process to the satisfaction of bemused electoral clerks. But on the other hand we also know that children are more competent to decide matters for themselves than they are often given credit for. The acknowledgment of this underpins the decision in *Gillick*.

But perhaps the question of competence to vote is an unnecessary distraction. It definitely did not worry John Holt. His response was simple:

> Most people assume that if young people voted they would vote foolishly, ignorantly, for trivial reasons. I don't think their reasons for voting would be any worse than those of many people who now vote, and often might be better . . . There is much evidence that enormous numbers of people who now vote do so out of deep ignorance and for the most frivolous and foolish reasons . . . No amount of ignorance, misinformation, or outright delusion will bar an adult from voting . . . There are . . . people who believe all manner of absurd, fantastic, and even dangerous things. None of them are barred from voting. Why should young people be?[1]

It is accepted that for practical reasons a voting age must be specified. What the above discussion suggests is that the current voting age is too high. Many children do have the competence to vote and there seems little justification for excluding them from the electoral process.

Victims of tyranny

Holt thought that if young people were involved in the political process then they would learn about the responsibilities which such inclusion implies. In other words enfranchising young people is about including them in the decisions which affect them. Giving children the vote would make them participants in political decisions, not the objects.

> To be in any way subject to the laws of a society without having any right of way to say what those laws should be is the most serious injustice.[2]

One wonders if the recent reforms to the juvenile justice laws in Western Australia and South Australia would have taken the same shape if the subjects of those laws had the vote. The stark reality is that no matter how many representations child and youth advocates made to Parliamentary Committees or politicians on these new laws not one of them could say, 'look, these laws are draconian and will hurt young people. Now there are at least six marginal seats where the 16 and 17-year-old vote will be crucial to the outcome and unless you want to see a targeted campaign we think you should reconsider the legislation'. These are the tactics often employed by special interest groups when confronted by unpalatable legislation and often to great effect.

There are other recent examples of legislative and administrative changes which have adversely affected the interests of young people. Changes in income support provision, school discipline regulations and child protection laws might have taken on a different hue if those subject to the laws were enfranchised.

Current moves for reform

The New Zealand Youth Law project reports that in 1986 the Royal Commission on the Electoral System recommended that the voting age should be reviewed and that there was a strong argument in favour of lowering the voting age to 16 years. The Youth Law Project is at present lobbying for an amendment to the electoral law in New Zealand to enfranchise over 16-year-olds. They also report that in the United Kingdom the Liberal Democrats have a policy of lowering the voting age to 16.[3]

There has been little said in Australia about lowering the voting age. Although children can make many important decisions in their lives before they turn 18 (such as leave school, undertake employment, consent to certain sexual relationships, consent to medical procedures in certain circumstances) it has not been considered inconsistent to deny children the vote.

But perhaps the strongest argument in favour of lowering the voting age is that it would reverse the trend in recent years to scapegoat young people for various social problems. It would redress a power imbalance which makes young people easy targets for politicians who want to make a name for themselves. And in giving young people some power they would have to be included in society's decisions and perhaps better decisions would result. It might just help reduce some of the alienation which the political exclusion of young people currently causes.

There are cynics who will say that voting changes nothing and lowering the voting age will achieve little. Of course, the right to vote is not an end in itself. But those who express a cynical view of voting often have the vote and would be shocked to have it taken away. At the moment young people have nothing to lose.

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References

1. Holt, J., *Escape from Childhood*, Penguin, 1975, pp.126-8.
2. Holt, J., above, p.118.
3. (1993) *Youth Law Review*, April/May, Youth Law Project Newsletter, Auckland New Zealand.

Redefining the public interest

SIMON RICE attended a forum at which several fresh perspectives on what constitutes 'the public interest' were offered.

As the director of the Public Interest Advocacy Centre (PIAC), Michael Hogan, pointed out, PIAC's tenth anniversary really celebrates the passing of its tenth year. A surprisingly formal and stilted dinner on a Friday night in June, at which funders and patrons were seated at one end and workers and ratbags at the other, was followed on the Saturday by a self-styled 'summit': *Redefining the Public Interest*.

The summit, on 12 June 1993 in Sydney, was perhaps so-called because it brought together senior representatives of major consumer and public interest groups, as well as a number of respected commentators. As a forum for comment, ideas and fresh perspectives it was a considerable success.

The public interest

The 'redefinition' which was the aim of the conference was never explicitly addressed; no session of the day was set aside for that issue. Rather, the day's agenda itself reflected the range of interests and perspectives that could contribute to a definition of the public interest. During the day an idea developed of the many aspects of 'the public interest', and of the competition among interests any of which could claim to be a part of the public interest.

Much of what was said followed from or fitted into a pattern set by Julian Disney's opening address. Now Professor of Public Law at the Australian National University, **Julian Disney** continues his research and commentary on social issues. He offered three background considerations to the discussion: the internationalisation of our society, particularly in the economy and media; the prolonged recession, creating a class of unemployed; and the growing divide between those with and those without secure housing and employment.

Part of his broad ranging speech focused on employment, taxation and urban development. Taken as a group these issues raise questions about entrenched structural and behavioural unfairness in our society. To an audience generally committed to the daily battle against individual instances of social injustice, the most telling point was the need for us all to understand and deal with the macro issues if there is to be any hope of real change.

The interest groups

There followed a panel of people whose organisations represent the sort that 'the public interest' might encompass: the environment; Aborigines in the criminal justice system; migrants; and consumers of goods and services.

Trish Caswell of the Australian Conservation Foundation (ACF) saw six areas needing attention and action:

biodiversity (species survival) – Australia is a megadiverse environment but one that has lost and is losing species and environment at a great rate;

- climate change (greenhouse) – Australia contributes significantly to the depletion of the ozone layer, and risks failing to comply with international obligations;

sustainable agriculture – Australia faces serious problems with soil erosion and land degradation and must confront issues of water storage and pricing;

urban issues – clean air and water, public transport and household waste management are urgent issues;

green issues in industry – regard must be had to recycling and environmental conditions that are beginning to form part of international trade agreements;

constitutional issues – State boundaries are becoming increasingly less relevant to environmental concerns.

With Trish Caswell having picked up on Julian Disney's themes of urban development and the internationalisation of the economy, **Pat O'Shane**, an Aboriginal magistrate, moved to the connections between social and legal justice. She identified fundamental elements of social justice as freedom from want and hunger, shelter and medical services. Although social matters, they are dependent, she said, on the resolution of economic issues.

The chronic absence of these elements of social justice among Aborigines raises for her the challenging and, from a magistrate perhaps surprising, questions: 'What is crime?' and 'What is peace and good order?'

From SBS Radio **Quang Luu** maintained the tendency to tie the pursuit of the public interest to the economic market either directly or by analogy. He observed that the ACF and the Australian Consumers' Association (ACA) have successfully marketed their concerns, establishing their issues as relevant to society, and their organisations as credible authorities.

The 'ethnic issue' has not, he said, been marketed. The ethnic community has allowed its concerns to remain sectional interests, and has failed to make them relevant to the public interest. Most telling is the failure of Australia to use migrants' skills – an issue of major importance to the economy and society, but to date marginalised as merely a sectional matter.

Louise Sylvan of the ACA spoke of access – access to justice and access to information – as essential to any pursuit of public interest concerns. In litigation, standing and cost remain significant barriers to consumers' ability to seek justice.

But even before litigation, the consumers' 'right to know', embracing access to information, participation in decision making and plain English, must be pursued. While these are issues that arise locally, Louise Sylvan too reminded us of the internationalisation of markets, referring to food standards relevant to Australia but determined in Geneva.

An aspect of the economy to be considered is the role of business and corporations. They hold information which should be available to consumers, and they have codes of conduct which should be enforceable by consumers. They also have a potentially insidious power in the funding of research: the spectre was raised of corporate allegiance among the experts. The concern exists in any area of public interest, and anecdotes abound, I thought to myself, that either assert or query the independence of corporate-funded research.

Lunch was served and eaten in the State Library's exhibition of posters, prints and photos of the sixties. The images were in part of civil disobedience perhaps hinted at by Pat O'Shane. How many at lunch were reminded of how long now the struggle has gone on or how many – without those memories – found some inspiration in the images of protest and demonstration, and how many were merely curious to see in the original the now-revived styles of bell-bottoms, floral shirts and platform shoes?

Hilary Charlesworth faced the daunting task of shaking us from the inevitable post-lunch lethargy. She did this in style, challenging a perceived human rights/public interest dichotomy in Australia. International covenants and international human rights procedures can be invaluable tools, she reminded us, in the promotion and advocacy of the public interest.

At the same time, Australia should not be glib about its position in relation to human rights. It is a matter of public interest, not properly recognised, that Australia continues to breach international standards of civil and political rights.

The lawyers

The final session was again a panel, this time lining up lawyers rather than interest groups. It was hard to see a

stronger connection among them than that they each had, on the day at least, a view about how the legal system assists or obstructs the pursuit of the public interest.

Peter Cashman, a solicitor in private practice, acts for plaintiffs in 'public interest' matters, particularly product liability claims. Having noted that mass production will necessarily lead to high levels of consumer litigation, his principal point was that the legal system is not geared to deal with this consequence. Defendants have the capacity to litigate endlessly, and have economic advantages, such as tax deductibility of legal costs, not enjoyed by plaintiffs.

Moving up or along or to another place on the spectrum of lawyers, **Caroline Simpson** is a Sydney Queen's Counsel who challenged us with the thorny question of competing interests. She offered the familiar dilemma of employment of women in lead-based industries, a major issue in the United States recently; the competing interests, each of which alone are in the public interest, are those of equal opportunity in employment, and the right to a safe environment. Caroline Simpson's point was not so much that interests compete, but that it is not always easy (and presumably this is a warning to vociferous advocates for a cause) to identify *the* public interest.

On a different note, but again challenging some implicit assumptions among public interest advocates, Caroline Simpson suggested that despite its advantages, alternative dispute resolution (ADR) can counter the advancement of the public interest. ADR is a private system, with no opportunity for public interest advocates to intervene or to follow the progress and resolution of matters. In my own experience this has been reflected in part in the private nature of conciliating discrimination complaints.

Among Peter Cashman's foes are the lawyers who advise companies. **Don Robertson** is a partner at the Sydney firm of Freehill Hollingdale and Page. He was not, however, on the panel to counter Peter's rage against commercial litigators. Rather, he gave an academic and researched account of how he could see the legal system becoming more accessible. He presumably spoke with some authority when he proceeded on the basis that high litigation costs will not be sufficient to deter companies from using the adversarial system and push them to ADR. His solution is to make the system 'truly user pays', so that the full, real costs of the adversarial process would confront a party. It struck me that this was not a relevant tactic as far as non-commercial litigants at least are concerned, but there does seem to be in it some tacit support for the abolition of the tax-deductibility of legal costs. Don Robertson's further points extended to the need for heightened judicial activism and the need for lawyers to generate a professional commitment to *pro bono* (free?) legal service.

On the heels of the suggested judicial activism came the final speaker, Justice **Margaret Beazley** of the Federal Court. Her contribution focused on the nature of public interest litigation and the capacity of its advocates. I wondered whether Her Honour knew her audience much better than the ex-judge who had spoken at dinner the night before. In presenting the uncontroversial thesis that a public interest issue needs to be acceptable in courts and the broader arena, she strongly intimated that public interest advocates lack professionalism, knowledge of the legal process and knowledge of the law. If true, then her exhortation to PIAC to be more professional might have been an apt conclusion to the conference. I agreed with many who thought it an odd note to go out on.

In all, it was a full, busy and thought-provoking day. It has renewed the need to characterise so much of the work of legal centres and other non-government organisations as being in the public interest, and has maintained the challenging and never-ending quest for the public interest. The papers will be available from the Public Interest Advocacy Centre, P.O. Box C185, Clarence St., Sydney, tel. (02) 299 7833.

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A tax by any other name . . .

LEO TSAKNIS asks whether governments can charge for the provision of services without legislation.

Scant consideration has been given to the ability of governments and statutory authorities, which include government business enterprises established by statute, to charge for services which they provide. Lest it be thought that the reason for this is that the law has long been well settled, the recent decision of the House of Lords in *McCarthy and Stone (Developments) Ltd v London Borough Of Richmond Upon Thames* [1991] 3 WLR 941, which reversed a decision of the Court of Appeal, shows this not to be the case. The reason for the paucity of judicial consideration probably owes more to the fact that, in the past, government services were provided at little or only nominal cost. However, in recent times there has been a trend towards the provision of government services on a 'user-pays' basis with the result that the costs for an increasing number of services are now being passed on to the consumer, and at full cost.

The leading case for over half a century is the English decision of *Attorney-General v Wilts United Dairies, Limited.*[1] Shortly stated, the facts of that case were that following regulations made under the *Defence of the Realm Consolidation Act* 1914, the Food Controller was empowered to make orders regulating, or giving directions with respect to, the production, manufacture, treatment, use, consumption, transport, distribution, supply, sale or purchase of, or other dealing in, or measures to be taken in relation to, any article (including orders providing for the fixing of maximum and minimum prices) where it appeared to him necessary or expedient to make any such order for the purpose of encouraging or maintaining the food supply of the country. On 17 April 1919, the Food Controller issued a press notice stating that he had decided that the maximum price of milk produced in the South-Western counties of Cornwall, Devon, Dorset and Somerset should be 2d. per gallon less than the general prices in England and Wales, and in the industrial area of the West Riding of Yorkshire they should be 2d. per gallon higher, and that these differential prices necessitated special administrative arrangements to ensure that buyers were placed on an equitable footing. To give effect to this, licensed wholesale