Briefs

REFORM IN TASMANIA

There's a redneck under the toilet seat!

HELEN GWILLIAM looks at the rights of minorities in the Apple Isle.

Those who hold dear to their heart a picture of Tasmania, frozen in time, occasionally rising from the mists as if a latter day Brigadoon, may wish to close their eyes and stop up their ears. The times they are a changin'. Maybe.

Gay law reform

Everyone will be aware that the Federal Cabinet has agreed to put forward legislation that may override ss.122 and 123 of the Tasmanian *Criminal Code 1924* which prohibit consenting sexual intercourse between male adults, and other 'acts against the order of nature'. The legislation is a response to the Opinion of the UN Human Rights Committee, handed down on the 9th of April this year, finding that Australia was in breach of its obligations under the International Covenant on Civil and Political Rights.

The Committee found that Australia, as signatory to the Covenant, was in breach of two articles, namely provisions against discrimination (Article 2(1)), and arbitrary or unlawful breach of privacy (Article 17). Australia was given three months to consider the form of action to be taken. In the first month the Federal Government asked the Tasmanian government to consider its position. At the end of that period, Attorney-General Lavarch announced in May that in the absence of any response from Tasmania, the likelihood was that the Federal Government would have to legislate to override the Code provisions.

Agreement to legislate has been reached but it is not clear, at the time of writing, the exact form that the legislation will take. It seems that there will be a right of sexual privacy between consenting adults. In this way the Federal Government is not only pinpointing the Tasmanian legislation, but also the differential ages of consent applying in Western Australia, (i.e. the age of consent for homosexuals being 21 years of age), although the Tasmanian *Criminal Code* provisions are clearly the central concern.

The Tasmanian response

The response from Tasmania has been predictable. In a run-up to the next State election there's nothing that any State would like better than a State/Federal dispute, allowing the David and Goliath impression to arise, thereby supplanting any debate on more difficult State issues, such as parliamentarian's pay rises, unemployment, funding of social services, and other such matters of inconsequence. With that ace up their sleeve, the Government can sit back and do nothing. If the Federal legislation is passed, as appears likely given the non-opposition from the Federal Liberal Party, then the only decision the State Government has to make is whether they will arrest someone under the Code provisions. If people are charged, a challenge to the federal legislation will almost certainly follow, with a consequent cost to the public purse at a State and federal level. However, even without charges being laid, there may be a challenge in the High Court to the Tasmanian legislation from the Tasmanian Gay and Lesbian Rights Group. The State Government is therefore in the happy position of only having to stir the pot occasionally to keep the issue alive. Their most recent action has been to allow the anti-reform group 'Tas Alert' to place information in schools and colleges for students who are concerned about their sexuality. This is in stark contrast to an education department request several months ago that information giving such assistance be removed from State schools and colleges (principals did have the discretion to refuse). It appears that freedom of expression is now being openly attacked, given that Article 19 of the Covenant protects the freedom to seek and receive information. As the Tasmanian Government was unsuccessful in its justification of the *Criminal Code* on the grounds of protection of public morals, with regard to Articles 2(1) and 17, it is unlikely that the prevention of pro-reform and sympathetic information for gay and lesbian students being available in schools would be viewed any more favourably by the UN Human Rights Committee. Meanwhile the debate continues, the community is further polarised, and Tasmania is not so much under a cloud as under an unwelcome glare of publicity.

Reform and disability

On 16 August a rally was held outside Parliament House calling for a change in the funding and management of services for people with a disability in Tasmania. In response to a trend in Europe and the US, there has been a move away from institutionalisation of people with a disability. All well and good. However, this is not a particularly successful strategy if the move to community integration is hampered by underfunded group homes, and the refusal of local councils to allow residential housing to be used for that purpose. It is no coincidence that the numbers of the homeless are rising in Tasmania. Couple that with underfunding of social services and you have a disaster waiting to happen.

With that apparent, the disability organisations in Tasmania came together to announce that the disaster has happened. Disabled people in Tasmania are lucky if there is any assistance to get out of bed in the morning; people are not able to choose when to use the toilet, when to go to bed, when to eat and many other fundamentals of independent life (never mind actually having any interesting quality of life beyond these thrilling activities).

In response to this rally of over 200 disabled people and carers, a meeting was held between representatives and the Groom Government. During that meeting the Government representatives expressed their understanding of the problems, but stated that there was no extra funding available to remedy the situation. This was not persuasive as far as members of the disability organisations were concerned, given that each group home of four people who used to be in institutional care,

actually saves the Government thousands of dollars. This is because the residential care workers are paid significantly less per hour than the hospital based carers, even given the economies of scale.

The problem for disabled people is that there has been little option for access to complaint systems for a variety of reasons (such as physical access to community legal centres, communication problems, and common experiences of being ignored or having their opinions undervalued).

Disability legal service

In response to this situation, a steering Committee constituted by a group of disabled people representative of the disabled community in the State, has formed the Disability Legal Service. At present it is a volunteer service, but it is hoped that once up and running, there will be a possibility of funding. The volunteers will assist people with disabilities with any legal problem, whether a problem of discrimination, of financial concern (many disabled persons have their finances in trust), access to benefits, etc. It is hoped that this service will be able to respond to the demands of the disabled community in Tasmania rather better than agencies with a broader scope, not least because it will continue to be directed by people with a disability.

As with the question of homosexual law reform, change is coming from the groups affected, rather than from any formal grouping of government, political parties, or the legal fraternity.

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Honey I shrunk the Parliament!

RICK SNELL reports on an inquiry into the size and constitution of Tasmania's legislature.

Between May and August 1994 Tasmanians witnessed a public debate about the size and operation of the Tasmanian Parliament. In this period, the Morling Inquiry Into the Size and Constitution of the Tasmanian Parliament received 211 written submissions from individuals, 33 submissions from political parties and other organisations and heard evidence from 108 witnesses.

The depth, extent and public participation in this inquiry has surprised many given the original terms of reference which included:

- To investigate and report on a reduction in the number of members elected to the Tasmanian Parliament, how such reduction might take place.
- To investigate and report on whether or not a reduced Parliament would be better constituted by a single chamber.
- To examine an improved mechanism for disagreements between the Legislative Council and the House of Assembly.

The inquiry attracted considerable interest because it arose out of the political fallout which accompanied the community reaction to the Tasmanian Parliament passing, in the space of nine hours, 40% pay rises for all MPs. The Morling Inquiry is due to make its final report to the Government by 30 December 1994.

Submissions to the Inquiry

The Morling Inquiry has produced a wealth of discussion and options for the reform of parliament. Researchers and reformers in other jurisdictions will now be able to consider a wide variety of reform proposals ranging from the novel to submissions that focus on offering considered solutions to the problem of responsible government in Australia. The concurrent publication of David Hamer's book *Can Responsible Government Survive in Australia?* is a timely one. Hamer's book poses a number of critical questions about parliamentary operation in Australia in the 1990s. The submissions to the Morling Inquiry have offered some fascinating answers to those questions.

The one generalisation that can be made safely about such a wide range of submissions is that Tasmanians display a propensity to offer new variants or models for the design of parliamentary democracy. The politics of Tasmania seem to consistently throw up interesting experiments, innovations and twists on parliamentary democracy. This is a State that embraces the Hare-Clark system of proportional representation for its lower house, yet retains single member constituencies and preferential voting for its upper house. Tasmania has the largest gathering of elected green Members of Parliament and yet retains a Legislative Council which is viewed by most commentators as the most conservative upper house in the Westminster world.

The submission of the Parliamentary Labor Party epitomises the radical proposals which many of the submissions were prepared to offer to the Board of Inquiry. The Parliamentary Labor Party offered the following suggestions:

- A single 40 member chamber (a reduction from the 54 current members in both houses)
- 25 members to be elected from five multi-member electorates.
- 15 members elected on a state wide proportional basis (in the same way as elections for the Senate)
- The Executive would be selected from the 40 member chamber.
- A simple majority of the 25 members would form a Government.
- All members could vote on bills except only the 25 members from the multi-member electorates could vote on Money Bills and No Confidence motions.
- Well resourced administrative and legislative checks and balances would be put into place including Budget estimate committees, anti-discrimination legislation and a State administrative appeals tribunal.

A submission that reflected the cynicism of young Australians about the parliamentary process came from students of a private secondary college. The students made a submission that proposed the creation of a Public Panel. The Public Panel would consist of two members chosen from each of the five House of Assembly electorates on a rotating basis (a bit like jurors for court cases). The ten members of the Public Panel would be able to debate and vote on legislation. The reasoning of the students was that the presence of normal electors in the parliamentary process would remove much of the 'club' atmosphere of Parliament and allow public sentiment to be directly considered in debates and discussions.