DownUnderAllOver

A regular column of developments around the country

Federal Developments

IR BILL GETS THROUGH THE SENATE

The centrepiece of the Coalition Government's industrial relations policy, the *Workplace Relations and Other Legislation Amendment Bill 1996*, has finally been passed by the Senate and sent back to the House of Representatives to be passed. The Bill was introduced into the Senate on 27 June 1996 and the third reading of the Bill was on 19 November 1996.

During the Senate consideration of the Bill, approximately 580 amendments were moved. Out of these, 175 amendments were agreed to in the Senate. Most of the amendments, 171 of them, were joint Government-Democrat amendments.

The Democrats said that their input into the amendments to the Bill 'take "scare" out and put "fair" in new laws'. According to *Democrat Update,* the amendments to the Bill will ensure that the new laws 'provide a fairer balance between the rights of workers and employers, and much greater protection for workers in disadvantaged bargaining positions'.

The debate on the Bill took up a near record amount of the chamber's time — 49 hours and 23 minutes! This was only just beaten by the 49 hours and 56 minutes of chamber time spent on the *Native Title Bill* in 1993.

EUTHANASIA BILL TO SENATE COMMITTEE

On 27 November 1996, the Senate agreed that the Senate Legal and Constitutional Legislation Committee inquire into and report on the provisions of the *Euthanasia Laws Bill 1996,* and in particular:

- the desirability of the enactment of the provisions;
- the constitutional implication for the Territories of the enactment of the provisions;
- the impact of the enactment of the provisions on the Northern Territory criminal code; and
- the impact on and attitudes of the Aboriginal community.

The closing date for submissions is 12 December 1996 and they should be sent to The Secretary, Senate Legal and Constitutional Legislation Committee, Parliament House, Canberra ACT 2600.

The Committee is required to report to the Senate on or before 24 February 1997. ● **CH**

ACT

RECORD COMPENSATION PAYMENT FOR SACKED VISION IMPAIRED WORKER

(Melvin v Northside Community Services Incorporated, HREOC No. H95/93, decision delivered 19/7/96)

The Human Rights and Equal Opportunity Commission's Disability Discrimination Tribunal has made a record award to a Canberra childcare worker for a dismissal which unfairly discriminated against her on the basis of her disability. Mrs Melvin was an infant childcare worker with over a decade of exemplary service in her job. Throughout that period she wore spectacles with thick lenses and to read fine print she would lift her glasses and bring the print close to her face. Without substantiation, some workers raised concerns that Mrs Melvin may have been unable to perform her work safely. The CEO of Northside Community Services, after making some but inadequate enquiries, summarily stood her down. A month later, and without further enquiry into whether Mrs Melvin's eyesight really did render her incapable of the safe performance of the inherent requirements of her job, and without any attempt to consider the possibility of accommodating her disability in the workplace, she was dismissed.

The Tribunal found that as a procedural matter the primary onus was on the employer to make all necessary enquiries to determine whether, with or without accommodation, Mrs Melvin's disability did render her incapable of performing her job safely. It also found as a fact that Mrs Melvin's vision impairment did not render her incapable of the safe performance of her job. Mrs Melvin was awarded a sum of $46,000 in compensation for past and future economic losses as well as $10,000 for the considerable mental distress occasioned by her being treated unfairly and discriminated against. The total compensation is the highest amount yet awarded in a disability discrimination case.

Mrs Melvin has, however, found that compensation for the wrong is not a satisfactory substitute for her job. She has been unable to regain employment in childcare and believes that despite vindication from the Tribunal, employers attach stigmatising meaning to her case. She is 50 years of age and retraining has not yet assisted her to regain employment. She faces the poor employment prospects of the older age person. Northside Community Services have complained that this payout threatens their solvency.

Community legal educators can note that this is a case to prove that prevention is better than any cure that can be offered. Mrs Melvin was represented by Dr Chris Bell, Disability Discrimination Legal Service, Canberra. Northside Community Services was represented by Mr Tal Williams, Sneddon Hall and Gallop, Canberra. ● **CB**

NSW

HEROINES OF FORTITUDE

On 30 October 1996, the NSW Department for Women released a report on women's experiences in court as victims of sexual assault. The title of the report, *Heroines of Fortitude*, is taken from a comment made by one of the judges in the study. In sentencing a man who had sexually assaulted his victim, over a long period spanning her childhood and after she turned 16, the judge said, 'The victim is a heroine of fortitude . . . it is a tribute to the human spirit that she has survived'.

It is also a tribute to the human spirit that many of the women in the study survived their experiences in court. Despite changes to offence definitions and rules of evidence in sexual assault trials made in 1981, the study found that many complainants were still discredited and attacked during cross-examination. The types of questions asked by defence barristers clearly indicated that outdated and unacceptable views about the meaning of women's dress, behaviour, whereabouts, drinking or drug use habits, still permeate the minds of men accused of sexual assault, and are perpetuated in court by their barristers.

About one-third of the 150 women in the study were accused of fabricating their stories in order to obtain money through a victim's compensation claim. Half were questioned about their drinking on the day of the offence. Half were accused of behaving in sexually provocative ways. Almost all were accused of lying. Where the complainant was a woman with a disability, this fact was sometimes used to undermine her credibility as a witness. Aboriginal women, who were over-represented in the study by a factor of 10 compared to the proportion of Aboriginal women in the general population, had a particularly difficult time, from both the prosecution and the defence.

The report is the outcome of a two-year study of all trials of serious sexual assault charges conducted in the NSW District Courts between 1 May 1994 and 30 April 1995. The charges were those laid under ss 61I, 61J and 61K and the repealed sections 61B, 61C and 61D of the *Crimes Act 1900* (NSW). All complainants (or principal witnesses for the prosecution) in the study were women over 16. The study covered 150 hearings, comprised of 77 trials (where the accused pleaded not guilty) and 39 sentence hearings (where the accused pleaded guilty).

Only 31% of those accused who pleaded not guilty were convicted. Of those who were convicted, about 80% were sentenced to a term of imprisonment, although none was given the maximum sentence available for the offence. In many instances, sentences were reduced because the man had been intoxicated at the time of the assault, and the sentencing judge considered that he may therefore have 'misread the signals'!! One judge, justifying the imposition of a relatively lenient sentence, said, ' There seems no doubt that it was the alcohol that you drank that made you behave as you did'.

The findings of this study should come as no surprise to those working in the sexual assault field, or indeed, to women who have been victims of sexual assault and have been courageous enough to act as the principal witness for the prosecution in the trial of their alleged offender. It remains to be seen what will be done in response. ● **JB**

Northern Territory

ONE STRIKE AND YOU'RE IN

While the Northern Territory's Country-Liberal Party Government has attracted international attention with its euthanasia legislation, back home on the range it's still riding the good old law-and-order bandwagon for all it's worth. By the time you read this, the Territory's new sentencing legislation will have been enacted, imposing a minimum 14 days imprisonment for first-time adult property offenders, and a minimum 28 days detention for juveniles convicted of a second property offence.

Introducing the legislation to Parliament in October, Attorney-General Denis Burke pronounced that 'home invasions, vandalism and motor vehicle theft . . . threaten the very fabric of society in the Territory', and that 'the vast majority of Territorians support this initiative', which, he paradoxically claims, is aimed at 'those who persist in flouting the law'.

This 'vast majority' does not include the NT Bar Association, the NT Association of Criminal Lawyers, the NT Aboriginal Justice Advisory Committee, Aboriginal legal aid agencies, youth support agencies, the Opposition, or the Territory's Chief Magistrate, all of whom have publicly condemned the Bill. In responding to criticism that the new laws will effectively remove the courts' sentencing discretion, the Attorney-General has helpfully explained that 'this Government and Territorians want the courts to hand down harsher penalties and we are setting what is considered to be the bare minimum'.

Coincidentally, the NT government has just opened a brand-new hi-tech Correctional Facility in bushland south of Alice Springs. Although built to accommodate up to about 300 inmates, prisoners have already been put to work in the gaol workshop building beds for their future cell-mates. According to Correctional Services Minister Steve Hatton, with double-bunking and 'some crowding', capacity could be extended to approximately 600. If the new sentencing laws work as expected, they'll need every one of those double-bunks. ● **RG**

Queensland

SEVERE HEARTBURN

The Federal Member for Oxley, Pauline Hanson, continues to amaze with her antics and is causing severe heartburn for all the major political parties. National Party branches continue to invite Hanson to speak at their meetings while Nationals leader and Premier, Rob Borbidge, seeks to repudiate her views. Borbidge's concerns have focussed on economics, particularly the tourism trade and primary produce markets in Asia. The Labor Party has spoken strongly against Hanson but must be well aware of opinion polls which indicate that support for Hanson is strongest in seats held by Labor (not that there are many of those in Federal politics).

LEGAL AID VISION

The Legal Aid Office Queensland (LAO) has produced a *Legal Aid Vision* Information Paper which suggests major changes are ahead for legal aid in Queensland. The proposals include:

- providing legal casework services on the basis that 'Legal Aid's legal practice is a profit centre'. The idea that a profit can be made from providing services to people who must meet very stringent means tests is fundamentally flawed.
- the introduction of franchise-style arrangements and maintenance of a reduced salaried workforce.
- a move away from regional offices towards 'local access centres' which do not have administrative responsibilities.
- a more contractual basis for the relationship between LAO and community legal centres.

Seeking to do more with less is a laudable objective but in this case it must be asked whether enough of the legal aid system will be left to provide a comprehensive set of services.

CJC INQUIRY

The battle between the Borbidge Coalition Government and the Criminal Justice Commission continues. The Government raised the stakes by announcing an 'independent' Inquiry into the CJC and was criticised for doing so while Kenneth Carruthers, QC was still conducting the CJC's Inquiry into matters related to the Mundingburra by-election. Carruthers was rightly concerned that the independence of his Inquiry could no longer be assured, so, after obtaining legal advice, he resigned. The Government then stymied attempts by the Labor Opposition to have Carruthers return. Opposition leader, Peter Beattie, had proposed legislation which would have ensured that the independence of the Carruthers Inquiry would be respected by the Government review of the CJC. The CJC Mundingburra Inquiry will now go ahead without Carruthers but will face a difficult task in getting action taken on any adverse findings it makes. A further CJC Inquiry is now to be conducted in relation to allegations that the Police Minister, Russell Cooper, was involved in another 'election deal', this time with prison officers, prior to the Mundingburra poll.

COTTON FARMING

On a positive note, the Government surprised many observers recently by taking steps to prevent proposed cotton farming in the Cooper Basin in Western Queensland. Strong concerns had been expressed by both farming and conservation groups in relation to the introduction of such a water-intensive form of farming in such an arid area. ● **JG**

South Australia

GOOD NEWS AND BAD NEWS

The good news is that the attempt by the State Government to introduce 'general deterrence' as a consideration when sentencing juveniles has foundered on the rock of the Legislative Council. After intense lobbying by youth groups, academics and others concerned that such a principle would erode the rationale for a juvenile justice system in the first place, the Opposition Labor Party and Democrats combined to defeat the legislation.

The bad news is that the State's prisons are reported to be seriously overcrowded. Prison chaplains, in particular, have been vocal in criticising the situation that many prisoners find themselves in. The Ombudsman has begun an inquiry into the concerns before deciding whether he will initiate a formal investigation. Some of the critics of the overcrowding have suggested that international standards with respect to prison conditions have not been observed. We await further instalments. ● **BS**

Victoria

PERSONAL INJURIES

Victorian personal injuries solicitors have been shocked to learn of the Kennett Government's dramatic amendments to the WorkCover scheme. Under new provisions effective from 14 November, claimants will no longer be able to rely on a secondary psychological or psychiatric condition to qualify for the top level 30% impairment category. Additionally, permanent impairment payments over $5000 will no longer be paid in a lump sum but will be paid in instalments instead. The changes will apply to road accident victims as well to those injured in the workplace.

In a bid to save $400 million, the Government argues that the new provisions in the *Accident Compensation (Further Amendment) Act* are necessary to stop rorting in the system and in customary fashion have chosen a cut-throat approach rather than more rigorous supervision of psychological assessments. The reality of the provisions mean that hundreds of claimants with serious psychological conditions will be excluded from long term and weekly payments as well as common law damages if they are excluded from the 30% impairment category.

As yet it is unclear how the amendments will effect claimants with existing injuries.

PRIVATE PRISONS

Further questions have been raised about the propriety of the contract between the State Government and operators of Victoria's new private prison, the Metropolitan Women's Correctional Centre. Criticism has been directed at the adequacy of prison facilities and security following a report which indicated that security was inadequate, that there was a high rate of drug use, including three non-fatal overdoses and that assaults on officers had taken place.

The primary concern regarding the new prison involves the secrecy of the contract with the State Government and the lack of accountability of a private company to the public. This is reflected in the fact that it is unclear what incidents or problems the company is obliged to report, as the contract is unavailable for scrutiny. It is problems of this nature which critics of the privatisation of the prison had envisaged when the sale was first proposed. **EC**

WA

SENTENCING

New sentencing laws came into effect in Western Australia on 4 November 1996. The *Sentencing Act 1995*, the *Sentence Administration Act 1995* and the *Sentencing (Consequential Provisions) Act 1995* create a package of legislation which consolidates and extends sentencing laws and penalties.

The new laws are designed to provide a greater range of sentencing options. Among the legislative changes is the introduction of an Intensive Supervision Order for serious offenders which provides mandatory supervision of an offender in the community. The order may include the option of a curfew which requires an offender to remain at a particular place for between two and twelve hours on any day. The sentencing package also provides for the option of a suspended sentence for less serious offences. Under the new laws, the Chief Justice of Western Australia now has the opportunity to report in writing to the State Parliament on any matter connected with sentencing.

Provisions have also been introduced to compensate and protect victims of crime. Courts are able to impose separate compensation or restitution orders in favour of a victim. The court may also impose a restraining order on an offender even though a complaint has not been made.

While it is still too early to assess the effect of this legislative package, there is already criticism of the failure of the legislation to come to terms with inflexible parole provisions. **SW**

DownUnderAll Over was compiled by Jenny Bargen, Chris Bell, Elena Campbell, Jenny Earle, Jeff Giddings, Russell Goldflam, Catherine Hawkins and Sonia Walker.