

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.

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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.

The major employment in Nimbin is tourism. This is being adversely affected as a result of police continually telling tourists to get out of town. One cafe has sacked half its staff. Tourist bus operators have been searched. Road blocks on the main roads into and out of town are hardly conducive to business confidence. An amusing aside is that there have been several occasions when people, sick of being searched, simply take all their clothes off when confronted by police, continue with their coffee or shopping and return to collect their clothes after they have been searched. Only on the North Coast!

Police seem to target those who dress differently or look like 'hippies' or 'ferals' for their searches. Similarly, police helicopter raids have consistently targeted multiple occupancies (what used to be called communes) in this operation, as in past years. This year almost half the communities were swooped. With the exception of one large crop, not on a multiple occupancy, the charges have been for small amounts. In one case, the police found the crop of five plants of a client with a serious physical disability who uses cannabis for pain relief and he was charged.

Community reaction

All of this takes place in an area that has seen a worrying rise in serious drug-related violent crime. From 1 January 1995 to date there have been 19 reported armed 'home invasions' in the area, mostly looking for cannabis. There have been many more unreported as the victims are frightened of charges for possession or supply. Victims of domestic and other violence cannot call on the police for fear of being charged themselves. A woman client who was accompanied by police to collect her possessions from the house she had left because of violence is currently being investigated for the personal cannabis at the premises. Police-community relations are at an all time low, with the chance of co-operation in halting these serious crimes unlikely.

The Operation has become a public relations battle, with the police apparently giving out false information. They have claimed that they are only interested in heroin, yet of 214 arrests, 21 have been for heroin, two for amphetamines and one for LSD — the balance are for cannabis. Supply charges have largely been due to undercover Drug Enforcement Agency operatives seeking out drugs on the street. The police claim that the first ten weeks of the operation cost only \$40,000 and the value of drugs seized was \$7 million. These costings are simply not true.

The police also claim that they are working for the 'silent majority' of Nimbin people, who they say support the Operation. This 'majority' certainly are silent. A recent meeting called by Nimbin HEMP attracted over 200 people and was addressed by local business people, farmers, and old and new settlers. The meeting unanimously called for an end to the operation. There has also been an outcry against police behaviour by community groups, doctors, health workers and lawyers as well as delegations to the police commander and complaints from the business community.

Community leaders have been flooding the local media with outrage at what is happening to our town, and we have made the national and even international news. Law students from Southern Cross University have organised regular 'patrols' of the street, handing out leaflets about rights to search and advice if arrested. Local activists wield video cameras in an effort to curb excesses. Nimbin HEMP has produced a

series of television advertisements called 'Operation Judas' — dob in a copper — to highlight what is happening.

Yet the Operation has continued and we are told will continue until they 'get the drugs out of Nimbin'. The police line remains that while drugs are illegal, they will continue to police them. This approach ignores the obvious truth that the police are choosing to concentrate on drugs in Nimbin rather than, for example, swearing in police stations, selling cigarettes to children or domestic violence. The child protection unit for the entire North Coast region has only two full-time officers. What public opinion are the police responding to that suggests victimless drug crimes are more important than investigating child sexual assault?

The community outcry has led to a visit to Nimbin by an investigative team from the NSW Ombudsman's office. The team interviewed dozens of complainants, including almost every business in the main street. As a result, in October, the local police commander gave undertakings to the Ombudsman regarding future conduct of police in drug operations, and some of the excesses of individual police have led to personnel changes. In the ensuing lull, some peculiar results of the Operation have become apparent. It is now much easier to buy white powder drugs than green drugs on the street. Cannabis prices are being kept inflated by the operation and the cheaper and more available powdered drugs are an attractive alternative for the drug-seeking visitor. Byron Bay is seeing increased police activity of a similar nature, perhaps because some of the targets have simply gone to the beach to avoid the heat.

Some people on the street at Nimbin now have a large bell. As the police move toward the main street, word is quickly passed around and the bell rings loudly. Transfer of illicit goods and money ceases, small groups divide and discussions of price and quality are replaced with the humming of seventies folk ballads. Once the danger has passed it is back to business as usual. Police have threatened to charge the bell ringers but have not yet worked out what the charge would be.

The result

This latest police effort to 'solve' victimless crime and to 'clean up' the town is a futile exercise — when the police go, the drug situation will return to what it was before. This is 1930s style prohibition policing in the hope that the 'big stick' will solve a 1990s health problem. And who is pulling the strings? Such a co-ordinated, expensive, labour intensive campaign of police attacks against multiple occupancies, must have approval high up the NSW police hierarchy.

Nimbin does not have a bigger drug problem than other areas — it simply has a more obvious drug problem. The truth is that Nimbin is threatening to those who fear any deviation from the straight and narrow. This is a community that has for years been a symbol for the non-conformists, the drop-outs and those seeking alternatives to mainstream material-oriented lifestyles. We feel that the very fabric of our town is at risk because of this Operation.

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