
age media, such as electronic documents, floppy discs and CD-Roms; it recommended relaxing the rules for proving documents to allow copies and other ways of presenting information; and it thoroughly overhauled the hearsay rule. The Evidence Bill draws substantially on all these recommendations.

Significant reforms departing from the ALRC

The ALRC recommended a general privilege to protect confidential communications. It would have covered relationships such as those between journalist and confidential source; doctor and

patient; priest and confessee. The New South Wales Bill does not adopt all of these. Instead, following changes to NSW law made last year, it preserves only the privilege for priests in the confessional.

The second major departure from ALRC recommendations is the Bill's requirement that confessions are to be recorded. The Bill adopts the regime recommended by the Gibbs Committee in its report 'Detention before charge'. The federal Government has substantially adopted this regime for the Australian Federal Police and the Bill to enact it is before Federal Parliament. The issue has gained some currency with a

recent High Court decision requiring trial judges to warn juries of the danger of convicting people solely or mainly on the basis of their signed confessions to police. The decision effectively approves the use of audiovisual recordings of interviews as a means to overcome disputes about confessions.

This decision, as well as the requirement for a two-stage test for the admission of a confession in criminal cases, should go a long way towards ensuring that travesties of justice of the kind visited upon the so-called Guildford Four and the Birmingham Six (and numerous others before and since) should not happen in this country. □

Driftnet fishing

by Kirsty Magarey

Driftnets, 'walls of death' up to 60 kms long, may have a disastrous effect on marine life and ecology in Papua New Guinea. They may even change the evolutionary paths of fish stocks.

The Papua New Guinean Law Reform Commission (PNGLRC) has recently issued its *Report on the Laws Relating to Gillnet and Driftnet Fishing in Papua New Guinea*. While this Report is not a final report it is evident that the Commission is likely to take a strong stand against the current practices of the driftnet fishing industry.

What is gillnet/driftnet fishing?

The nets employed in gillnet fishing are made from a monofilament nylon which is virtually indestructible. The type of nylon used is invisible in water and cannot be seen by diving birds, nor can they be detected by the sonar systems of aquatic mammals such as dolphins. These

animals become caught in the net and are killed. The nets are suspended in the water with a system of weights and floats. A single driftnet can be up to 60 kms long.

International attitudes to gillnet fishing

The PNG Report was commenced in the light of moves in the South

Pacific — and throughout the world — to limit the use of driftnet fishing. In July 1989 the South Pacific Forum Nations made the 'Tarawa Declaration' calling for a driftnet free zone in the South Pacific and in late 1989 the UN General Assembly passed a resolution condemning driftnet fishing and calling for a ban on this activity in the South Pacific by mid 1991 and worldwide by mid 1992, unless other management measures can be agreed.

Opposition to gillnet and driftnet fishing is based on the widely recognised fact that, unless regulated it is likely to have disastrous effects on marine life and ecology generally. Even its regulated practice would be seen by most environmentalists as unacceptable. It is sometimes referred to as 'wall of death' fishing due to the length of the nets and the comprehensive nature of the catch.

Greenpeace has commented that 'using driftnets makes sound, ecological management of fisheries resources impossible.' ('Ocean Ecology: Driftnets', Greenpeace, 1990, p 1). The indiscriminate nature of the catch means that already-endangered species are further threatened, and therefore, as the PNG Report points out, the use of driftnets contravenes the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*. There are also questions of what long-term evolutionary impact driftnet fishing will have. The selection by the fishing industry of certain sized fish will change the evolutionary paths of natural fish stocks. Until more is understood about the impact of our exploitation of fisheries resources, the process needs to proceed more cautiously.

Not only is there a lack of discrimination in the catch of driftnets, but this method of fishing is highly wasteful — much of the catch is too badly damaged by the

net to be kept and is dumped back into the sea dead or wounded.

A final problem caused by driftnet fishing is referred to as 'ghost-fishing'. Lost nets can continue to catch and kill animals indefinitely, since the nylon used in the nets is non-biodegradable. Greenpeace estimates that, in the Pacific alone, 1 000 km of 'ghost nets' are created each year ('Ocean Ecology: Driftnets', Greenpeace, 1990, p 2). There have been a number of cases in which nets become entangled in the propellers of ships and reportedly fishermen have lost their lives trying to untangle propellers fouled by driftnets.

The central finding of the PNGLRC is that not only is driftnet fishing inadvisable on ecological grounds but that such activities, unless handled very differently, will not be economically beneficial to the State. While some of the problems experienced by PNG in its approach to gillnet fishing are specific to that country, others are likely to be faced by any nation state wanting to allow such fishing, and illuminate the reasons driftnet fishing is being opposed by most South Pacific countries.

Problems with the issuing of licences

The PNG legislation gives virtually all powers governing driftnet fishing, both prohibitive and licensing, to the Minister to exercise at his/her discretion. The PNGLRC foreshadows a 'proposal for radical restructuring of the resource-extraction policy and management process in PNG'. This restructuring would ensure that a more comprehensive fisheries resources management plan was followed and that the Minister was not vested with as many discretionary powers as at present. The PNGLRC points out that

the very fact that the driftnet licences were issued without a sufficient investigation of the environmental impact indicates the current system is inadequate. They outline a number of preliminary problems with the issuing of the licences.

- The driftnet licences were issued to fish for shark. However, gillnet fishing cannot be selective in its catch.
- There were no requirements for the nets to be tagged. This means that the length and number of nets cannot be monitored. It also means that the loss of nets cannot be reviewed and therefore that ghost-fishing is not controlled.
- The licences were given to a Taiwanese company despite the fact that Taiwan has not co-operated with PNG with respect to the conservation and management of fishing resources. In particular they have not been forthcoming with information about the retail value of the fish caught.

Problems with the conditions attached to licences

Compliance with the licence conditions is impossible to check and the good faith of the boat operators must be relied on. To the extent that this is an inadequate safeguard a number of problems will exist.

- PNG is a member of the Forum Fisheries Agency and is therefore bound to co-operate with other States in the Region in the conservation and utilisation of living marine resources.
- The boats are meant to report their daily position to the Department, but do not. This has resulted in possible infringements of the Torres Strait Treaty. Australian fisheries surveillance officers have sighted

one of the licensed boats fishing very close to Australian waters. Australian fishermen complain that fish bearing gillnet markings - indicating that they have been dropped out of nets when wounded are being caught in the Torres Strait waters.

- Catch reporting requirements were not always complied with, and, the absence of an inspector means the accuracy of the reporting cannot be checked. This difficulty with surveillance has meant that, as well as it being possible that the boats were violating the licence conditions, the catch cannot be properly evaluated for export taxes.
- One of the licence conditions is that no 'transshipment' take place. But difficulties with enforcing the licence conditions means that the possibility of 'transshipment' taking place cannot be ruled out.
- The crew on board the boats are meant to include a certain pro-

portion of nationals. From the observations of the Commission it seems unlikely that this condition is being satisfied.

The PNG Constitution calls for the wise use of natural resources and the environment and demands that they be conserved and replenished in the interest of the people's development and held in trust for future generations. Unless further study is done which shows that the impact of driftnet fishing is not as harmful as current thinking indicates, there do not seem to be adequate reasons to justify PNG licensing this practice. The PNG Commission takes a clear stand against gill-net fishing as it is currently practiced - and raises the question of whether it could ever be practiced in an acceptable manner.

They also recommend that the bureaucracy controlling the fishing industry should be re-

vamped. The Commission raises the question of whether imports of fish caught by driftnetting should be banned and whether there should be adequate labelling of fish products which would enable individuals to make their own choices as to whether to support the apparently cheaper products of drift-net fishing, or whether to support the long-term sustainability of fishing industries.

Perhaps the most important proposals to come out of the Report are those which endorse a major restructuring of fisheries and resource extraction operations. Such a move would mean that, as well as having dealt with the specific problems of driftnet fishing, the Commission will have supported an approach to such issues which will ensure the structural avoidance of such problems. □

New companies scheme commences

by Vincent Jewell

The new national companies scheme including the Corporations Law came into force on 1 January. This article discusses the lead up the new scheme and some of its features.

The new national companies scheme, with the Australian Securities Commission as regulator, finally began on 1 January 1991. The previous commencement

dates, 1 January 1990 and 1 July 1990, came and went, but the agreement of the Attorneys-General of the Commonwealth, the States and the Northern

Territory at Alice Springs in June 1990 resulted in the enactment by their respective Parliaments of the legislation for a comprehensive national companies scheme. The