it is a truly informed consent — that is, the police officer said, ‘I am going to ask you to empty your pockets, you do not have to’, and there is some kind of warning there. Like police interviews: everybody knows — it is well entrenched — that you do not have to answer police questions or any answers you give may be inadmissible unless the police warn you that you do not have to say anything. Children also have a protection when they are being interviewed by police that there has to be an independent adult present; I presume there is a similar provision in Victoria. I really think consent to search is a very problematic area. I think what is often deemed to be consent really is not a free and fair consent. I think that could also be relevant to entry to premises because, of course, police can enter premises without warrant if the occupier consents. I think perhaps sometimes people really may not be fully aware of their rights in that area. There may be a bit of misleading. I am not imputing impropriety to the police in general, but there may perhaps be some deception on the part of the police in leading the person to believe they have a warrant when they do not, or that they have some power to enter that they do not have. I think the notion of consent for police to enter premises has to be looked at pretty carefully as well.

Mr MAUGHAN — How effective do you think the courts are in monitoring warrants to search?

Ms SANDERS — I think perhaps of limited effectiveness. If there is something glaringly wrong with the way a warrant is executed or the grounds upon which it is obtained, then the courts will come down quite hard on the police. However, there is a problem in that with an application for a warrant it is often very difficult for the defence to get its hands on all of the material that led to the warrant being granted.

Mr MAUGHAN — Because it is not recorded.

Mss SANDERS — Yes. It is mainly in the area of telephone interception warrants that there is a real problem because the basis for a lot of that is done, quite necessarily, secretly. I do not have an awful lot of experience with search warrants, certainly not with challenging their validity in court. I just know that it is very difficult to challenge their validity. The manner in which it is executed — if it has been videoed and the basic procedures have been followed, then there is not an awful lot that courts can really do or say about it. I think there are always searches that take place that do not lead to police finding any admissible evidence or anything they can use to lay charges. I do not know what proportion of search warrants end up with evidence being found that is then put before the court. I cannot say, but I know a lot of personal searches end up with nothing being found and therefore there are no court proceedings to be a framework for the search to be scrutinised; I do not really know with search warrants. However, I think you cannot entirely rely on the courts. I think the courts are an important mechanism and the provisions for excluding improperly obtained evidence are really important. Sometimes a couple of judgments where evidence is excluded because of police impropriety often lead to a real change in police practices, so that can be good.

Of course where the evidence found in the search is of really high probative value — for example, a kilogram of cocaine or firearms or a very large haul of stolen property — it is most unlikely that the court is going to exercise its discretion to exclude that evidence. It may say it believes the search was improper or there were some defects in the warrants, but it will exercise its discretion to let the evidence in. The police are probably going to be getting a mixed message there. They are going to get a subtle message that maybe they could do better in the way they apply for and execute the warrant, but the main message they are going to get is, ‘It is okay really if we cut a few corners because we have great evidence and it has been allowed in’. There perhaps need to be some other mechanisms for scrutiny. I know your discussion paper has suggested a variety of measures to monitor warrants. I think a number of measures need to be taken in combination.

The CHAIR — You mentioned at the beginning that you could talk about bench warrants and young people. Do you want to tell us a little bit about that?

Ms SANDERS — Sure. I do not know how the system works in Victoria and whether the courts are particularly trigger happy with issuing warrants, but in New South Wales, in the Children's Court generally, young people who fail to appear in court are normally given another chance to appear. The Children's Court, in my experience at least, will usually adjourn a matter rather than just issue a warrant if the person fails to appear. Obviously if there are repeated failures to appear they will issue warrants. Sometimes when I refer to 'young people' I am being a bit ambiguous because I am actually referring to young adults as well — I work a lot with the 18 to 25-age group, so they are adults in the legal system.

Mr MAUGHAN — What is the legal cut-off for children in New South Wales?

Ms SANDERS — It is 18, so 17 and under you are a juvenile, as opposed to Victoria where it kicks in at 17, doesn't it?

The CHAIR — We are about to change that.

Ms SANDERS — Really. Raising it to 18 again? That is good to hear. I think that would be consistent with all sorts of things. That is good news. With the 18-to-25-year-old age group appearing in adult courts, typically with one failure to appear at court if you are legally represented then your solicitor may be able to persuade the court to grant an adjournment. We go to court a lot for homeless young people, people who have mental health problems and intellectual disabilities — all sorts of difficulties including drug and alcohol problems. They often find it very difficult to turn up at court despite their best efforts and their best intentions. If we actually have instructions from the client, can go along to court and convince the magistrate that there is a good reason why the person is not at court and that they are legally represented and that they are in contact with us, and yes, we do have instructions, and yes, we will make every effort to get them there next time, normally we can get an adjournment, at least in the early stages of a matter. But for someone who does not actually have legal representation from a service like ours, that option is not really open to them. In the adult courts legal aid generally does not take instructions until the person actually appears at court because it is based on a duty solicitor system. Also if the person does not appear at court on the next occasion legal aid will generally just withdraw their representation. They are not usually going to go into bat for a client who has not turned up, whereas the Aboriginal legal service — like our service, the Shopfront — has a bit more of an ongoing relationship with its clients and will tend to try and hang in there and obtain adjournments and things.

But yes, people who fail to appear at court are likely to face warrants being issued. The courts in the last few years have gained increased powers to convict people in their absence on pretty much any offence that is capable of being dealt with summarily. That ranges from things like offensive language or, in theory, all the way up to break, enter and steal offences. I doubt a court would convict someone in their absence of that, but in theory with any matter that is capable of being dealt with summarily the Local Court can convict the person in their absence. If it is a minor offence where the court thinks a fine is an appropriate penalty it can impose a fine in the person's absence, but if the court is of the view that another penalty is warranted, such as a bond, community service order, imprisonment or whatever, it issues a warrant. We find that many warrants are being issued against our clients or people who are in our client group. These are people who are young adults, who are Aboriginal, who have mental illnesses, disabilities — people who are just generally disadvantaged. The courts are very ready on a first non-appearance to issue warrants. Obviously the courts cannot keep adjourning things forever and ever, but I would perhaps like to see a little bit more of a chance given to people. Some magistrates have the practice of adjourning a matter if the person has not appeared. They think, 'We will give them one more adjournment, send them out a notice and see if they come next time'. In the long run

probably more resources would be saved that way rather than police having to execute warrants, bring the person into custody, put them before the bail court et cetera; or, as often happens, if we have clients who have failed to turn up at court and a warrant has been issued they will often come to us the following day and say, 'I missed court, what do I do?'. We take them down to the court and try to get it relisted and the warrants called off and everything. That, of course, is quite time consuming, not just for the court staff but also for the legal representatives. I would like to see perhaps a little bit less readiness to issue warrants, particularly for less serious offences.

The CHAIR — Have you achieved that though? Presumably the court already has the discretion.

Ms SANDERS — They do.

The CHAIR — And they can decide whether they are going to convict in absence or adjourn?

Ms SANDERS — Of course they can, yes. It is probably very pie-in-the-sky stuff.

The CHAIR — Is it the fact that the legislation has created a new norm that has encouraged the judiciary to — —

Ms SANDERS — The legislation has certainly created a new norm that has encouraged magistrates to convict people in their absence. The power to issue warrants has always been there. They should, of course, retain the discretion, but maybe there should be something along the lines of a practice direction where magistrates agree to adopt a practice of giving people one adjournment before automatically issuing a warrant. That is just my idea of what might be more helpful.

Another problem with warrants is that for people who are on good behaviour bonds or probation orders or the like, if there are proceedings being taken against them for breach of that order — either because they have been convicted of a subsequent offence or because they have breached a condition of their bond, such as not keeping in contact with their probation officer — then there will often be breach action taken. Courts and probation officers do not seem to have a terribly good system for keeping track of people and keeping their addresses up to date. I know that the offender is primarily responsible for that, but it is often the case that people — —

Courts and probation services are very quick to come to the view that this person is uncontactable. They do not know where to find them. There is no point trying to send them a notice. You may as well just apply for a warrant. So people often find months and months down the track, when they think all of their legal matters are cleared up, they are walking along the street and suddenly they are arrested on a warrant for a breach of bond where they thought all of their legal matters had been dealt with a long time ago. The main problem there is that breach action on good behaviour bonds and probation orders, or whatever, is so slow in working its way through the system. If a person does commit an offence which puts them in breach of a bond it could be months and months before anyone catches up with them.

Mr MAUGHAN — Why is it so slow, and would it be better if it were speeded up so that if a person breaches then, bang, things happen fairly quickly?

Ms SANDERS — It would be. In a way it is good that it is slow because it gives a person a chance to clean up their act a bit perhaps and to try and stay out of trouble so that things look better for them when they eventually front the court again. But it is a real nightmare in terms of people wanting to get their matters resolved and wanting to know what matters they have outstanding. For the sake of certainty it probably would be better, but that is an administrative and procedural thing. I am not sure there is anything that legislation could do about that.

The CHAIR — They may not even know that they are in breach of a condition.

Ms SANDERS — No, that is right.

The CHAIR — They may have incurred a traffic fine through the PERIN system, as we call it in Victoria, and received a notice at an address from which they have moved and they simply do not have the mechanisms for forwarding addresses. Is that something that you come across frequently with young people — that is, because they are highly mobile they are not actually receiving notices and are not even aware that they may in fact be in breach of the law?

Ms SANDERS — Incurring a traffic fine normally would not put you in breach of a court-imposed good behaviour bond. It would normally be a court conviction.

The CHAIR — No, it would not at that point, but at the point at which you do not pay the fine.

Ms SANDERS — If you are ever wanting to have an inquiry on the PERIN system I can address you at length on the evils of the State Debt Recovery Office in New South Wales! We do have young people who have enormous problems with that very thing — that is, with infringement notices being sent out, fine enforcement orders and all manner of legal notices — because they move around so often. Because it is very difficult to track their last known address it is very hard. That is difficult and there is no easy solution, because if you are someone who moves around a lot then how are people going to keep track of you? There are a couple of local youth centres that accept mail on behalf of clients, and the smart ones use those centres as their mailing address. Wherever they are normally there is a youth worker who knows where they are, and if it is that youth worker who is receiving their mail at least they can try and contact them and say, ‘Hey, you have a bunch of mail here and some of it looks like it might be coming from the courts. You had better come in and have a look’.

The CHAIR — There is a cascading impact, is there not, where you can end up owing significantly more than the original fine and may not even be aware or cognisant of the fact that you are going to incur the significantly higher penalties as a result of either being unaware in the first place or non-action? Sometimes people cannot pay the fine, they do not know what to do, they do not ring the phone number or contact anyone or seek any help, and they hope it will go away.

Ms SANDERS — Absolutely. For example — and again this is straying off the topic of warrants — you may have a young person who is 16 or 17 and who is homeless, and they incur an infringement notice on the railways because they are travelling on the train without a ticket. Sometimes it is because they are sleeping on the train because they have nowhere else to go; sometimes they need to get to a job interview or from one place to another and just cannot find the money to do it, and they then receive a railway fine. The fine might be \$100, it may be issued on the spot or it may not, but they lose the piece of paper. If it is sent to them in the mail, by the time they get it they have moved on and the reminder notice does not get to them. In any event to pay infringements with the infringement processing bureau there is no mechanism for granting time to pay, so if you do not pay you initially have 21 days and then the reminder notice gives you 28 days. If you cannot pay within that seven-week period in full it goes to the State Debt Recovery Office. Automatically that is a further \$50 enforcement cost; then if they proceed to other enforcement action it is another \$50, and that goes on all the time.

A young person who is homeless or unemployed is not going to be able to find \$100 to pay the fine by the due date. They have no option but to let it go to the State Debt Recovery Office unless they want to take it to court and challenge it, and sometimes that is what we advise clients to do, particularly if they are juveniles, if they have not got much of a record and if they really are impoverished. The Children’s Court is likely to reduce the fine or dismiss it with a caution, but

that real problem of forwarding addresses and people not being contactable by the system often leads to warrants being issued.

A reason that a lot of people fail to appear in court is that they get arrested, are charged at the police station, given their court attendance notice, they might be required to enter a bail undertaking, and they get given their bits of paper by the police station. Typically, looking at our clients, probably more than 50 per cent of them lose their court papers before the court date. Either it is in their bag which gets stolen at a refuge, they leave it on the train, it falls out of wherever, they cannot take it with them because they have to leave their home in a hurry perhaps because of violence, or they get kicked out by their landlord and do not have time to collect all their belongings. So for one reason or another they lose their court papers, and there is no easy way then for them to find out when their court date is, which is quite extraordinary. The courts usually do not get the papers from the police until a few days before court, so it will not be on their system until maybe a couple of days before the court date. If you ring up the court, you might not even remember which court it is at. You think, 'I have to go to court somewhere in the city, but I cannot remember which court'. You cannot just ring the police station and ask when your court date is unless you actually know the name of the officer who arrested you.

Sometimes if you walk into the police station with identification, present yourself at the counter and say, 'Look, I have a court matter coming up, can you please look on the computer?', you might be okay. But a lot of young people do not want to do that because they have had negative experiences with the police or they think the police might be after them for something else, so there are a whole lot of factors which make it very difficult for people to actually find their court date when they have lost their court papers.

The CHAIR — How could you fix that?

Ms SANDERS — Perhaps by having some facility for electronic transmission between police and courts, so from the moment a person gets charged they are able to find their court date. I know there are privacy considerations and a whole lot of issues with police giving out that sort of information over the phone, so that would have to be quite well thought out, but it is very difficult.

Mr MAUGHAN — Do the type of young people you are dealing with respond positively to being given further time or being given some leniency?

Ms SANDERS — Generally yes. You are talking about the time to pay fines generally?

Mr MAUGHAN — Yes.

Ms SANDERS — Some of our clients are still really not in a position to pay anything. Their lives are such a mess, they are so unstable, they have huge debts, they may be in the acute phase of a mental illness, so giving them time to pay is not really going to help them, but we do see a lot of young people who are really trying to get their lives together. They have had very turbulent teen years, they may have been homeless, they have been involved with the criminal justice system and are now trying very hard, and some of them may have got a job or are looking for a job, but they find that the State Debt Recovery office has directed the RTA to cancel their licence, for example, or to stop them applying for a driving licence — because that is a sanction that can be used for any types of fines, not just traffic fines generally.

If they are able to enter a payment plan and pay off their fine slowly, they will respond quite well to that. There has been a difficulty until recently because the State Debt Recovery Office did not offer a direct debit facility so people actually had to either take out a mail order, which costs them a few dollars each time for maybe a \$10 payment, or they had to particularly go into the post office every week or fortnight on the same day and queue up and pay. And that is quite difficult, not only just to remember to do it, but the time and effort it takes. Now there are arrangements with Centrelink where people can have their fine repayments taken out of their Centrelink benefits

by agreement. So that is something that will improve the rate of compliance with time to pay. But generally I find that our clients do respond quite well to time to pay, also to courts giving them another adjournment if they have missed a court day. Anything which helps people to comply rather than punishes them for not complying has got to be a good thing.

The CHAIR — In terms of the oversight of warrants in New South Wales, how effective do you think the courts have been?

Ms SANDERS — Are you talking about all warrants?

The CHAIR — In relation to young people.

Ms SANDERS — Not very good. I talked about search warrants and the sort of scrutiny they get from the courts, and generally that is only where the court is asked to consider an issue of admissibility of evidence. When it comes to bench warrants and court-issued warrants, I do not really think there is any sort of scrutiny. Presumably there are statistics kept about how many warrants are issued. I think the Bureau of Crime Statistics did some research last year about bail and people absconding on bail. There was some analysis there of the number of warrants issued by courts, but I do not think there is any scrutiny, because generally there is no appeal or review against the issue of a bench warrant by a court.

Generally the remedy is to go in and ask for the warrant to be recalled, but it is not really a formal review or appeal process. Once the warrant has been issued, if you do not get in there in time to get the warrant recalled, of course you will be arrested on it. Then you have to just front the bail court and apply for bail again. But that just constitutes a fresh application for bail. It is not really an exploration of the merits of whether the warrant should have been issued or not. So I do not really think there is any oversight of the frequency with which courts issue warrants and the appropriateness of that. I do not know how that would be achieved, but probably there should be some sort of data checks and maybe some sort of review of the numbers of types of warrants that are being issued and in what types of matters.

There has been a problem with warrants taking a long time to find their way onto the police system, but I think it is less significant now. A person may know that they have failed to appear at court. They may be told by the court, 'Yes, there is a warrant out, and the warrant has already gone to the police so it is too late to come to the court and try and get it recalled. You have to go and hand yourself into the police or wait to be arrested'. The person tries to hand themselves into the police to be told, 'You have no warrants, mate'. They want to clear up their warrants; they want to hand themselves in because of course it puts them in a much better position. But the warrant is somewhere in limbo between the court and the police and until it is on the police system they cannot execute it. So that can sometimes cause a problem. Sometimes warrants mysteriously turn up months and months later — for example, they may mysteriously turn up a week after a person has been released from jail. Many people quite reasonably think that that is a conspiracy on the part of the police to find something else to lock them up on. I do not necessarily think it is, but you can see how people might have the view that they are perhaps being — —

The CHAIR — Persecuted.

Ms SANDERS — Persecuted or harassed, yes. So there are all sorts of practical and procedural problems, and that is what we see the most acutely at Shopfront. Certainly there are real defects in legislation as well, but where we really see our clients being disadvantaged is with all the procedural things that are not really regulated by legislation and may not be amenable to being regulated. But it is where people really get stuffed around, for want of a better expression.

The CHAIR — The average citizen has no prospect of understanding all of those procedures, let alone the young people you are dealing with.

Ms SANDERS — And even with legal advice it is very difficult. All the legal advice in the world cannot alter the fact that a warrant may be somewhere in limbo between the court and the police and a person cannot actually take any action on it.

The CHAIR — Yes.

Ms SANDERS — So that is a practical problem.

The CHAIR — Jane, are there any other comments that you want to make before we run out of time?

Ms SANDERS — I do not think so, maybe just on behalf of Teresa O'Sullivan who was going to be here today but could not be: I had a brief talk to her yesterday and she just wanted me to mention the legal aid Children's Legal Service and the existence of the legal aid hotline for under-18s, particularly in relation to search warrants executed in relation to a person who is aged under 18. I think her view is that there needs to be more clarity on the right of a young person to seek and obtain legal advice when a search warrant is being executed.

Currently, if a young person is under arrest and at the police station, there is a right to legal advice and police are required to inform the young person of the existence of the legal aid hotline and to give them the number and allow them to ring it. I think if search warrants are being executed at a young person's house the practice is perhaps a bit less well defined. In both Teresa's and my view, a young person who is having a search warrant executed at their premises really needs to be informed of their right to legal advice before any search takes place, and needs to be given the opportunity to ring the legal aid hotline. So maybe in any search warrant legislation that needs to be —

The CHAIR — What would you hope to achieve out of that? If they had access to legal advice, what practical improvements would that bring for the young people you deal with?

Ms SANDERS — I think it would mean that the young person would be advised of their right to silence, and of their right not to answer police questions while a warrant is being executed; not to make any admissions, because even though the police will normally give the person the caution when they are executing a warrant, 'You do not have to say anything' et cetera, from the very beginning a young person should be advised of their right to silence in terms that they can understand, and probably cautioned by a lawyer against answering police questions. It is not very easy if the police are going around your house, pulling things out and saying, 'What is this?' and 'What is that?'. So perhaps a young person needs to be cautioned in relation to that.

Also a solicitor may be able to help to make sure that the young person understands the occupier's notice and that what is set out in the warrant is consistent with what the police are really there to search for. So I think the opportunity to have legal advice up front before any searching takes place is really important, not just for children, but particularly for young people because they are likely to be more disadvantaged. I think there is a danger of them being persuaded to make admissions and talk to police. A lot of people think that if it is not a formal police interview and they are not in an interview room with an electronically recorded interviews with suspected persons, (ERISP) machine then it is not an interview, and nothing they say matters, but often it is, so I think that is quite important.

Mr MAUGHAN — Is there any difference in your client group to the Legal Aid Commission?

Ms SANDERS — There is a lot of overlap, and of course most clients of the Legal Aid Commission are economically and socially disadvantaged which is generally why they are in the criminal justice system. But I think the clients of the Shopfront are probably the most disadvantaged of the lot, because we target young people who are homeless, who have mental

illnesses, who perhaps have serious drug and alcohol problems and serious disabilities. Our clients probably tend to be more disadvantaged than the average legal aid clients.

Mr MAUGHAN — Do you seek them out or do you wait for them to come to you?

Ms SANDERS — We have a referral network through various youth services, so we really do not need to seek out clients; they come flooding through the door. But normally it is the youth centres — the refuges, the drop-in centres and the health centres who are aware of us, so if they are in contact with a young person we will normally get a referral that way. Certainly, legal aid deals with young people who are very, very disadvantaged, but they also deal with young people who are perhaps just a bit troubled, but who still have a supportive family and perhaps go to school and have a reasonably decent level of education. Ours would probably be the most chaotic if you like.

Mr MAUGHAN — Does this consortium have a presence in any of the other major capitals — Melbourne, Brisbane?

Ms SANDERS — Are we talking about — —

Mr MAUGHAN — Salvation Army, Uniting Church, Freehills.

Ms SANDERS — Not in the same form, no. The Shopfront is a unique project in New South Wales. I know there is a youth legal service in Western Australia for example — —

The CHAIR — Youth Law.

Ms SANDERS — And there is Youth Law in Melbourne, to which one of the major firms contributes. I think that the Western Australian youth legal service is partly run by one of the charities. I am not sure if there is assistance from a law firm. So partnering goes on but this particular service is only in Sydney.

The CHAIR — We are out of time, Jane. Thank you very much for coming along. It has been fascinating and you have given us a lot of good food for thought. Thank you very much for your time.

Ms SANDERS — Thank you. I am not sure that I was very much on the topic — —

The CHAIR — You were.

Ms SANDERS — I hope I have been able to help you somehow.

The CHAIR — Thank you very much. If there are any follow-up questions from us, perhaps we can contact you for some information in writing or over the phone.

Ms SANDERS — Yes, that is no problem.

Witness withdrew.

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