government' and, unlike the ALRC, even of government funding!

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Changes appeared to come over the face of policing, emerging out of the New South Wales Wood Royal Commission which lasted for so many years. The era of the 'SNAP' (sensitive new age police) began, although we learned all too quickly that appearances can be deceptive and that closer to the mark was the emergence of what Jude McCulloch now more than 30 years ago had the gall to proclaim was the militarisation of our police forces. With the expedited promotion of policewomen came the unchanging iron fist in the new velvet glove. How naive were those reformers of early days, like myself, who believed that mere gender change to the profile of police would introduce greater humanity and sensitivity to minority rights

What happened, of course, was that men ceded some of their positions of dominance at the head of police forces but were replaced by more sophisticated, media friendly females who in fact possessed just as much of the brutality as their male predecessors but could put a charming and 'feminine' public face on it. As a public relations exercise, starting in New South Wales and the Northern Territory and followed eventually in Victoria and Queensland, the 'de-masculinising' of policing leadership appeared a great success, for a time, until the fabric of the velvet glove became unmistakeably bloodied. The emergence of the phantasm of sensitive new age police was in inverse proportion to the behaviour of police on the street.

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A few independent bodies to investigate public corruption were established, but they achieved remarkably little in retrospect. The great initiator was the Criminal Justice Commission, later followed by the Ethical Standards Investigator in New South Wales. At first government funding was adequate. Then, bit by bit, it drained away among interminable legal disputes about the meaning of various of the technical terms in the enabling legislation and about the civil liberties of police and other government employees under investigation. The increasing politicisation of judicial appointments contributed at the start of this century to the resolution of these problems in a way acceptable to governments none too keen on intrusive external scrutiny.

In the end there was a body in every jurisdiction with responsibility for investigating complaints against public officials of corruption, conflict of interest and excessive use of force. Each was independent in name, but dependent on funding obtained from recovery of assets from government employees found guilty of misconduct by the State courts. This was part of the incentive-driven prosecutorial and investigative system that commenced to evolve in the late 1990s. Unfortunately, the investigation bodies never were able to recoup enough from those who were the subject of adverse determinations and were always reliant on 'donations' from governments or other entities for continued viability.

As well, this meant that for investigators they primarily had to use not just serving police, but rather those serving police made available by Commissioners. Naturally, these were judiciously selected by the Commissioners and the separation between civilian scrutiny and the subjects of investigation became utterly illusory. At times, it almost seemed that police who were under investigation were aware of impending raids and interviews before investigators had started their work. Investigations were selective, methodologically as flawed as they had been in the days of internal police investigations of complaints against police, and rarely resulted in any significant prosecutions. Being in name independent, however, made the hypocrisy of their inefficacy the more distasteful.

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Looking back, the territorial tensions and then the First Kiwi War of 2010 against New Zealand, were really the turning points for Australian policing. Until then, reform of institutional corruption was theoretically possible. For years allegations had been made by politicians in Australia about the destabilising influence of Kiwis and about the attempts of New Zealanders to interfere with Australia's fiscal entitlements. When ASIO announced in 2008 that it had foiled a New Zealand government plot to assassinate our then President, emotions erupted and not only did war ensue two years later but the nature of Australian policing changed probably forever. The rhetoric of community policing took on new sinister connotations, the uniform response to the presence of police became that of fear and the arming of police was formalised with their being absorbed (for administrative convenience, no more!) as a division of the Department of the Military.

The role of police in identifying Kiwis and Kiwi sympathisers 'for national security purposes' resulted in still more 'generous' powers of search, seizure, detention for questioning and use of discretionary interrogation techniques than had ever been contemplated previously. Unfortunately, the powers were not limited to the Kiwi crisis and were extended to police work generally. What history has taught us is that a civil right lost is a civil right not easily regained. Long after the Kiwi crisis was resolved and the War won, as it always would be, governments re-elected with an increased mandate and whispers suppressed that the menace had never been any greater than the Kuwaiti threat against Iraq had been last century, the enhanced police powers remained and commenced to be turned against the non-compliant within the civilian population. Rights of public assembly had gone, even gestures toward accountability ceased to be made and the concentration was upon protecting the ability of governments to discharge their democratic mandate to govern without impediment. The government and the police became one. Opposition to either was visited with the revivified charge of treason.

Ian Freckelton is a Melbourne barrister.

ENVIRONMENTAL LAW

Lawyers for forests

DAVID HEILPERN discusses ethical dilemmas for green lawyers.

It is cold and foggy and dark. The convoy of geriatric four-wheel drives snakes its way along the ridge top in Richmond Range State Forest, way west of Kyogle. Redneck country. The moon is setting on one side, and the first rays of sunlight are visible only by a milkiness in the fog on the other. It is isolated and we are tired but we are near our destination.

The bulldozer sits in a log dump, looking almost alive in the mist and we stand in awe for a moment as our joints re-set themselves after the jarring ride. Within three minutes a tripod is erected over the beast, and neck lock and other devices that look remarkably like torture equipment are positioned for 'lock ons'. I put on my 'legal observer' shirt, we light a small fire, the radio crew makes contact with Lismore Base, mobile telephones are charged, the video camera is on and we wait for the loggers to come. I look around the motley crew that now feels like family, having spent many nights on previous blockades together. A genuine tribe. Aged 6 to 60, some dreads, some crew-cuts, many tatts, but all so committed and determined. We sing to quiet guitar, we reminisce about previous campaigns, a poem is read and we wait for the loggers to come. Some sleep, some smoke, some make warm sweet tea and we wait for the loggers to come.

The blockade

The sound of machinery echoes through the hills, breaking the silence and some scurry to place branches on the road. A North East Forest Alliance (NEFA) banner is hoisted and the chain of four-wheel drives moves slowly down the hill and stops at the blockage. A spokesperson, emerging almost organically from the group, moves forward and greets the loggers with a smile and a welcome and a statement that there will be no logging here today. 'In fact', she says, 'this is a deferred area, there should be no logging at all here, the logging is illegal, and we have seized your equipment'. It has been my experience that a red-neck and his dozer have a symbiotic relationship — separation, when caused by greenie, dole-bludging activists, is likely to engender rage and violence. Hence the camera.

'You fucking cunts have no right to be here, get off my dozer, get out of the way, I'm here to earn a day's wages, who's paying you, you fuckwits.' All responses are met with a smile. The loggers are shown those people who are locked on and who are on top of the tripod and they are invited to a cup of tea. 'Youse have no right to be here youse cunts.'

'Well, we do, this is state forest, we can be here if we want — the forest is not closed, and you should go back to State Forests and get advice, and this area is reserved under all agreements.'

'Bullshit.'

'Well, would you like to speak to our lawyer?'

And on cue I emerge from the shadows, clutching my briefcase and mobile telephone, suited and tied, shaved even. I introduce myself to the loggers, who stand in stunned silence, and I lecture them on the complexities of the deferred forest agreements, the amendments to the Forestry Act and Regulations, the defence of necessity and the right of free speech, assembly and protest. Without a word, they retreat to their vehicles, and drive off to go to State Forests. Another blockade has begun.

The lawyers

Lawyers for Forests is a group of green lawyers who are committed to providing 24 hour-a-day legal support, advice and representation for environmental activists at blockades and other demonstration sites. We go with and stay with blockaders, assisting with police liaison, legislative interpretation, pre and post arrest advice and representation. Based on the North Coast of New South Wales, we have now attended seven blockades, most of which have been managed by NEFA. We are currently negotiating a protocol with police for blockades, and have prepared written advice for protesters on their legal rights and obligations. We help make claims for victims compensation when loggers or others attack blockades, ensure that charges are laid for acts of violence, and provide on-the-ground advice for the lawyers working on court challenges.

It is wonderful work — rarely do lawyers have the opportunity to spend days in the bush, surrounded by music and children and learning to identify trees and the marks of endangered fauna. It is of course also risky work. We have been on blockades where loggers violently attack in the night, where people are seriously injured, where trees are being felled around people and where bulldozers are driven dangerously in an effort to dislodge a blockade. There is the ever-present threat of arrest, and the personal toll of having to give difficult advice without having had a shower for three days. Sometimes, it rains.

Some of the advice is complex. A woman chains herself by the neck to a cattle grid on the border of the State Forest and private land, thus blocking a convoy of logging trucks and a dozer. The logging operation is not authorised, or if it is, it is not within the Commonwealth-State Agreements or it is possibly otherwise illegal. The police inform the woman that if she does not release herself she will be arrested. She replies that she cannot release herself, she hasn't got the key, and mock calls for the key bring no response. We are currently in the Land and Environment Court seeking an injunction to save this virgin, old growth forest classified as crucial for two species of endangered fauna and one of endangered flora. I am asked whether she could be successfully prosecuted for hindering police or intimidation or anything else. The advice must be immediate. Answers please!

The campaign

We have had some notable successes. At a recent blockade, a security guard was charged with assault after our intervention. Police tend to behave better when a suited lawyer is watching, side by side with the video camera. False information about the law, espoused by loggers or government agencies, can immediately be corrected.

At one blockade, the loggers had formed a blockade of their own, trying to stop us from getting out of the forest. As an aside, the logic of this move caused much amusement. After all — we wanted to be in the forest. A member of Lawyers for Forests, wearing a legal observer shirt, got out of the car on approaching their blockade, and explained clearly to them the law of false imprisonment. She then proceeded to write down their number plates. Their blockade was broken, which was just as well as we were running out of water back at the camp.

Blockades have been an effective tool in saving the forests of the North Coast of New South Wales since the battle for Terania Creek. NEFA, a non-organisation from a legal point of view, has been co-ordinating the fight in the forests and in the courts, often at great personal cost to the activists. Hundreds of arrests were made stopping forest activities that turned out to be unlawful. The police would blindly step in, following the directions of the Forestry Commission, and brutally arrest environmentalists who were, as it turned out, in the right. Of course charges were not dropped for this reason, and despite the war eventually being won, the battle left many activists with criminal records and fines. This led

to a highly developed system of liaison between NEFA and the police and to the formation of Lawyers for Forests.

But it does raise some interesting ethical dilemmas. How far should officers of the court go in providing advice to those who are probably breaking the law? Should these people be lawyer-free in situations where they are at real risk and where the presence of a lawyer seems to make a difference? How can we effectively represent people when there is a real risk of being a witness to the proceedings oneself?

Of course one can intellectualise some clever responses — lawyers in such circumstances are not participating in a criminal activity, just observing, communications are privileged, representation and observation are assigned to different lawyers. But in the end the personal, the political and the professional are merged and a commitment to the environment overwhelms. If you would like to join Lawyers for Forests and have some experience in criminal or environmental law, contact Lawyers for Forests, c/- David Heilpern, PO Box 157 Lismore 2480.

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Day four at the blockade and the Minister has just ordered a cessation of logging in the whole area pending an investigation into how such a 'tragic error' could have been made. NEFA has succeeded in protecting yet another stand of our native forest — for now. So, back to the office to catch up.

David Heilpern teaches law at Southern Cross University. He is also Solicitor for Nimbin HEMP and the founder of Lawyers for Forests.

LEGAL AID

When will lawyers ever learn?

CASSANDRA GOLDIE examines the threat to community legal education in Western Australia.

In October 1995, the Commonwealth and State governments commenced a joint review of legal aid in Western Australia. Both the Law Society, as representative body for the private profession, and Law Access[1] made submissions. Each of these bodies recommended to the Review that Legal Aid WA should reduce, and if necessary, abandon its community legal education (CLE) activities.[2] They argued that Legal Aid's core function should be to fund litigation.

The Commonwealth recently announced a $120 million cut to national legal aid funding. Is this an opportunity for these recommendations to be taken on board? Is CLE on its way out?

This article warns against that approach. It argues that CLE is critical to the success of an effective, more humane and less costly form of access to justice for disadvantaged people. It suggests that the recommendations from the private legal profession are retrogressive, and contrary to current international thinking.

The development of CLE

Traditionally, Legal Aid WA gave little emphasis to CLE.[3] The reasons are complex, but are linked to the nature of the legal profession as a whole, which has seen its role as providing people with legal advice and representation, one on one. The lawyer's job was to take over the client's problem, typically by negotiation, leading to litigation when a settlement could not be reached. Legal Aid WA saw its role as supporting that traditional approach by responding to requests for advice and representation and providing assistance when people could not afford to pay for it themselves. Legal Aid WA did not actively seek out its clients but would wait for them to apply for help.

This approach was similar to the traditional public health system. People only went to the doctor when they got sick. The doctor took responsibility for getting the patient better. People had little awareness of how to keep healthy, and were often kept in the dark about their illness and treatment.

However, there is evidence in public health that government and the profession have taken on the challenge to find a better way, recognising that it was not in the community's interest to spend public money supporting an expensive, crisis-driven health system.

In the last decade, there has been a significant shift in the nature and extent of public health awareness. There is public education about iron counts, HIV/AIDS, eating better foods, and the importance of exercise. People are encouraged to see their doctor early, and to understand ill-health prevention.

The solution-oriented approach to legal aid delivery

The previous Commonwealth Government commissioned several enquiries into access to justice,[4] driven by a recognition of the failure of the existing system to meet community needs. Broadly, these enquiries supported a paradigm shift in the delivery of legal aid, analogous to that in public health.

In particular, the National Legal Aid Advisory Committee (NLAAC), challenged legal aid bodies to help disadvantaged people to avoid and resolve legal problems early and without confrontation and litigation. This was also the recommendation of a 1993 Churchill Fellowship study into legal aid[5] and remains a theme, it would seem, of the Federal Attorney-General, Darryl Williams, QC.[6]

In order to achieve this paradigm shift, NLAAC recommended that legal aid intervene earlier through the provision of timely legal advice. It also supported education directed to 'imminent or probable needs of individuals or people with a common interest to protect or assert legal rights and interests'.[7]

Legal Aid WA has sought to implement early intervention in a range of ways, including a CLE program targeted at disadvantaged groups. The CLE program concentrates on community workers, who are uniquely placed to recognise legal problems early and support their clients in getting legal help before they are in crisis. This approach can be demonstrated by an example.

Legal Aid WA provided a training course for workers from women's refuges. The very next day, one of the workers called Legal Aid — for the first time. One of her residents, illiterate and petrified, was facing warnings about her children being apprehended by the Department of Family and Children's Services. Legal Aid provided a grant of aid for advice and negotiation with the Department. The advocacy