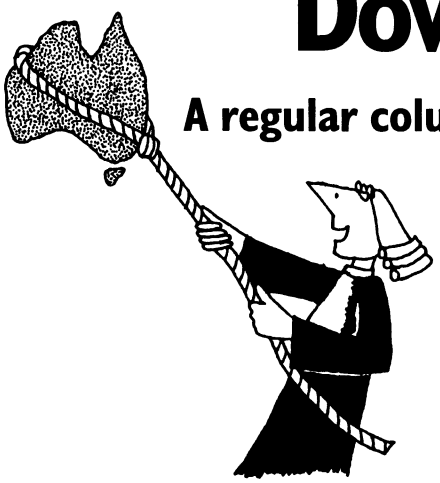
DownUnderAllOver

A regular column of developments around the country



Federal Developments

Native title victory in High Court croc case

The Gulf of Carpentaria region, in the remote northwest corner of Queensland, was for a long time neglected by the rest of Australia. These days the Gulf and its people make national headlines. The local with the highest profile is Murrandoo Yanner, a young charismatic and controversial figure. In the mid-1990s, as head of the Carpentaria Land Council, he articulated local indigenous concerns about the huge new Century Zinc mine. At the end of a long and scarring battle, the project secured the go-ahead and the local indigenous community secured a compensation package including money, jobs, service contracts and land.

In the middle of this highly charged confrontation with the Queensland Government, Yanner was prosecuted when he killed a crocodile and shared the meat with other members of his Gangalidda tribe. Yanner insisted he was doing no more than exercising the native title rights which the High Court and the Commonwealth Parliament had affirmed in the *Mabo* decision and *Native Title Act 1993* respectively. His battle against conviction went all the way to the High Court and his success there on 7 October 1999 once more made him front page news.

In *Yanner v Eaton* [1999] HCA 53, the High Court upheld by a 5–2 majority the dismissal of an illegal hunting charge against Yanner, on the basis that the taking of a crocodile was authorised by the *Native Title Act 1993*. Yanner's appeal revolved around two issues:

1. Did vesting the Crown with 'property' in wild animals under Queensland legislation extinguish native title rights? (Question 1)
2. Did prohibiting the taking of wild animals without a permit extinguish native title rights? (Question 2)

Queensland refrained from arguing for the second proposition but the Commonwealth insisted on pressing this argument for extinguishment. Two High Court judges remarked on the spectacle of the intervenor going further than the prosecuting party.

In October 1996 a charge of illegally taking fauna against Yanner had been dismissed by a Mt Isa magistrate. The prosecution relied on Queensland's *Fauna Conservation Act 1974,* which did two material things: it vested property in most Queensland fauna in the Crown, and it made it a criminal offence to take crocodiles without a permit. The prosecution argued that vesting property in crocodiles in the Crown extinguished any native title rights Yanner may have had to hunt them. Because the law required a permit and Yanner had not obtained one, he was guilty of an offence.

Yanner's defence was based on s.211 of the *Native Title Act*. This offered an immunity from laws which would otherwise force native title holders to obtain a permit to engage in traditional activities such as hunting, fishing and gathering to satisfy communal needs. Prior extinguishment of his native title right to hunt would prevent Yanner relying on the s.211 immunity. Thus the legal effect of vesting the Crown with 'property' in wild animals was critical to the case.

The Queensland Court of Appeal found by a 2–1 majority that the magistrate was wrong to dismiss the charge. The Court of Appeal majority judges held that the statutory assertion of Crown property in fauna had indeed extinguished any native title rights in relation to crocodiles. Yanner was, they said, barred from using the s.211 defence.

The High Court 5–2 decision reversed the Court of Appeal finding. The High Court's majority finding, in favour of Yanner, suggests extinguishment of native title is not achieved as easily as some governments may have thought. Four High Court judges, including Gleeson CJ and Hayne J, two recent appointments by the current federal government, combined in a joint judgment while Gummow J wrote a separate judgment in Yanner's favour.

As to Question 1, the majority made clear that a mere statutory vesting or other assertion of Crown 'property' in natural resources cannot be assumed to extinguish native title. The true meaning of such assertions will depend on a careful analysis of the words used and the underlying purpose of the statutory provisions. In this respect, the decision follows the lead given by the majority in the *Wik* case.

The term 'property' was treated as an intellectual construct, no more than a description of a legal relationship with a thing, 'a legally endorsed concentration of power over things and resources' (Gleeson CJ, Gaudron, Kirby and Hayne JJ, para 18). Its use in a statutory context may be a full assertion of ownership, or for a far more limited purpose, for example, to lend legal legitimacy to a royalty scheme. In the present case, the majority found the vesting provision to have a narrow purpose and no extinguishing effect on native title.

As to Question 2, the majority found that requiring a permit to hunt a crocodile was no more than regulation of the way in which that native title right could be exercised. Since *Mabo (No 2)* it has been clear that regulation does not extinguish native title. The majority said that regulation is not inconsistent with the continued existence of native title rights and interests, indeed it assumes their continued existence; and that here the usufructuary (or use) right was merely an aspect of a deeper and more multi-faceted relationship to land.

Having found no extinguishment, it was clear the Queensland law, which made crocodile hunting an offence without a permit, was in direct conflict with the Commonwealth immunity provision, s.211 of the *Native Title Act*. By the operation of s.109 of the Constitution, Yanner could not be convicted and his appeal was upheld.

The *Yanner* decision makes only a modest contribution to the still emerging law on extinguishment of native title, but it seems to carry an important message. The majority joint judgment signals that the cultural and spiritual connection of native title holders to their land, together with a requirement of 'clear and plain intention' to extinguish title, provide a substantial bulwark against extinguishment. Just as freeholders and leaseholders remain freeholders and leaseholders even if parliaments from time to time restrict certain rights or freedoms that those titles confer, so too native title can withstand considerable legislative intervention.

According to the majority, indigenous connection to land runs deep, and merely regulating surface manifestations of that connection, such as use rights like hunting or fishing, will be as ineffective to destroy that connection in law as it is in reality. The common law, always a strong protector of property interests, looks more likely to accord native title holders a similar level of protection after *Yanner v Eaton*. But ultimately it remains a question of close statutory interpretation on a case-by-case basis.

Sean Brennan

Sean Brennan is a Canberra lawyer who has worked on native title issues for a number of organisations since 1994.

ACT

Welcome to the Republic of the ACT

While the past couple of months have seen plenty of political wrangling and government discomfort in the ACT, the most notable item of law reform, or lack of reform, was the ACT's dramatic showing as the only Australian State or Territory to give its unequivocal endorsement of the republican model on offer at the November 6 referendum, with 63% voting Yes.

ACT voters were probably not all that surprised to see their support for a republic confirmed in the count. It might have been something of a shock, however, to find themselves out on a limb relative to the rest of the country (including their rural NSW neighbours). Granted, the ACT was not alone if compared with Federal electorates in metropolitan areas — it was the split between the city and the bush that has yet again been underlined. Of all the states, Victoria put on the best show of support for the Republic (nearly 50% voted Yes), with Queensland and Tasmania being home to the most loyal monarchists. Although the combined ACT and NT vote rivals Tasmania's voter numbers, the Referendum reminded us that the Territories only count towards the national majority of votes.

As the commentators examined the carcass of Referendum 99 to discover what the results might or mightn't mean, the ACT was left to wonder which of the many proffered explanations would best fit its profile.

The Yes and No camps respectively claimed majority endorsement for their causes — everyone's a winner, except for the losers (advocates of genuine constitutional reform?). Some Yes advocates took cover variously under calls for better civics education for the great unwashed and alleged grubby campaigning from the monarchists, while the No supporters were left to ponder whether they alone had heard the voices of rural and regional Australia, or had merely capitalised on a 'unifying' distrust of politicians and city silvertails. So are ACT voters over-educated, or have they just spent too much time fraternising with the country's elected representatives?

Interestingly, while making no such claims for the defeat of the Republic question, the PM cited ignorance and apathy as the probable reasons for the Preamble's defeat. In this respect, at least, the ACT was in step with the country as a whole. Perhaps all commentary on the subject of the Preamble is best summed up by our unofficial poet laureate, Les Murray, who noted with relief that 'the people took it out the back and mercifully shot it'. • **FD**

NSW

Protecting rape counselling notes

The *Evidence Act 1995* (NSW) recognises 'sexual assault communications privilege', which protects communications made in the context of rape counselling if the public interest in preserving confidentiality and protecting the complainant are greater than the public interest in admitting relevant evidence in the accused's defence. In *R v Young* [1999] NSWCCA 166 the NSW Court of Criminal Appeal held that sexual assault communications privilege in the *Evidence Act* does not apply to pre-trial applications, for example on objection to the production of a document on return of subpoena. The *Evidence Act* does not apply to pre-trial applications because the wording in the privilege sections states that the privilege is available when 'evidence is *adduced*'. The *Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 1999* (NSW), assented to on 1 November 1999, will reverse the decision in *Young* to ensure that sexual assault communications privilege can be used in pre-trial applications. • **MK**

Northern Territory

East Timor update

Darwin is still abuzz with military activity and the aid relief project is in full swing. Calls for tenders and expressions of interest for major reconstruction projects abound and already local business is mobile and on the ground doing essential works.

This contrasts sharply with what seems to be a leisurely stroll by the UN on the central issue of investigating human rights abuses. On 30 September, UN Human Rights Commissioner Mary Robinson announced the establishment of an International Commission of Inquiry into the atrocities alleged to have taken place in the immediate aftermath of the Timor vote. On 15 October she named the members of the Commission. On 8 November, three UN envoys unrelated to the Commission reported their serious concern about ongoing abuses.

Amnesty International expressed serious worry in early November over the sluggishness of the UN response, pointing out that the UN had still not placed any forensic experts on the ground at that time. In spite of this, it appears the Commissioner expects a report from her Commission by mid-November. Amnesty have now dispatched their own forensic team to commence the collation of evidence.

All this at a time when the ubiquitous Jamie Shea, mouthpiece for the UN S-For in the Balkans, was under pressure over allegations that S-For had pathetically lost a slew of chances to arrest arch-suspect Radovan Karadzic, the Bosnia Serb leader and the UN's 'most wanted'. This failure is seen by many to signal either an inability or unwillingness by the UN to act decisively.

Will the UN Commission report into East Timor allay fears that the UN is talk but no teeth, or confirm the anxieties of many that it has become too cumbersome and/or ruled by *realpolitik* to act swiftly? • **KB**

Jabiluka

Some of the last cases arising out of the 1998 Jabiluka Blockade were back in Court in Darwin on 8 November. All charges against the five protesters were dismissed.

In one case the prosecution offered no evidence on charges of trespass, apparently because it accepted that the fence erected to keep protesters out of the mineral lease had not been placed on the true boundary. In four other cases the protesters, all of whom were from outside the Northern Territory and were unable to come to Darwin because of work commitments and cost, agreed to plead guilty to a single charge of 'trespass after a warning to stay off' on the basis that the prosecution would withdraw the other charge of 'trespass after direction to leave'. Fortunately this agreement was confirmed in writing by the defence. Although they had technical defences they wished to run, the decision of the protesters to plead was not unaffected by the prosecution's stated intention to claim $3500–$4000 witnesses' expenses plus costs if they were convicted (in contrast to typical penalties of $150–$300). Another reason was that the Supreme Court had earlier held that they could not be defended by a legal representative in their absence because they were on bail.

When the cases were called on, the prosecutor started to allege the charges which he had agreed to withdraw. In the discussions that followed, it transpired that the prosecution felt it could not properly substantiate the charge to which it had agreed to accept a plea. To cut a long story short, the prosecution ultimately elected to withdraw all charges.

Tim Prichard, solicitor at the Darwin Environmental Defender's Office which represented the protesters said: 'We believe that many people charged with minor offences arising out of the blockade were forced to plead guilty in their absence irrespective of the merits of their defences simply because they could not afford to come back to Darwin to defend themselves. However, we discovered that when we did press the defences the prosecution failed in a large number of cases. Of the 11 people we represented, all were acquitted or had their charges dismissed, And of the other 26 or so people we assisted to defend themselves, a substantial proportion was successful. The lesson seems to be: stick to your guns, sometimes you get lucky'!

Tim Prichard

Tim Prichard works at the NT Environmental Defender's Office.

Queensland

The Queensland contribution to the August *DownUnder* column looked at State government proposals to reform the legal profession and at the departure of the Chief Magistrate. Well, it's more of the same four months later.

Legal profession reform — the debate hots up

The Queensland Law Society is campaigning strenuously against the implementation of proposals contained in the Green Paper on Legal Profession Reform. The Green Paper reforms are due to be legislated by the end of this year.

The following are key concerns of the Law Society:

- the Supreme Court (and the Chief Justice in particular) will be required to take a more active role in regulating the profession. One commentator has referred to a 'judicial dictatorship',
- licensed conveyancers will be able to operate in Queensland,
- no reform is proposed to ensure that there is a right to legal representation before tribunals,
- costings of the proposed reforms are not available.

The Queensland Law Society has received support from Shadow Attorney-General, Lawrence Springbourg. Meanwhile, the *Courier-Mail* has been providing very negative press for the Law Society. The past week has seen the following *Courier-Mail* headlines: 'Lawyers' fraud fund triggers audit warning', 'Law group refuses to aid Ombudsman' and 'Law Society rejects payout for widow'. At the same time, the *Courier-Mail* has provided quite favourable press to Attorney-General Matt Foley.

In an interview for the Queensland Law Society journal, *Proctor*, Supreme Court Chief Justice Paul de Jersey has called on the interested stakeholders to co-operatively seek to work together. We'll have to wait and see.

Judicial appointments criticised

Former Chief Magistrate Stan Deer has recently spoken out with concerns about judicial appointments made by Attorney-General Foley. The Attorney-General has appointed 12 women and 11 men to the bench in the past 18 months.

Deer said that Foley was 'more likely to tell you who he's going to appoint, as opposed to (asking) who would you consider'. This follows on from criticism by Court of Appeal Judge Bruce McPherson of inexperienced 'political appointees' who had to be 'carried' by fellow judges.

In response to Deer's criticisms, Foley said 'there have been too few women given a fair go in appointments to the bench previously ... and I'm very proud of the approach to appointments because I think I have broadened the cross-section of talent on the bench'. Interestingly, Queensland Law Society President Peter Carne has supported Foley, describing him as consultative and approving of the 'excellent' appointments and selection process. • **JG**

South Australia

Festival State, dream state

What has been happening in SA? The State government has announced that it will not proclaim its new home invasion laws. Although they were passed only last week the government has decided that life sentences for home invaders will only result in over-crowded prisons and more violence as trespassers will be more likely to fight their way out when cornered than face a life sentence. A government spokesperson added, 'the new laws will also mean that accused persons will more likely plead not guilty and so the whole criminal justice system could become clogged with cases taking much longer to try'. The review of the laws began when Parliament narrowly avoided enacting a provision that would have meant that babysitters who stole from their employees would go to gaol for life. 'It's a backdown', said the spokesperson, 'but people will have to realise that longer sentences just don't make for a better society. Some people

would have all crimes punished by life sentences. But where would we be then?'

In another development the government has also announced a major review of the juvenile justice system. Although a new set of laws were passed in the early 1990s it has been widely reported that the system still discriminates against Aboriginal youth. An even broader concern is that the juvenile justice system is tough on young people generally. 'We have to get this right', said the overworked government spokesperson this week. 'For too long we have been scapegoating young people through passing laws that have more to do with adult attitudes towards youth than the needs of children — and remember they are still children we are talking about, even if we try to label them "youth" in some attempt to make them appear more grown up and responsible.'

In a related move South Australia is to get a Children's Commissioner with broad powers to investigate abuses of children's rights. 'This office will have real teeth', said the almost exhausted government spokesperson. 'The focus will be on the rights of children and what can be done to ensure that the State complies with the terms of the United Nations Convention on the Rights of the Child.' An early indication is that the Commissioner would be asked to investigate draconian school discipline laws, discrimination in the workplace and the participation of young people in local government. 'We have to move from rhetoric to reality', said the spokesperson looking decidedly weary. 'We have to take on the hard cases. For example, I just hope that when those refugees move into Woomera that we can have a close look at children in the camp and make sure that their rights are protected.'

And in a busy week the government announced that it would be abandoning all privatisation programs. 'Too many questions, too many doubts as the Auditor-General says', said the government spokesperson, hoarsely. 'We have to focus on justice, not the bottom line from now on.'

Then I woke up. It was just a dream. My apologies. Look I would like to stay and tell you what has been happening in Adelaide recently but someone has just told me that a traffic light is going to change on South Road and I don't want to miss it. Bye ... • **BS**

Tasmania

On 10 December the Tasmanian *Anti-Discrimination Act 1998* will be proclaimed. The proclamation will also inaugurate the Tasmanian Anti- Discrimination Commission whose first Commissioner is Dr Jocelynne Scutt, an internationally renowned human rights advocate. The Act introduces comprehensive anti- discrimination legislation and repeals the State's *Sex Discrimination Act 1994.*

The Act has had a gestation period of more than 20 years. Ironically, Tasmania was the first of the States to respond to the Whitlam government's human rights push on the international scene in the 1970s. In 1977, then Tasmanian Labor Attorney-General Miller introduced an anti-discrimination Bill which had extensive coverage for its time, including impairment or disability discrimination. However, that Bill lapsed when a Committee found the legislation not to have community support and representing a 'minority standpoint'. Similar Bills were reintroduced in years 1991, 1994, 1996, 1997 and finally in 1998. Though last amongst the States, the Act covers all the grounds covered in other State laws, including sexual orientation and pushes anti-discrimination laws further to include parental status, political and religious belief/activity or affiliation and irrelevant criminal and medical records. A Tribunal with far reaching powers will ensure that the legislation has teeth. The Tribunal's orders are enforceable once registered with the Tasmanian Supreme Court.

On other legislative fronts

There are a number of other interesting legislative proposals currently under consideration in Tasmania.

The *De Facto Relationship Bill 1999* introduces a modern regime in respect of de facto partners. Borrowing heavily from the *Family Law Act 1975* (Cth), the Bill sets out similar grounds which will allow a court to make appropriate orders regarding maintenance and property adjustment. However, the Bill covers only de facto heterosexual relationships of two years or more and does not include same sex relationships, in spite of the recent legislative changes to ban discrimination on the basis of sexual orientation.

The New Criminal Code Amendment Bill 1999 repeals the potentially discriminatory effects of s.126 of *Criminal Code Act 1924*, which presently prohibits all persons from engaging in sexual intercourse with 'insane' persons or 'defectives'. The section prohibits people with psychiatric or intellectual disabilities from engaging in consensual sexual intercourse. Proposed new s.126 makes it illegal for a person responsible for the care of a mentally or intellectually impaired person to have sexual relations with that person. The new offence, however, provides a defence where the mentally or intellectually impaired person consented to the sexual act and the consent was not unduly influenced by the carer.

The *Criminal Code Amendment (Stalking) Bill 1999* alters s.192 of the *Criminal Code Act 1924* to include an objective test of intention. A person accused of stalking will no longer be able to claim as a defence that he or she loved the victim and would never hurt her or him, if in fact the actions had caused physical or mental harm, apprehension or fear, and the accused knew or ought to have known, that his or her behaviour would have that effect.

Finally, the *Judicial Review Bill 1999* radically simplifies the present system of reviewing administrative decisions. Under the Bill any person aggrieved by an administrative decision will be able to apply to the Supreme Court for an order of review. While the Bill's coverage of 'administrative decisions' is broad (and includes a decision made or in the process of being made), the grounds on which an application can be made are essentially those of existing common law that include denial of natural justice, ultra vires, error of law and jurisdictional error.

Launceston Community Legal Centre (ed. GB)

Victoria

Proposed law reforms from the new government

As anticipated, a minority Labor government was formed in Victoria, following the support given to the ALP from three Independent MPs, who hold the balance of power. Former Premier Jeff Kennett subsequently resigned as leader of the Liberal Party and from his seat of Burwood, where a by-election is to be held in December.

Due to the delay in the determination of the new government, as yet there have been no Acts passed by the new parliament. However, there have been several legislative changes proposed by the new government.

New Attorney-General Rob Hulls has announced his intention to introduce into Parliament Bills which would give effect to the conditions set by the Independents for their support of Labor, namely those concerning Upper House electoral terms, freedom of information legislation and the re-instatement of the position of Auditor-General.

Hulls has recently announced that he will introduce reforms recommended by the Victorian Equal Opportunity Commission to end discrimination in current laws against gay and lesbian individuals and relationships on the basis of sexuality. It has been indicated however, that the government would not be likely to support the proposal for lesbians or gay men to have access to fertility treatment (including artificial insemination and IVF) or to adopt children. Recently, a breach of Victoria's *Infertility Treatment Act* (which permits women in married or heterosexual de facto couples to have access to fertility procedures), was committed by two police officers. They falsely asserted that they were living in a de facto relationship, when in actuality, the woman was (and is currently) living with a female partner in a de facto relationship. As well as discriminating against lesbian couples, the current Victorian legislation offers no solution for single women, whether heterosexual or lesbian, wanting to access fertility treatment, unlike its counterparts in New South Wales and Tasmania.

The rank of Queen's Counsel for a senior lawyer in Victoria may be re-named 'Senior Counsel', if a proposal by Hulls is accepted by the government. The change would bring Victoria into line with the new nomenclature adopted in New South Wales. Perhaps the removal of the reference to the term 'Queen' could give effect to the sentiments of Victoria's (or rather Melbourne's) high rate of 'Yes' voters, found in the recent failed referendum on the Republic?

The new government has also endorsed the creation of five supervised drug injecting rooms in Melbourne's growing drug-affected suburbs, with approval required from the relevant city Councils. It has been suggested that the benefits of the rooms include the reduction of harm caused by street drug users, and that the safety of injecting practices could be monitored. So far, two of the five Councils have given their support for the trials.

The Attorney-General has also indicated that funding for the Victorian Law Reform Commission will be re- established, after it was closed in 1992 under the Kennett government. The recommendations of the independent body will hopefully be a source of future progressive law reform — fingers crossed. • **MR**

Western Australia

Law reform WA style

The West Australian Law Reform Commission (the Commission) recently published a Final Report of the Review of the Criminal and Civil Justice System (the Report), available in full text at <http://www.wa.gov.au/lrc/index.html>.

The Report contains 447 recommendations that aim to produce a justice system that 'serves the needs of society.' How are the needs of society to be assessed? Mention is made, in fairly abstract terms, of the importance of qualities such as justice, fairness, comprehensibility, certainty, effectiveness, expeditiousness, 'basic rights' and equality. However, the Report makes no mention of international human rights norms relevant to recommendations. For example, no mention is made of International Convention on Civil and Political Rights Article 14(3)(g) in relation to a recommendation that the right to silence at trial be curtailed.

The Report's discussion of competing policy considerations in relation to some significant recommendations is disarmingly brief. For example, the justification for recommending compulsory disclosure of the defendant's case in criminal proceedings is short enough to be quoted in full: 'removing the inefficiencies of the prosecution anticipating, investigating and disproving matters which are not truly at issue'. No mention is made of competing policy considerations or potential problems with the recommendation arising from expert evaluation of the experience in other jurisdictions (see Corns, *Anatomy of Long Criminal Trials* AIJA, Victoria, 1997, pp.62-65).

The Report states that the 'needs of society' are to be assessed, in large part, by extensive consultation with 'stakeholders'. This is also a suggested criterion for initiating future reform; Recommendation No 3 of the Report proposes regular polling of public attitudes to the justice system. The emphasis on widespread consultation is welcome. However, neither the fact of such consultations or the outcome of those consultations is a substitute for an important *additional* ingredient in sound law reform: mature and transparent consideration of *all* competing policy considerations.

There is not space to do justice to the content of the hundreds of recommendations dealing with: civil procedure; criminal procedure; evidence; ADR, courts administration, the legal profession and the creation of two novel jurisdictions: (1) a Western Australian Civil and Administrative Tribunal; (2) a 'private' court with civil jurisdiction of the Supreme Court in relation to consenting parties. We highlight a couple of items below.

Bouquets: In the 'novel but welcome' category are recommendations directed to the physical environment of courts. Recommendations are made about the importance of architecture, artwork, cafes etc to the quality of justice. Mention is also made of the desirability of courts being separate physical structures from police stations (Recommendation No 397 and following, and 408). Hear! Hear!

Brickbats: In the 'can't be bothered looking at this issue' category is the recommendation of a study on the involvement of indigenous peoples and non-English speakers with the justice system (Recommendation No 405). If the Commission were seriously interested in the involvement of indigenous peoples and non-English speakers with the justice system, there are more than enough recent Australian studies on the topic upon which it would have been possible to ground a large number of useful recommendations: for example, Queensland Criminal Justice Commission report *Aboriginal Witnesses in Queensland's Criminal Courts* (1996); Australian Law Reform Commission Report No 57 *Multiculturalism and the Law* (1992). Boo! Hiss!

This is the first report of the new 'lean, mean and efficient' Commission. The new Commission completed this

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22 years after the first Australian anti-discrimination board was established in NSW. However, Jocelynne says that because it has taken so long to achieve, the Tasmanian legislation is the most progressive in the country, covering industrial discrimination (unlike Victoria) and breast-feeding (unlike everywhere except Queensland). *Girlie* thinks it will be a nice change for Tasmania to be our beacon of anti-discrimination after so many years in the equality wilderness!

'Single' mothers

In a frightening example of where Victoria's anti-discrimination laws fall short, a lesbian police officer who used IVF treatment to have a baby has been charged with breaching the Victorian *Infertility Treatment Act*. She and a fellow male police officer have been charged with giving false and misleading information under the Act after they allegedly posed as a heterosexual de facto couple so that they could enter an IVF program. The Act prohibits 'single' (read 'without man', read 'lesbian') women from accessing fertility treatment and *Girlie* considers it an extraordinary situation that women continue to be denied the right to parent simply because of their sexuality, and are consequently forced into desperate measures to conceive. The Act, according to Sex Discrimination Commissioner Halliday, is clearly discriminatory and *Girlie* hopes that the new Victorian government will take up recommendations by various legal and medical bodies to correct this ridiculous provision quick smart.

Mandatory sentencing

Girlie was appalled to learn of figures released by the Territory Women Lawyers Association that reveal that indigenous women are being gaoled at four times the rate they were before the introduction of mandatory sentencing last year. Under the mandatory sentencing provisions magistrates have no discretion over offenders found guilty of property crimes, with offenders facing a two-week mandatory prison sentence. One woman, a breast-feeding mother, was found guilty of stealing a single can of beer and was separated from her baby during the sentence. The baby never breastfed again after that. The Territory Women Lawyers Association said that the figures were even higher than they had feared.

East Timor

Girlie is full of admiration for over 100 lawyers who volunteered to be part of an ICJ program documenting evidence of atrocities in East Timor by interviewing East Timorese refugees. Our ever generous federal government has denied the lawyers access to the refugees and some lawyers have even volunteered to fund their own fare to East Timor to continue the process over there. It will be a particularly difficult and sensitive project, given the reluctance most East Timorese women will feel about speaking about any sexual violence they have experienced, but *Girlie* wishes them luck!

Les femmes sole

Girlie is taking terrible liberties, but ever since Kirby J used this expression in the *Garcia* decision it has been one of her favourites. It seems however that 'les femmes sole' are not a favourite with the proprietors of famous French Restaurant *Le Fouquet*. This salubrious establishment has taken the Victorian IVF Act's 'woman without man = single' concept and sprinted with it, concluding that 'woman without man = non-accompanied'. The French paper *Le Monde* reported that the restaurant has a security system that selects clientele in order to keep away 'undesirables' and, having been spotted as conspicuously WITHOUT MAN by the cameras, two women were told by a doorman that 'non-accompanied women are not admitted'. *Girlie* is mortified at the one long *faux pas* her life has been — constantly eating without male supervision ...

Festivities

Girlie wishes everyone a fun and feminist festive season, and a misogyny-free millennium.

Milly Neeham

Milly is a Feminist Lawyer.

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reference in 15 months with three part-time Commissioners, a permanent staff of one and 66 consultants, producing a Report over 400 pages long. It is too early to make cost and quality comparisons with the 'old' Commission, but comparison with one of the more 'enduring' reports of the old Commission is interesting. The recommendations in the *Report on Evidence of Children and Other Vulnerable Witnesses* (1991) were largely implemented by the government and have been influential in other jurisdictions. The old Commission completed that 140-page report in 26 months with one full-time Commissioner, three part-time Commissioners, a permanent staff of four and 1 consultant. • **MF & OB**

DownUnderAllOver was compiled by Alt.LJ committee members Olivia Barr, Ken Brown, Fiona Dalton, Martin Flynn, Jeff Giddings, Miiko Kumar, Michael Ryall and Brian Simpson together with invited writers listed under their contribution above.