

Policing and Young People:

Practice and Reform



By Sarah Nicholson, Director of Youthlaw

Independent Persons: the good news story

The law requires that an adult be present during formal police questioning of a young person under 17 years-of-age. When a parent or guardian is unavailable, an independent adult is required, called an "Independent Person" ("IP"): s464E *Crimes Act 1958* (Vic). The role is an important one in providing support and information to a young person in police custody, both about the legal process and about appropriate community support networks and services.

Historically, IP processes (including the training of volunteers) have been uncoordinated across municipalities and are generally not communicated or delivered in a culturally sensitive and appropriate manner. Nor has there been information provided to parents about how they should perform the role. This has created confusion about the role of the IP and diminished the benefit to young people that the role can play.

Youthlaw, and various agencies and individuals working with young people in the criminal system, have long been advocating for improvement to the system of IPs. In 2003, Youthlaw received funding from the State Government for a collaborative project with Victoria Police, called the "Co-ordinated Independent Persons Youth Diversion Pilot Project". The project will establish culturally appropriate statewide infrastructure to serve as a mechanism for:

- strengthening existing IP networks;
- simple and reliable centralised allocation of trained volunteer IP's for five pilot local government areas, available 24 hours a day, 7 days a week, to attend police stations;
- expansion of the existing AlphaLine telephone legal advice service (operated by the Fitzroy Legal Service) for young people being interviewed by police;
- establishment or consolidation of regional youth justice networks to provide local support to volunteer IPs, and the opportunity to develop partnerships between local police, youth, ethnic community and welfare services; and
- production of a bilingual information card for parents and guardians explaining the role of an IP and the availability of the project.

This project offers a significant opportunity to address the over-representation of young people in the criminal justice system, including those from newly arrived and refugee communities, and is, in our view, the most significant project in recent times seeking to improve the relationship between police and young people.

Legislation that expands police powers: the bad news story

The Victorian Parliament recently passed the Drugs, Poisons and Controlled Substances (Volatile Substances) Bill¹, which gives police powers to:

- seize items used to inhale volatile substances (more commonly known as 'chroming');
- search under 18-year-olds for possession of these items, without a warrant, provided that a written record is made of the search; and
- apprehend and detain persons under 18 years to protect them and others from the effects of inhaling volatile substances.

Whilst the legislation does not make it an offence to inhale or possess substances for inhalation, it significantly expands the power of police to intervene in a young person's life. These laws will come into effect in July 2004 and include a sunset clause after two years.

Youthlaw advocated to stop the legislation being passed, because we believe that it breaches fundamental human rights and will create more problems than it will solve. It is also inconsistent with the recommendations of the most extensive recent Victorian Government report into the issue: the Drugs and Crime Prevention Committee, *Inquiry into the Inhalation of Volatile Substances*, 2002. This legislation will also create practical difficulties, because like the recent expanded powers given to ASIO at a Federal level, police are given the power to intervene where no offence has or is being committed.

Currently, whilst police can seize alcohol from people under 18 years-of-age present in a public place, police do not have legislative power to search young people's bags or person for alcohol. Police only have the power to search without a person's consent in a public place where they have a reasonable suspicion that a person possesses illegal substances, such as weapons, drugs or stolen goods. It is a fundamental right of every citizen, including all young people, to be present in a public place and to be free from invasions of the person or personal property. It is a significant expansion of police powers to be able to search where no criminal offence has been, is or is suspected of being, committed.



It is Youthlaw's experience that young people generally do not have a great understanding of their rights or obligations with police searches. Coupled with the recent expansion to powers of search for weapons, which provide police a "reasonable suspicion of possession of a weapon" if someone is "present in an area of high incidence of violence", young people will be even more confused. Unlike the weapons search powers, in the case of volatile substances there will be no judicial oversight of the use of the power, as no criminal charges will result.

The ability of police to conduct searches of young people chroming creates practical legal difficulties when it leads to the discovery of evidence related to a criminal activity, such as stolen goods or weapons. This is compounded

by the caution that police are required to give, stating that the young person is not committing an offence by chroming. In addition, Youthlaw has serious concerns that police intervention with a young person who is substance-affected will provoke abusive or violent behaviour, resulting in police charges for assault or abusive language etc. This means that more young people will be brought into the criminal justice system, which is contrary to the stated intention of the legislation.

Whilst Youthlaw failed to stop the passage of this legislation, we are represented on the Volatile Substance Protocols Advisory Committee, which has been set up by the Departments of Justice and Human Services who have joint responsibility for the development of protocols and regulations

supporting the legislation. Through this committee, we hope to have an influence on the implementation of the legislation to minimise the negative impact upon young people.

Youthlaw is a community legal centre that provides legal advice to young people in Victoria, as well as seeking to address social justice issues systemically through targeted education programs and advocacy initiatives, involving: policy research, writing submissions and journal articles, conducting test cases, and speaking to the community, the media and young people about the legal rights of young persons.

For more information about Youthlaw go to: www.youthlaw.asn.au or phone: 9611 2412. ■

¹ <http://www.dms.dpc.vic.gov.au/pdocs/bills/B01516/index.html>

Eco-Kit for Law Firms

Anyone who has ever worked in a law firm, large or small, will know just how much paper is used each day, as documents are continually churned through photocopiers and printers. Lawyers for Forests ("LFF") has decided it is time for law firms to cut back on this wastage and embrace a clean and green office environment.

LFF has spent 12 months developing the Eco-Kit for Law Firms, with funding provided by the Victoria Law Foundation. The Kit, supported by The Wilderness Society, draws together useful information from a range of sources to provide a step-by-step guide for law firms (and other office environments) to become "forest-friendly."

The Kit examines and makes recommendations about issues such as:

- what kind of paper to use;
- how to reduce consumption of resources such as paper, electricity and water;
- buying recycled products;
- waste minimisation through recycling and conservation; and
- superannuation and ethical investing.

The Kit was launched at the Law Institute of Victoria on 22 August 2003. Copies of the Kit will be sent to over 70 law firms and regional law associations and will be available on-line at www.lawyersforforests.asn.au and www.victorialaw.org.au. LFF is looking for lawyers who are willing to 'champion' the Kit within their firms. For more information contact lff@lawyersforforests.asn.au.

Quotables

In the case of *Akron Securities Ltd v Iliffe (No 2)* (unreported, Mason P, Priestely JA and Meagher JA, Supreme Court of New South Wales Court of Appeal, 26 June 1997) Meagher J, clearly not impressed with the earlier orders made by the majority, delivered this pithy judgment:

"Meagher J: In this matter my brethren allowed the appeal. The parties do not understand what they meant. Everyone is now wallowing in a state of confusion, which would not have arisen, had the appeal been dismissed, as it should have been. I do not care what (if any) further orders are made, but will acquiesce in any order which appeals to my brethren."