Briefs

WOMEN AND THE LAW

bur-ran-gur ang (court out)

ANNETTE PEDERSEN curated an inter-disciplinary exhibition of artworks.

bur-ran-gur ang (court out) Women and the Law was opened on 24 February 1995 by Dr Jocelynne Scutt at the Lawrence Wilson Art Gallery at the University of Western Australia. The exhibition and accompanying publication of essays was organised to celebrate the 20th anniversary of International Women's Day, on 8 March 1995, as a part of Professor Joan Kerr's Australia-wide celebrations. By combining visual art with written works by women to produce a provocative and rigorous interdisciplinary exhibition, it was hoped the issues would reach a broader audience than would normally be expected of an art exhibition.

The title *bur-ran-gur ang* comes from the Nyoongah language; it is a literal translation of 'court out'. These Nyoongah words were used as a mark of respect for the first people of the Perth region of Western Australia.

The women involved in the project came from diverse backgrounds. What it means to be a woman can never be the same for an Aboriginal Australian woman and a European Australian woman. To be a woman is always to be a woman differently, depending on race, class, sexuality and age, and yet there is meaning to the statement that one is a woman, even if that meaning constantly shifts.

As it was felt it to be essential that this diversity of the 'Australian' experience be expressed, 20 women from different cultural backgrounds in Western Australia were invited to critically examine aspects of law in their work. Consequently there were academics, writers, lawyers, journalists, artists and students involved in the project. Their artworks ranged from video installation, photography, paintings and printed silk through to essays specifically on law, Aboriginal women's law, crime writing and also creative writing.

The works in the exhibition showed some of the positive and negative aspects of law in Western Australian culture as it relates to women. While the laws of many western democracies are changing to give 'equal' status to women, the patriarchal myths on which these societies are structured and justified remain largely unchanged. These myths make possible the distinctions between private and public as they have developed in western society. This issue was a recurring concern in the exhibition and is eloquently expressed in Jo Darbyshire's painting *Wildflowers.* *

Also of importance to participants in the exhibition were the spaces indigenous cultures occupy in Australia. In our so-called 'post-colonial' culture, the High Court *Mabo* decision is seen as only the first step towards the acknowledgment and inclusion of the histories and needs of Aboriginal Australians in the dominant 'Eurocentric' discourses and histories of our culture.

There are many different stories within our culture waiting to be told. Despite dominant patriarchal discourses, there is potential within visual culture to subvert and change contemporary practices and ideologies. An important way to achieve this is to provide an opportunity for people to interact with different traditions and experiences. The project, *bur-ran-gur ang*, was undertaken in the hope that by celebrating International Women's Day with a combination of visual and written texts, these dominant practices and ideologies would be reconsidered. Nearly 5000 people visited the Lawrence Wilson Art Gallery to see the exhibition.

Crime and law may have structured the beginnings of white Australian culture, but it is by the subtle means of art and literature that we may be able to change the future into something else again. We have the opportunity to bring some measure of fresh understanding and input to the events that shape our lives.

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** Wildflowers appears on the cover of this issue.*

POLICE POWERS

'Name and address?'

PHILIP GRANO and JUDE MCCULLOCH discuss the limits of a new power of the Victoria Police.

Ten years ago, at its Annual General Meeting in April 1986, the Victorian Police Association resolved to pursue a wish list of powers, at the top of which was the power to demand name and address.

Amendments to the *Crimes Act 1958* (Vic.) in 1993, which came into effect in 1994, delivered to the Victoria Police a wide power to demand the name and address of citizens. Previously, the police could only lawfully demand name and address if the person concerned was engaged in an activity that the government had seen fit to regulate, for example, driving a motor vehicle or drinking on licensed premises. However, police have traditionally had wide powers to arrest people they suspect of engaging in criminal activity; once arrested, a person must give their correct name and address before being released.

New s.456AA of the *Crimes Act* requires that a person must provide their correct name and address if the police believe:

- they have broken the law;

- they are about to break the law; or
- they are able to assist the police with information about an indictable offence.

The police officer must tell the person the reasons for their belief, if asked (the person should ask for these if the police do not tell them) and their name, rank, station and number, if asked (the police should also give these details in writing if requested).

It is widely perceived that under the amended legislation the police power to demand name and address is virtually unfettered. While it is true that police do have wide powers to demand name and address, a case heard in a Victorian Magistrates Court in March 1995 illustrates that there are some restrictions on police power and that police acting outside their lawful powers leave themselves open to civil actions for unlawful imprisonment.

The facts

In October 1994 Joe Bloggs was broke. He collected 12 of his CDs together and went to the local pawnbroker to get a loan of $20 to see him through to the next DSS cheque in two days. After going to the pawnbroker's he intended to go to the local gym. Joe had been to this pawnbroker before, once to hock some CDs and once to hock his CD player. At the pawnbroker, he handed over his CDs and got his $20 loan. The pawnbroker entered the transaction in his record book, including, among other things, Joe's name, address, the property hocked and the health care card he had used as ID. On a previous occasion Joe had used his drivers' licence showing his photograph.

As Joe was leaving the pawnbroker's, a man entered. Joe thought this man could have been a policeman and indeed he was. Joe went to the supermarket before setting off for the gym.

The policeman asked the pawnbroker to produce his record book. He saw that Joe had hocked CDs and that he obtained only $20 for them. He thought to himself that this was a 'bit strange'. He knew that there had been a number of CD thefts in the area. However, he did not note down Joe's name or address or the names of the CDs, nor did he ask the pawnbroker whether the transaction was a loan or a sale, or any other questions. He left the shop, got in his car and drove down the street.

The policeman then saw Joe walking along the street. He approached Joe and asked him whether he was the person who had hocked some CDs that morning and whether he had received only $20 for them. Joe replied in a surly voice that he was. The policeman asked for Joe's ID. Joe refused to give it. He then asked Joe for his name and address. Joe, knowing he was innocent of any wrongdoing, refused to give it. The policeman tried again. He explained to Joe that the law had been changed and that he had the right to ask Joe for his name and address. Joe was steadfast in his refusal. He was becoming angry.

Joe tried to walk away. The policeman said he was arresting him for failing to give his name and address. Joe kept walking. The policeman grabbed the strap of his backpack. This broke. He then grabbed his singlet. Joe still tried to walk away. The policeman then put Joe in a headlock. A wrestle ensued. Joe ended up on the ground, with the policeman on top. A crowd gathered. Eventually a man in a suit called for police reinforcements and Joe was swept away to the station.

At the station Joe was read his rights about being interviewed for failing to give his name and address. The police asked if they could search his flat. Joe said they could. A search took place and nothing was seized. Joe explained that he did not know that he was required to give his name and address. He was charged with failing to give his name and address, resisting arrest and assaulting police, and pleaded 'not guilty' to all charges.

The legal argument

The Magistrate was required to decide whether the police officer had reasonable grounds for his belief that Joe may be able to assist in the investigation of an indictable offence which had been committed.

The prosecution argued that the policeman did have grounds for his belief, being his knowledge that there had been CDs stolen in the area; that 'it seemed a bit strange' that Joe only received $20 for the CDs; and that, in his experience, ID given to pawnbrokers was often 'not kosher' and pawnbrokers were an avenue for unloading stolen goods.

The defence argued that these reasons may amount to conjecture or suspicion that the CDs were stolen but they were not sufficiently strong to support a belief.

In *Fisher v McGee* [1947] VLR 324, it was held that a belief encompassed more than a suspicion:

> The gradation in mental assent is 'suspicion' which falls short of belief, 'belief' which approaches to conviction, and knowledge which excludes doubt (citing Angas Parsons J in *Homes v Thorpe* [1925] SASR 286).

The difference between conjecture and suspicion was enunciated in *Hughs v Dempsey* (1915) 17 WAR 186 by McMillan CJ:

> It seems to me that reasonable suspicion means that there must be something more than mere imagination or conjecture. It must be the suspicion of a reasonable man warranted by facts from which inferences can be drawn; but it is something which falls short of legal proof.

Thus there are four levels of postulation. The lowest level is conjecture, the second is suspicion, third is belief and fourth is knowledge. Defence counsel argued that in suspicion the mind can entertain multiple hypotheses, while in belief these multiple hypotheses have been tested and now only one hypothesis disposes of all the data. The application of this distinction between suspicion and belief to s.456AA of the *Crimes Act* raises the standard required before the police are entitled to request, as of right, a person's name and address.

In this case, the policeman's own behaviour — his failure to take down any of Joe's details from the pawnbroker's record — indicated that he did not have a belief that Joe could assist in the investigation of an offence. Further, he failed to obtain information at the pawnbroker's which could have alleviated his suspicion or conjecture that the CDs were stolen. He could have inquired whether the pawnbroker had had previous dealings with Joe, whether he had produced other ID on those occasions, whether the transaction was by sale or loan. The Magistrate found that the failure to do these things showed that the policeman did not have a belief on reasonable grounds.

Accordingly Joe Bloggs was wrongfully arrested and had every right to resist arrest, such arrest being considered unlawful. He was acquitted on every charge.

Police power to demand name and address in other States

There are equivalent provisions to s.456AA in some other Australian jurisdictions. Section 50 of the *Police Act 1892* (WA) is the most draconian. It states: 'Any officer . . . may demand and require of any individual his name and address, and may apprehend without warrant any such person who shall neglect or refuse . . . '. Section 74A of the *Summary Offences Act 1953* (SA) requires a police officer to have '*reasonable cause to suspect* (a) that a person has committed, is committing, or is about to commit, an offence; or (b) that a person may be able to assist in the investigation of an offence or a suspected offence' before being entitled to demand name and address. Section 134 of the *Police Administration Act 1994* (NT) also requires belief on reasonable grounds.

In Queensland and New South Wales the common law prevails and in general, a citizen cannot be forced to answer questions put to them by the police. However, there is a plethora of statutes which grant the police the power to demand a person's name and address in specific situations.

Conclusion

The problem for citizens refusing to give police their name and address is that in most circumstances it will be impossible for them to know whether the police demand is one based on a reasonable belief as required by the Act. A refusal to acquiesce will expose people to the risk of incurring a fine of up to $500 and being convicted of an offence. Legal aid funds will not usually be available to challenge a charge of refusal to give name and address and most people affected will not have the financial resources to fund their own defence. Thus, it is likely that in most cases the limits on police powers in this area will remain largely theoretical. Nevertheless, it needs to be borne in mind that the police power to demand name and address is not unfettered and citizens are still entitled to go about their lawful business without being harassed and resist, by force if necessary, unwarranted and unlawful interference in their lives.

Philip Grano is a Melbourne barrister.
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POLICE

The death of community policing

DAVID HEILPERN reports on a drug offensive in Nimbin, NSW.

As the Royal Commission into Police Corruption in New South Wales continues to uncover massive drug-related corruption, the streets of Nimbin in northern New South Wales have seen a police operation that is deeply disturbing. I have been practising criminal law in this town for eight years and I have never seen such disregard for the law by the police themselves. Only after huge community uproar and a flying visit by senior officers from the NSW Ombudsman to Nimbin has the operation in Nimbin slowed. Now the town is left with a deep mutual suspicion and mistrust that will take years to repair.

There has been an ongoing battle between the people of Nimbin and the police for a generation. Much of this has concerned the use of cannabis, and this friction has been increased over the past couple of years partly due to the activism of Nimbin HEMP (Help End Marijuana Prohibition). Actions of HEMP have included marches, demonstrations, voluntary arrests, test cases and conferences. The annual Nimbin 'Mardi Gras' has attracted over 3000 people to the town for the last three years and has involved a range of civil disobedience activities, such as 'Pot Art' and the 'Cannabis Cup'.

In the last New South Wales election HEMP fielded a candidate, Mr Bob Hopkins (who changed his name to Prohibition End). He gained 8.2% of the vote in the electorate, double the vote of the Greens, and came third after the two major parties. His vote in Nimbin was over 40%. The police actively discouraged the media from reporting his campaign activities, which is the subject of a current complaint to the Ombudsman. On the day before the election, in a fanfare of publicity, Mr Hopkins beat charges of possession of cannabis in the Lismore local court. The police have since publicly complained about the Magistrate in this case, leading to intervention by the Chief Magistrate and the defence of the Magistrate by the local legal profession. Despite the police sniping at the magistracy, they have not appealed the decision.

The day after the election the police commenced 'Operation Ell Dockin' with the supposed aim of wiping out the drug trade in Nimbin. Their first action was a raid on the residence of Bob Hopkins with a police helicopter and nine police vehicles. The police claimed it was a coincidence. Since March 1995 there have been ten full-time police allocated to the Operation, as well as operatives from the Air Wing, Drug Enforcement Agency and Highway Patrol. For a town of 500 people this is saturation policing.

Random searches

Random motor vehicle and full body searches have been the most obvious aspect of the Operation. Most of these are, in my view, illegal. I have clients who have been searched nine times in three weeks, with no result. I have clients who have had police fondle their genitals in public looking for drugs. I have many clients who have been searched in public toilets, out the back of shops and in the pub. I have seen body searches in the street.

Most searches seem not to involve violence but some do, including one case where a man with a baby was thrown to the ground and another where a juvenile was thrown into a wall. Complaints are met with the claim that all searches are conducted with reasonable suspicion — anyone in Nimbin it seems is fair game. There is a 'police state' feeling in the community.

The police have no regard for private property. They walk into cafes and drag people off to be searched. Cafe owners who do not co-operate are told that they will be closed down. Witnesses to violence are told to keep quiet. Properties are entered without warrants almost daily. One local business, the famous Rainbow Cafe, has erected a sign denying police entry without permission. The police enter and search regardless.