

nisms for distribution of unclaimed funds. These are known as *cy pres* orders, meaning 'as near as possible'. The absence of such a provision in the *Federal Court Act* means that unclaimed moneys stay with the defendant.

The Coalition believes unclaimed moneys should be distributed in a variety of ways, other than requiring individual members of a class to be identified and claim a share of the award. Australian examples of the types of arrangements that can be made in *cy pres* orders are found in some creative settlements in the consumer credit area.

Consumer Credit Legal Service (CCLS) in Victoria took on HFC Financial Services in 1987 for engaging in practices which were found by the Credit Licensing Authority, to be 'dishonest, unfair and to the serious detriment of its borrowers'. As the affected borrowers were hard to find, the Authority agreed to a settlement proposed by HFC, the Director of Consumer Affairs and CCLS, that HFC pay \$2.25 million to a consumer fund. Some of the money was claimed by HFC borrowers but most has been used to establish the Consumer Law Centre Victoria. Similar cases against Westpac resulted in the creation of a Credit Information hotline in Victoria and a consumer research and information trust in New South Wales.

### Reform for tribunals

The focus of the Coalition is not limited to reform of class actions in NSW superior courts. It is also seeking reforms to the class actions provisions in New South Wales tribunals.

Grouped proceedings provisions under New South Wales anti-discrimination law, which are the same as those in Commonwealth sex and race discrimination laws, have proven problematic in a number of ways. While the more recent provisions in the *Disability Discrimination Act 1993* (Cth) are an improvement, the Coalition would like to see further refinements and integration with the Federal Court procedures.

### Encouraging class actions

The Coalition plans to have an ongoing educational role, providing information and analysis of class actions proceedings in Australia. To start the process, the Coalition will publish a review of the operation of class actions proceedings in the Federal Court, New South Wales and State and Commonwealth discrimination jurisdictions later this year.

If you wish to be involved in the Coalition contact Amanda Cornwall at Public Interest Advocacy Centre on tel (02) 299 7833 or fax (02) 299 7855.

*Amanda Cornwall is Policy Officer, Public Interest Advocacy Centre, Sydney.*

## YOUTH

# Has anybody listened to 'Nobody Listens'?

## JENNY BARGEN discusses the response to a report on young people and police in NSW.

In the December 1994 issue of the *Alternative Law Journal* one of the Notices drew readers' attention to the release of a new report, *Nobody Listens*. The report was researched and written by the New South Wales Youth Justice Coalition (YJC), in association with the NSW Youth Action and Policy Association (YAPA). The findings in the report were based on the responses to a questionnaire completed by 140 young people from ten metropolitan and seven regional agencies (refuges/accommodation services, streetworker facilities, community centres, legal centres and youth centres) about their experiences with the police: on the street, in the police station and elsewhere; and on their knowledge and use of formal complaints mechanisms.

*Nobody Listens* paints a dismal picture of the relationships between police and the young people who completed the questionnaire. Harrassment, assault, and strip searches were found to be almost everyday occurrences for some young people. A pattern of differential policing emerged — the young people most often harrassed, assaulted and searched were those who were from Asian or Aboriginal families. It was clear that police treated young people who were visibly different more harshly than those who conformed to a stereotype of the 'normal' young person held by some police.

The picture is similar to that found in Queensland, Tasmania, Victoria and Western Australia by Alder and others in 1992.<sup>1</sup> Their research was extensive and, indeed, methodologically more reliable, than that carried out for *Nobody Listens*, and included a review of legislation and legal policies touching police powers with respect to young people in those four States. In addition to surveying young people's perceptions of the police, Alder *et al.* surveyed police officers, lawyers and legal centres. They were, therefore, able to obtain a multi-dimensional perspective on the ways in which police and juveniles interact.

*Nobody Listens* repeated the recommendations in *Kids in Justice* that any policy on policing young people should be a public document, prepared through the process of consultation between police, young people and youth welfare and legal workers; that a comprehensive range of accountability mechanisms for police in the policing of young people should be implemented; and that a well-resourced, accessible and independent complaints mechanism such as a Children's Ombudsman should be established. *Nobody Listens* also recommended that Police Youth Liaison Officer positions be established in every patrol, with clear responsibilities towards young people and their 'community', as well as to the police service, for the policing of young people.

*Nobody Listens* was criticised for being 'unbalanced', in that it did not include the perceptions of police officers in New South Wales. Given the shoestring budget on which the report was undertaken, it was a miracle that YJC and YAPA were able to produce *Nobody Listens* at all! Obviously, further funding is needed if a fuller understanding of the picture in New South Wales is to be obtained.

Since the release of the report in July 1994, YJC and YAPA have sought to ensure that some action is taken by the relevant government bodies (the NSW Police Service and the NSW Ombudsman) to address the concerns arising out of the research findings and to implement the recommendations.

This brief is to inform readers of the efforts made by the YJC and YAPA to ensure that the recommendations contained in *Nobody Listens* were heard by both the Police Service and the Ombudsman's Office, and the nature of their responses to our concerns.

### The Ombudsman's Office

*Nobody Listens* was submitted to the Ombudsman's Office as a response to its discussion paper, 'Race Relations and Our Police' (July 1994) and was cited in the Ombudsman's subsequent report.

The call made in *Nobody Listens* for a Children's Ombudsman has again been made in recent weeks by organisations such as the NSW Federation of Parents and Citizens Associations. The public responses predictably focus on the expense of establishing and properly resourcing a Children's Ombudsman. The real question is whether this stance will be maintained by the new Labor Government, given the focus on both economic rationalism and punitive law and order policies by both the Coalition and Labor candidates before the March election.

### The Police Service

The police have been the major focus of our work in following up *Nobody Listens*.

A new Police Minister, Garry West, was appointed in NSW at the time of the release of the report. (Readers will probably be familiar with the story of the demise of the previous Minister, Terry Griffiths.) A Policy Statement on Children and Young People had been prepared by the police without consultation with community groups in November 1993. Among the Minister's first public statements were the rejection of this document as 'incomplete', and a promise that Youth Liaison Officers would be appointed to every Police District in the State! This latter statement was made prior to our approach to his office, and gave us some hope that he would be open to a full and frank discussion focusing on the perceptions of young people about the way police treated them. He subsequently agreed to a meeting with YJC and YAPA at which our concerns were openly and frankly discussed. While some of the senior police present at this first meeting were initially sceptical about our understanding of police/youth relations, they went away convinced that we knew what we were talking about. At the close of the meeting, it was agreed that YJC and YAPA should be invited to participate in the formulation of a new Police Youth Policy document and in the subsequent development of an action plan to support the policy.

Representatives of YJC and YAPA attended two meetings in late 1994 at which the new Police Youth Policy statement was developed. We were concerned about the processes adopted for these meetings: the police would present a docu-

ment on which we would be asked to comment; no comment was taken to mean full agreement. The time frame was tight; long documents would reach us the day before the meeting, giving little opportunity to carefully consider the contents, let alone prepare written responses! So while the process was, from our perspective, problematic, the outcome was, while not perfect, less problematic.

We now have a new Police Youth Policy Statement, released with much fanfare on 9 February, which 'outlines the commitment of the Police Service to children and young people' and which overtly recognises that children and young people have rights. Unlike the *Children (Parental Responsibility) Act 1994* (discussed by Teresa O'Sullivan in the April 1995 issue of *Alt.LJ*), the statement is cognate with the White Paper on Juvenile Justice released by the Attorney-General's Department in 1994. A Statement of Intent sets out the aims of the policy: children and young people are to be treated fairly; police are to work to reduce youth crime; courts are to be used as a last resort; police are to support and involve victims; and towards positive social change.

Of course, this is merely the beginning of the long and tortuous process of attempting to translate policy into practice. YJC and YAPA are not certain of the extent to which we may be involved in the implementation of the policy, if at all. But we are determined to remain a critical part.

*Jenny Barga teaches law at the University of NSW and is a member of the Youth Justice Coalition.*

### Reference

1. Alder, C., O'Connor, I., Warner, K. and White, R., *Perceptions of the Treatment of Juveniles in the Legal System*, National Clearinghouse for Youth Studies, Hobart, 1992.

## DPP

# The Bongiorno affair

## JUDE McCULLOCH revisits the controversy surrounding prosecutorial independence in Victoria.

More than a year ago I was co-author of an article in this journal describing the Victorian Government's proposal to amend the *Director of Public Prosecutions Act 1982*. The article set out the controversial circumstances surrounding the drafting of the *Public Prosecutions Bill* and described how, if enacted, it would have substantially undermined the independence of the Director of Public Prosecutions (DPP) and opened the way for political interference in prosecutorial decisions. As pointed out in a stop press to that article, sustained and widespread opposition to the proposed changes led the Government to abandon its original plans, in particular the proposed appointment of a Deputy Director with power of veto over the DPP.<sup>1</sup> This article revisits the controversy surrounding the changes to the office of the DPP, describes some new developments, and touches on the implications of recent events.

### Public Prosecutions Act 1994

After abandoning its original plans the Government passed legislation in the form of the *Public Prosecutions Act 1994*.