

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.

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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.¹ 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*.

The then DPP, Bernard Bongiorno, QC, requested that the Attorney-General, Jan Wade, defer the enactment of some parts of the legislation pending a review of the office of DPP and further consultation. This request was denied and the legislation came into effect of 1 July 1994. Although the Government backed away from the most controversial aspects of its plans, the changes that have occurred nevertheless undermine the ability of the DPP to function independently. In the latest, and for Mr Bongiorno the last, annual report of the Office of the Director of Public Prosecutions (1993-94), the then DPP wrote:

Although it [the new act] preserves the Director's independent decision making function (albeit now constrained by a bureaucratic process of compulsory consultation with other designated officials, unknown in any other prosecution system of which I am aware) it removes the Director's control over the staff who perform the actual prosecution function and the budget which pays for it. These are now administered by the Solicitor for Public Prosecutions who is himself responsible not to the Director but to the Attorney-General . . . At the time the 1994 Act was passed I expressed concern at the provisions which removed the Director's control of the staff of the Office and his or her now inability to ensure that adequate resources are made available to prosecute in the most difficult and complex cases . . . In particular, it is not unlikely that in the future the actual independence of the Director of Public Prosecutions will be effectively compromised by an inability to direct or control the staff who must, of necessity, carry out the day to day work of prosecuting and an inability to ensure that where necessary, counsel of the highest calibre are engaged to match the resources of even the wealthiest of accused persons. A lack of control over the prosecution budget must ultimately effect the independence of the prosecution system itself. [p.4]

On 13 October 1994 Mr Bongiorno advised the Attorney-General that he intended to resign effective from the end of the month. Unfortunately for the Government, and in particular the Attorney-General, Mr Bongiorno's resignation did not bring to an end the controversy surrounding 'the Bongiorno affair' as it is commonly referred to in the media where it has retained, at the time of writing, major story status for several weeks.

Controversy reignited

The controversy over 'the Bongiorno affair' reignited in April 1995 when the ABC's *Four Corners* devoted a program to the issue. Most damaging to the Victorian Government was an interview with Ann Collins, a public servant formerly employed in the Attorney-General's office. Ms Collins claimed that she was told by the Attorney-General's senior adviser, who was acting on her instructions, that the changes to the *Director of Public Prosecutions Act* were being prepared partly because the DPP had considered laying contempt charges against the Premier over comments he made on a day time television talk show about a then recently arrested murder suspect. Ms Collins also alleged that the Attorney-General's adviser said that Mr Bongiorno was a 'publicity hungry megalomaniac' and mentioned the charging of a number of police with murder over two fatal police shootings.² These allegations undermine the Attorney-General's oft repeated claims that the changes to the DPP's office were aimed at generating greater efficiencies in the office of the DPP. Subsequent to the *Four Corners* program it was revealed that the Attorney-General had invited the then DPP to her home to discuss his intentions in relation to contempt charges against the Premier and that during the subsequent meeting she received a number of phone calls from the Premier.

The *Four Corner's* program and subsequent revelations prompted calls by a number of legal groups and the opposition for an inquiry into the affair.³ There has also been talk of a Democrat-initiated Senate inquiry at the federal level.⁴ The Kennett Government has resisted calls for an inquiry and it is uncertain whether a federal inquiry will eventuate. The Premier claims to have documents that prove he and the Attorney-General did not pressure Mr Bongiorno not to lay contempt charges but has refused to release them. Somewhat ironically, given the suggestion that the former DPP is 'a publicity hungry megalomaniac', Mr Bongiorno has refused to make any public comment in relation to the matters except to issue a statement saying he would speak to a 'properly constituted' inquiry.

In the lead up to the original controversy surrounding the office of the DPP, Mr Bongiorno upset a number of powerful interests. Apart from considering contempt charges against the Premier, his role in the investigation and prosecution over allegedly fraudulent business dealings upset the wealthy business man and former federal president of the Liberal Party, John Elliott. Mr Bongiorno also upset the police by charging 11 serving or former police officers over the fatal shootings of Gary Abdallah and Graeme Jensen. Two police officers were subsequently tried and acquitted over the Gary Abdallah shooting; proceedings are still pending in the Graeme Jensen case.

The previous article on this topic described the history of police attacks on critics and argued that the Government's moves against Mr Bongiorno needed to be seen in the context of this history. The emphasis on this aspect of the 'affair' is not designed to play down the Kennett Government's largely successful attempts to get rid of, or silence, people in independent positions capable of calling the Government to account, or to ignore the influence of other powerful interests. Mr Bongiorno no doubt accurately assessed the situation when he said '... there are powerful influences within the community who would like the power of the DPP curtailed. Not one source, many sources . . . Independent officers make independent decisions which offend people'.⁵ The focus on the police is designed to highlight an aspect of the case that has received relatively little public attention. Recent comments by the Attorney-General and developments in the prosecution of police officers charged over the killing of Graeme Jensen underline the concerns raised in the earlier article.

Police shootings

On 11 April 1995 Mrs Wade, speaking about the former DPP on a Melbourne radio station, said:

We also had some complaints about prosecutions that were taken that perhaps some people thought should not have been. There's one obvious one and that's the police shootings, the one I think, it was Graeme Jensen, where a large number of police were charged, and there was a certain amount of surprise, can I say, both within the police, but also within the legal community that the large number of police were charged.⁶

Doug Meagher, QC, who until recently was briefed by the DPP to act in the Graeme Jensen matter, is reported to have told colleagues 'politicians have no business saying anything about an ongoing criminal trial. They should keep their bibs right out of it.'⁷ It is extraordinary that the Attorney-General should publicly pass comment on a criminal matter to be heard before a jury.

Mr Meagher, QC was briefed in the Jensen matter by the former DPP prior to the laying of criminals charges. Accord-

ing to a report in the *Sunday Age* Mr Meagher wrote to the current DPP, Mr Geoff Flatman, QC, a few days after the *Four Corners* program. His memorandum to the DPP, again according to a report in the *Sunday Age*, commented on a number of matters to do with the case, sought an assurance that the DPP was supportive of the prosecution, and expressed concern about delays. The DPP responded with a letter accusing Mr Meagher of having lost his objectivity and stating that the case would be withdrawn from him. Mr Meagher resigned from the case after receiving the letter. Another Queen's Counsel has now been briefed to prosecute the Jensen case when it finally comes to trial.⁸

Police prosecutions

In his final annual report as DPP Mr Bongiorno commented on police prosecutions. He noted that:

Although care is taken to ensure that cases against police officers are prosecuted in exactly the same way as those against other citizens the results obtained in such prosecutions are markedly different. Whereas in the year under report some 79% of all citizens prosecuted in the superior courts either pleaded guilty or were found guilty on one or more charges upon which they were presented, the figure for police officers was about 6% . . . The figures for previous years are not markedly different . . . It is essential to any system of justice that no group in the community should have, or be perceived to have, any advantage over any other in having the law applied to it. It is a matter of some concern that the figures for successful police prosecutions in this State could suggest that police officers enjoy an advantage over their fellow citizens when they are accused of serious crime. [p.8]

The loss of counsel with two years involvement in the Graeme Jensen case is likely to disadvantage the prosecution, particularly given that the coronial inquest into Graeme Jensen's death ran for more than 60 days and generated thousands of pages of transcript.

Conclusion

The Attorney-General's comments, referred to above, are symptomatic of the Government's apparent inability to grasp, and demonstrated failure to honour, the basic principles relating to the separation of power between the Government and judicial officers. Her comment implies that one of the problems with the former DPP was that he made some unpopular decisions. It is precisely because adherence to legal principles may require the DPP to make decisions which are unpopular that his or her position needs to be completely independent of political interference. If people within Government or with political influence are free from the threat of prosecution, or free from the threat of prosecution resourced at a level likely to secure their conviction, ordinary people have one less reason to believe in a system under which the wealthy and powerful already enjoy great advantage.

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References

1. McCulloch, J., Connellan, G. and Isles, A., 'Putting the politics back into prosecution', (1994) 19(2) *Alternative Law Journal* 78-82.
2. See *Sunday Age*, 16.4.95, p.19.
3. *Age*, 17.4.95, p.3; *Sunday Age*, 23.4.95, p.6; *Age*, 1.5.95, p.2.
4. *Sunday Age*, 7.5.95, p.1.
5. *Sunday Age*, 16.4.95, p.9.
6. *Sunday Age*, 7.5.95, p.7.
7. *Sunday Age*, 7.5.95, p.7.
8. *Sunday Age*, 7.5.95, p.7.

STOP PRESS

On 1 June 1995 it was announced by the Victorian DPP, Mr Geoff Flatman, that murder and other charges against seven former serving police officers charged over the fatal shooting of Graeme Jensen would be dropped. Mr Peter Faris, QC, for the DPP told the Supreme Court that the Crown would enter *nolle prosequi* — intentions not to prosecute — regarding the seven men, but it would proceed with a murder charge against one of the charged police officers, Mr Robert John Hill (*Age*, 2.6.95).

GUN CONTROL

Shoot 'em up Shout 'em down

REBECCA PETERS faced a hostile forum on 'home defence' under the glare of TV cameras.

Last month I flew to Adelaide and stayed overnight in a flash hotel, courtesy of Channel 7. A current affairs show had decided to hold a public forum on 'home defence', following the fatal shootings of intruders by householders in Brisbane and Adelaide.

The shootings had aroused a storm of controversy, with macho blustering from the gun lobby and paranoid spluttering from talkback radio callers who apparently cannot wait for the day when they too will get the chance to be heroes by blowing away a rapist, a burglar or at the very least a lout who puts his feet on the seat on public transport. An obvious choice for a tabloid television forum.

You know the format: fill a studio with vehement opinions, wheel out a couple of bunnies ('experts') to sit up the front, whip up an argument in which most people don't get a word in edgewise. The gun lobby sat impressively in rows in its gorgeous uniform, an olive sportscoat with two crossed rifles over the heart. There were victims of crime, Neighbourhood Watch, and a few bizarre inclusions like a fellow plugging the notion of Citizen Initiated Referenda. The remainder of the audience had responded to an invitation to 'have their say' by ringing a 0055 number. I was there representing the Coalition for Gun Control.

Even though the TV show was being made exclusively for South Australian broadcast, the producers imported me from Sydney because they'd been unable to find a local organisation to oppose the philosophy of 'shoot first, ask questions later'.

Not even a Council for Civil Liberties exists in South Australia: a representative of the Australian CCL had to be imported from Victoria for the show. Nor apparently were there any lawyers or criminologists available on the night, except a representative of the Law Society who was asked just one question: if a burglar breaks into my house and my dog bites him, can he sue me? (Answer: possibly.)

So, is the Festival State so civilised that it doesn't need organisations to advocate non-violence and human rights? Not by a long shot, judging by the scene in the studio that night.