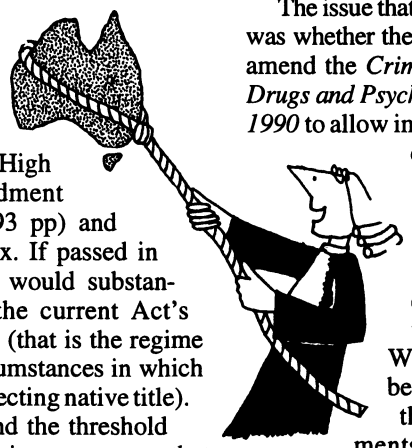
DownUnderAllOver

A regular column of developments around the country

Federal Developments

Native title amendments

On 4 September 1997 the Government introduced its *Native Title Amendment Bill* into the House of Representatives. The Bill was immediately referred to the Parliamentary Committee on Native Title and the Indigenous Land Fund for consideration. The Government hopes that the Bill will be passed by the House of Representatives in time for introduction and passage by the Senate before the end of the year.



The Bill implements the Government's 10-point plan for dealing with the consequences of the *Brandy* and *Wik* decisions of the High Court. The amendment Bill is lengthy (293 pp) and technically complex. If passed in its current form it would substantially restructure the current Act's 'future act' regime (that is the regime setting out the circumstances in which acts can be done affecting native title). It would also amend the threshold test for lodging claims to ensure that claims are more detailed, and strengthen the registration test that would be applied to claims before the claimants would be entitled to claim the right to negotiate.

The Government is also proposing to amend the Act to increase the classes of proposed acts that would be exempt from the special procedural requirements in the Act called the 'right to negotiate'. The capacity of native title holders to enter into agreements in relation to acts affecting their title would be enhanced, and the functions of representative bodies are to be enacted in detail. Their accountability is also to be enhanced.

The Bill will also contain a schedule of interests considered to confer exclusive possession on the interest holders, and which therefore, under the Act, would extinguish native title. ● **LK**

ACT

Federal cabinet pulls the plug on heroin trials

On 20 August 1997 Federal Cabinet decided that it would not support the proposed ACT heroin trials.

The ACT trials, which had been developed over a number of years, had the support of Victoria, South Australia, Tasmania and New South Wales. The trials would have been the first such initiative in Australia, recognising that the current drug law regime is ineffective in preventing or treating drug use and dependency.

The issue that went to Federal Cabinet was whether the Commonwealth should amend the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990* to allow importation and transport of heroin for the first stage of the trial, which would have involved administration of heroin under medical supervision to 40 ACT addicts. While legal advice had been received indicating that legislative amendments were not necessary, Cabinet rejected this advice and decided that amendments were necesssary and, furthermore, that it would not agree to them.

One of the reasons given by Prime Minister John Howard for the decision was that it would send the 'wrong signal' to the community about dealing with drug abuse. The decision was strongly criticised by ACT Chief Minister Kate Carnell, who said that the decision had been 'gutless', as well as Victorian Premier Jeff Kennett, South Australian Health Minister Michael Armitage, and the NSW DPP Nicholas Cowdery QC. ● **BC**

NSW

Youth justice conferences

The *Young Offenders Act 1997* was assented to on 2 July 1997. The Act aims to establish procedures to divert children from court proceedings through the use of warnings, cautions and youth justice conferences (YJCs). The Act only applies to summary offences, and indictable offences that may be treated summarily. One view is that the Act should not be limited to certain types of offences (New Zealand does not place limits). However, there are significant problems with mediating violent crimes.

YJCs are a community-based negotiated response to offences. They emphasise restitution and responsibility by the offender, and aim to meet the needs of victims and offenders. The child concerned should have 'developmental and support services that will enable the child to overcome the offending behaviour and become a fully autonomous individual'. The conferences must be 'culturally appropriate'.

The Act provides that a YJCs may be held if the child admits the offence and consents to the conference. A child is entitled to a YJCs if the investigating official determines that the matter is not appropriate for a caution, and a specialist youth officer (a member of the Police Service) considers that a conference is appropriate. Referrals for conferences can be given by the DPP and courts (what happens when police prosecutors are dealing with matters that fall under this Act?). Participants in YJCs include the child, a conference convenor, a person responsible for the child, members of the child's family, a lawyer advising the child, the investigating police, a specialist youth officer, any victim and a support person for the victim. Additionally, the convenor can invite people to attend the conference, for example, a respected member of the community. The participants in the conference have a broad discretion to make any decisions as 'they think fit'. A guided discretion would have been preferable. Close monitoring of the 'outcome plans' will be necessary to ensure that they are not imposing tougher penalties than those a court would hand down.

An outcome plan is subject to court approval. If an outcome plan is not reached, or is not satisfactorily completed, then court proceedings may be commenced. Records of cautions and YJCs may be divulged to the court. Any

admission made by a child is inadmissible as evidence but an outcome plan may be admitted in the proceedings. Past conferences, warnings or cautions can not be disclosed as a child's criminal history. ● **MK**

Northern Territory

'Reforms'

Maybe it's because of the Top End's dreaded build-up, or perhaps it's post-election fever, but whatever the reason the current Territorian legal crop is colourful even by our lurid standards.

Both major Parties used the election to whip continuing public concern about property crime into hysteria. Labor even ran a TV campaign in which masked burglars were depicted invading homes (belonging, presumably, to those considering voting for the Country-Liberal Party). No sooner had the polls been declared and the CLP comfortably returned, than Correctional Services Minister Steve Hatton flagged the use of electronic handcuffs (currently used to keep tabs on home detainees) for children who are placed on curfew as a bail condition.

If this was an attempt by the Minister to shore up his law and order credentials with his boss, it didn't work: Chief Minister Stone dumped Hatton from the Ministry the following week. At the same time, Stone also re-installed himself as Attorney-General, appointing a colleague and former CLP candidate as Secretary to the Department. He then immediately announced that as mandatory sentencing (after less than three months of actual operation) had proven so successful, he was going to make a wider range of offences subject to automatic imprisonment, and, for good measure, to jettison the suspect's right to silence, as well as introduce other, yet to be detailed, 'reforms'.

Protests

Meanwhile, moves are afoot to arm NT police with capsicum (sounds so much more innocuous than chilli, doesn't it) spray, following similar initiatives in some southern States, in spite of its well-known potentially lethal effects to those with respiratory illnesses and heart disease. The high rate of these illnesses amongst Aboriginal people make this new weapon particularly worrying.

During a recent inquest into a fatal police shooting, passers-by near the Darwin courthouse were confronted by a small but graphically effective protest staged by supporters of the deceased: a (live) body spreadeagled on the footpath liberally smeared with tomato sauce and sheep guts, with explanatory placards.

This brings to mind two other notorious courthouse protests of recent times. For years, long-time litigant Alexander Prus-Grzybowski maintained an intermittent one-man vigil outside the Alice Springs courthouse featuring provocatively defamatory epithets directed at senior members of the NT legal establishment. During the recent election campaign, handbills bearing his inimitable slogans mysteriously appeared at Darwin bus shelters.

Another disgruntled client of the legal system was charged with offensive behaviour after wearing a T-shirt which proclaimed 'Fuck the Family Court'. After a conviction, appeal, and order for a retrial, the authorities recently decided that enough was enough, and dropped the charge.

Futile Act

A case which has attracted less public attention, but which has serious implications for the effectiveness of the Territory's *Anti-Discrimination Act*, concerns a woman who complained under the Act against her employer for failing to properly accommodate her pregnancy. Following a hearing, she was awarded compensation. Unprecedentedly, the employer appealed against this decision under the relevant provisions of the Act, which are unique in Australia. It has now been held that this challenge must be heard as an appeal *de novo* in the Local Court, a jurisdiction in which the complainant bears the onus of proof, is subject to the rules of evidence and, most importantly, will be exposed to the legal costs of her former employer in the event that her claim is unsuccessful. From now on, anyone contemplating a complaint under the NT Act should bear in mind that if they 'win', they can, effectively at the whim of the other party, be required to re-run their claim, through the courts. This seems to render futile the very purpose of the Act. The only solution appears to be to amend the legislation, although that of course will not avail the complainant in the case in question. ● **RG**

Queensland

Getting tough

The State Government has proposed 'tough' changes to juvenile justice and the parole system. Juvenile offenders convicted of violent offences may be named with a view to shaming them publicly. In relation to the parole proposals, Police Minister, Russell Cooper said 'The principle of protection of the community must come first. To those who say it isn't fair, I say "tough"'. There must be an election approaching! It has been suggested that Queenslanders may go to the polls before Christmas. Perhaps the next 'tough' policy to be announced will be on police powers.

The Borbidge Government is pushing ahead with moves to create a new Crime Commission which would take over some of the functions currently discharged by the Criminal Justice Commission (CJC) [see *Opinion* in this issue]. The CJC finds itself playing an important role in many issues of public concern which may explain why the Government is so determined to press on with its reforms.

Hinchinbrook protests

People protesting against the Port Hinchinbrook development have complained about lack of police action in response to incidents at the development site in mid-September. It was claimed that senior police had watched while protesters had been hit and kicked by local residents and staff employed by site developer, Keith Williams. Complaints have since been lodged with the CJC for investigation.

Police-community consultation needs improvement

The Research Division of the CJC has found that the Queensland Police Community Consultative Committees, set up following a recommendation from the Fitzgerald Inquiry, are not working effectively. The CJC study found that only a quarter of police divisions in Queensland have active committees. Police Minister, Russell Cooper responded to the study by referring to the recently announced Community Policing Partnership Scheme which he hopes will improve liaison in this area.

It seems clear that, whenever the election is held, law and order issues will be crucial. ● **JG**

SA

MPs and sexual harassment law

The South Australian legislature recently extended the boundaries of sexual harassment law to apply to Members of Parliament *(Equal Opportunity (Sexual Harassment) Amendment Act* (SA) 1997). The *Parliamentary Debates* indicate that a loophole in South Australian law, and in that of other States, became apparent following the resignation of the New South Wales Police Minister, Terry Griffiths. This followed accusations that he sexually harassed members of his staff. The event revealed that sexual harassment legislation did not apply to MPsand local government, and judges and magistrates as they were not considered the employers of the staff who work in parliament, local government, and judicial offices. The application of the law to these officers represents an important extension of sexual harassment law.

While the amendment represents an advancement, MPs are protected from complaints of sexual harassment being made against them in a certain situation, in spite of the efforts of some women in parliament. The Select Committee on Women in Parliament proposed reforms that would allow one Member of Parliament to make a complaint against another. The Liberal Government's Attorney-General, Trevor Griffin, led the debates that resisted the proposal. He argued that it entailed an infringement of the principles of government and that MPs should not be subject to sexual harassment law implemented by other MPs because they should be able to pursue issues without being subject to control by the courts.

Women in parliament contested the argument. They reported that some MPs have been sexually harassed by other members. Carolyn Pickles led the debate for the Labor Party. She contended that in spite of parliamentary privilege some laws have applied to members. Further, parliamentarians should set an example for the public and be subject to the same laws. Nevertheless, the Liberal Party's position prevailed. The legislation does not pertain to MPs who sexually harass other MPs.

Debate also surrounded the best place to resolve sexual harassment disputes between MPs and staff. The Act allows the Equal Opportunity Commissioner to handle complaints against parliamentarians, but only under certain conditions. Before dealing with a complaint she must consult with the Speaker of the House of Assembly or the President of the Legislative Council. If the complaint does not relate to anything said or done during parliamentary proceedings the Commissioner can then proceed with dispute resolution. Cases involving parliamentary proceedings will be dealt with by the Speaker of the House of Assembly or the President of the Legislative Council. Carolyn Pickles argued that MPs should not judge themselves, and that the Commissioner should also deal with these complaints. She considered it unacceptable that a few parliamentarians of a certain age and gender should deal with breaches of sexual harassment law. Nevertheless, the Government assigned responsibility for resolving disputes involving parliamentary proceedings to the Speaker of the House of Assembly or the President of the Legislative Council. ● **MAC**

Victoria

Out of control?

The Victorian Court of Appeal is proving to be a nuisance to John Elliott, making a finding that the National Crime Authority's evidence against Elliott which was dismissed by Justice Vincent at trial as being inadmissible was not necessarily so. While Elliott cannot be retried, the NCA has been vindicated to a certain extent and it is rumoured that fresh charges are being considered. Elliott in turn has labelled the NCA 'scurrilous' and has made pleas that he be left alone like any other law-abiding private citizen. Despite his findings, however, Justice Brooking of the Court of Appeal expressed frustration with the process which had led to the appeal, stating that in some cases, the criminal justice system in Victoria was 'out of control', with trials lasting far too long, as well as civil trials being spawned by unsuccessful criminal trials. Ah, for the good old days ...

Ain't love grand?

A curious exception has been made to the Victorian Equal Opportunity Act in the interests of true love. An application by the dating agency 'Dinner for Six' for exception from the Act has been accepted by the Tribunal, despite opposition from a competing business. 'Dinner for Six' asked the Tribunal to allow them to charge clients different rates according to their ages or genders, because of a perceived gap in the market in certain age groups. Apparently women under 25 and men over 50 are noticeably under-represented in the singles market, and *Dinner for Six* was seeking discounts to entice these people into the dating game. They argued that they would not be able to provide a full service to their other clients without this discount, as some clients would simply be left with no potential match. President Mackenzie of the Anti-Discrimination Tribunal agreed, saying that the exception was for the benefit of everyone.

Litigious adventures

Freedom of Information applications have revealed that a total of $169,830.50 of public money has been used to fund four civil trials in which Premier Jeff Kennett was either the plaintiff or the defendant. In one recent case, nearly $70,000 was used to pursue a defamation suit against the *Australian* over an article by Beatrice Faust. The case was settled out of court for an undisclosed sum. However, Jeff Kennett has defended his decision to sue 'as Premier' rather than as private citizen and has made assurances that settlement funds will be used to reimburse the public purse. Not surprisingly, the Opposition is calling for a more detailed account of the Government's litigious adventures. ● **EC**

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