DownUnderAllOver
Developments around the country

FEDERAL

National legal practice rules

The Law Council of Australia, as part of its National Practice Model Law Project, is currently seeking comments from state and territory law societies on proposed Australian Solicitors Rules. The proposed rules will apply to solicitors rather than barristers. A uniform set of professional conduct rules will ensure conformity across the states and territories and consistency in the legislation regulating the legal profession.

The rules are intended to apply to all solicitors within Australia and to Australian-registered foreign lawyers. The object of the national rules is to 'assist solicitors to act ethically and in accordance with the generally accepted principles of professional conduct established by the common law and as set out in these Rules.' The proposed rules cover many of the current state conduct rules, particularly in relation to the core areas of duties to client, court and the profession. They set out the principle taught to students in the early days of their law studies, that 'a solicitor's duties to the Court and the administration of justice are paramount and prevail to the extent of inconsistency with any other duty'.

The proposed rules include aspects of legal practice that are not covered in, for example, the NSW Professional Conduct Rules, such as dishonest and disreputable conduct, another solicitor's error, inadvertent disclosure, and unfounded allegation of conflict. Other proposed differences that require consideration include advertising and marketing and referral fees. Some NSW Professional Conduct Rules not included in the national draft include the requirement for corporate counsel to comply with legal profession legislation and the compulsory undertaking of MCLE (Mandatory Continuing Legal Education).

The Australian Bar Association is undertaking a concurrent review of the Barristers Rules. Advocacy and litigation rules will be subject of negotiation with the Australian Bar Association in order to achieve consistency of approach between the solicitors rules and the barristers rules.

It is expected that the final draft the Australian Solicitors Rules will be available for public comment later this year with a view to introducing them in 2010. Further information will be available on the Law Council of Australia website <lawcouncil.asn.au/> .

MAXINE EVERS teaches law at UTS in Sydney.

An inaccessible process for 'Access to Justice'

In the last issue we reported the establishment in the Commonwealth Attorney-General's Department of an Access to Justice Taskforce. On 27 May Senator Ludlam of the Greens asked for 'information regarding the taskforce; its terms of reference, who is participating, what its budget might be, how it will relate to/interact with the Senate Inquiry into Access to Justice, and when will it report?'.

The Attorney-General replied, without really answering. Remarkably, the Attorney said that 'the Taskforce does not have specific terms of reference'. In terms surely drafted by 'the hollowmen', the Attorney said that the Taskforce's role 'is to develop a more strategic approach and to make recommendations on ways to improve access to justice for all Australians'. In a speech on 27 July the Attorney-General said that the Taskforce will examine access to justice 'in a holistic way'.

We now know what the Taskforce was up to; its report was released on 18 September, announcing (for the first time) that its purpose was 'to undertake a broad examination of the federal civil justice system'. After 160 (colourful) pages the report makes 57 recommendations for action to improve the operation of the federal civil court system, many of which have much broader application.

For some reason the Attorney's Taskforce began after the Senate Legal and Constitutional Affairs Committee's inquiry into 'Access to Justice' commenced, and has reported before the Senate Committee is due to, on 30 October. The Attorney-General Department's submission to the Senate inquiry did nothing to forewarn of the Taskforce's report, and advised only that it was 'able to provide further information to the Committee as required'. Presumably the Taskforce's report has led to some frantic re-writing of the Senate Committee's pending report.

In July the Attorney told an audience that it is 'important to take a take a wide-ranging view of access to justice', and certainly the Taskforce has done that, although ostensibly limited to federal civil law. The Senate Committee has a wider brief and received wide ranging submissions for achieving access to justice. We can only wait and see what synergies there are between the two reports. The Taskforce's report is available from <www.ag.gov.au>.

SIMON RICE teaches law at the ANU.

Economic, Social and Cultural Rights: review of Australia

The UN Committee on Economic, Social and Cultural Rights recently met in Geneva to review Australia's compliance with the *International Covenant on Economic, Social and Cultural Rights*. The Committee was briefed by a non-government delegation (including representatives from the Human Rights Law Resource Centre, the National Association of Community Legal Centres and Kingsford Legal Centre) on 4 May 2009, and by an Australian Government delegation on 5 and 6 May.

On 25 May 2009, the Committee released its Concluding Observations on Australia. The Committee commended Australia on recent initiatives and advances, including the national human rights consultation, efforts to combat violence against women, and the Apology to the Stolen Generations. However the Committee also made 26 recommendations for Australia to improve its human rights performance with respect to economic, social and cultural rights, in the following areas:

- implementing a comprehensive national human rights legislation that includes the protection of economic, social and cultural rights;
- enacting comprehensive federal anti-discrimination laws;
- strengthening the mandate of the Australian Human Rights Commission to cover economic, social and cultural rights;
- implementing the recommendations of the *Little Children Are Sacred* report with respect to the Northern Territory Intervention;
- realising economic, social and cultural rights for particular groups, including people with disability, asylum seekers and Aboriginal peoples;
- developing a comprehensive poverty reduction strategy;
- ensuring universal and adequate social security coverage and removing the 'conditionalities' associated with the payment of social security benefits; and
- adopting special measures to improve workforce participation among disadvantaged groups.

The Committee also called on Australia to take urgent action to address the human rights implications of climate change and to increase aid to developing countries, the first time that a UN treaty body has included recommendations on these issues in a human rights report.

The Committee's Concluding Observations open as a Word document at <http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-AUS-CO-4.doc.>

BEN SCHOKMAN is a Senior Lawyer with the Human Rights Law Resource Centre

Economic, social and cultural rights: Optional Protocol

In September 2009 the United Nations Optional Protocol to the International Covenant on Economic, Social and Cultural Rights opens for signature. The Optional Protocol establishes three important mechanisms for bringing violations of rights before the UN Committee on Economic, Social and Cultural Rights: an individual communication mechanism, an inter-state complaint mechanism and an inquiry procedure.

On 15 May 2008 Senator Faulkner told the Senate that in the UN Working Group, Australia 'worked closely with like-minded countries, advocating for the development of a workable instrument that recognises the special characteristics of the Covenant'. Despite this, he declined to commit Australia's to ratifying the Protocol, saying only that 'The Government will give consideration to this issue at the appropriate time'. That time has come, and the Australian Government is currently considering its position on whether to ratify, with a decision due by mid-September at the latest.

The Government has consistently stated the importance, as part of its re-engagement with the international human rights community, of Australia playing a leadership role in human rights. If the Government is serious about this commitment, it has an historic opportunity to display its leadership by being part of the first group of States to ratify the Optional Protocol in September.

Now is an opportune time to write to both the Foreign Minister and the Attorney calling for Australia to be part of the first group of States to ratify the Optional Protocol to the ICESCR and bring it into force. The Human Rights Law Resource Centre has made a submission to that effect, available at <www.hrlrc.org.au> > Publications & Resources > Submissions.

EMILY HOWIE is a Senior Lawyer with the Human Rights Law Resource Centre.

Extension for National Human Rights Consultation

The Attorney-General has granted a one month extension to the reporting date of the National Human Rights Consultation. The Committee will now report to Government by 30 September 2009.

According to the Attorney, the Committee requested a short extension to ensure that it has sufficient time to consider all of the views expressed by the community during the consultation. The Committee has undertaken a broad and extensive consultation process, receiving around 40 000 written submissions and conducting 66 community roundtables in 52 locations across Australia.

PHIL LYNCH is Director of the Human Rights Law Resource Centre.

Parliamentary procedures to promote human rights

The Federal House of Representatives Standing Committee on Procedure is conducting an Inquiry into the effectiveness of House Committees. On 1 July 2009, the Human Rights Law Resource Centre made a submission which focuses on the second and fourth of the Committee's Terms of Reference namely, 'the type of work being undertaken by committees' and 'the powers and operations of committees'. The HRLRC considers that parliamentary committees should play a more significant role in the promotion and protection of human rights in Australia.

In addition to considering Australia's international human rights obligations in this regard, the submission also considers the operation and effectiveness of parliamentary human rights scrutiny mechanisms in other jurisdictions, and concludes that Parliament should establish a Joint Parliamentary Committee on Human Rights to lead parliamentary engagement with and understanding of human rights issues.

The submission is available at <www.hrlrc.org.au> > Publications & Resources > Submissions.

RACHEL BALL is a lawyer with the Human Rights Law Resource Centre.

AUSTRALIAN CAPITAL TERRITORY

ACT Law Society joins the CPD trend

The Law Society of the ACT has finally taken the plunge and joined the countrywide move to require Continuing Professional Development ('CPD') for holders of practising certificates. The

decision has come after what appears to have been a long and at times heated debate over the utility of such a requirement.

As of 1 July 2010 all legal professionals in the ACT who apply to obtain or to renew their practising certificate will have to show that they have completed 10 CPD points during the Law Society's fiscal year, which runs to 30 March. Consequently, there will be one more item in our diaries to remind us of administrative legal obligations at a time that is inconsistent with other annual tasks like income tax returns.

The Continuing Legal Education Committee of the Law Society will propose an implementation model to the Law Society's Council. The proposal includes a discretion to disapprove a claimed CPD point on the grounds of irrelevance, inappropriateness, or being otherwise unacceptable as development material. Notwithstanding this, the Law Society does not plan to establish an approval system for the CPD courses on offer, and legal practitioners will be at liberty to choose the CPD course or material that would be best suitable for them.

On average it will cost approximately $700 to $1200 to complete 10 CPD points. CPD becomes more expensive closer to the end of the year in February and March: those who have left the collection of CPD points until the last possible day will have to deal with the CPD service providers and their '10 points CPD Blitz in one day' service at a significant cost.

Whether such a requirement will in fact improve a practitioner's knowledge or competence to any meaningful extent remains unknown. What real and practical role compulsory CPD training has had in the development of legal practitioners in other jurisdictions also remains a complete mystery. Registered migration agents have the same CPD requirement, yet recent studies have demonstrated an alarming perception among consumers of a decline in migration agents' competency in the last few years. In part to improve the agents' knowledge by force, the Migration Agents Registration Authority imposes an additional requirement for renewal of an agent's practising certificate: agents are to submit a proof of purchase of subscription to one of the Research Service providers, like LexisNexis!

What is certain however, is that community legal centres (CLCs) will face higher costs of holding practising certificates. This change could not have come at a more difficult financial time for the CLCs. The cost of CPD points will be an additional burden the CLCs who are already stretched to the limit, and their employed practitioners who have sacrifice the possibilities of significant financial reward to remain in the community sector.

One cannot help but wonder whether sound education prior to certification would be a better and cheaper option for teaching lawyers to be responsible for their own professional development.

JALEH JOHANNESSEN is a senior solicitor at the Welfare Rights and Legal Service in Canberra.

NEW SOUTH WALES

Self-incrimination before the Independent Commission Against Corruption

In May 2009 the NSW Parliamentary Committee on the Independent Commission Against Corruption (ICAC) held public hearings on a proposal to amend s 37 of the *ICAC Act*. Section 37 requires witnesses to answer all questions, and produce all documents, that are relevant to the proceedings, even if the answer or document may incriminate the person. If the witness objects, the answer or document will still be required, however it will not be admissible against them in any proceedings except for other proceedings under the *ICAC Act*.

The proposal is to amend s 37 so that incriminating answers or documents can be used against the witness in civil or disciplinary proceedings. The proposal does not intend to make the incriminating evidence admissible in criminal proceedings, although arguments were put to the Committee that it would still be possible to use the evidence by indirect pathways in criminal proceedings.

The Issues Paper and the arguments made at the public hearings seek to strike a balance between the public interest in exposing corruption, and the public interest in preserving the privilege against self-incrimination.

The primary purpose of the ICAC is to investigate corruption that would be otherwise difficult to discover or expose, and a secondary function is to gather evidence that would be admissible in criminal prosecutions. In proposing the amendments, the ICAC argues that where evidence is disclosed of misconduct by public officials, including their own admissions, civil and disciplinary proceedings against those officials might fail unless the Act is reformed.

The privilege against self-incrimination has a long history in the common law, and goes to the fundamental principles and protections that operate in an adversarial system of justice. However, the privilege can be abrogated by statute, as has already been done in other anti-corruption commissions similar to the ICAC, including the NSW Police Integrity Commission, the Queensland Crime and Misconduct Commission, the WA Corruption and Crime Commission, and the Commonwealth Law Enforcement Integrity Commissioner.

The NSW Premier has asked whether the proposed amendment could distract the ICAC into focussing upon evidence admissible in civil and disciplinary proceedings, instead of pursuing evidence for criminal proceedings where the abrogation of the privilege would not directly apply. The Committee also needs to consider whether the enactment of the proposed changes would make the ICAC less effective in investigating corruption because witnesses would be less likely to cooperate or tell the truth.

All of the documents relating to the proposed amendments can be found at: <parliament.nsw.gov.au> Committees > ICAC Committee > Inquiries.

Bail reform and juvenile justice in NSW

Recent figures from the NSW Bureau of Crime Statistics & Research (BOCSAR) show that the amendments to the NSW *Bail Act 1978*, introduced in December 2007, have increased the number of juveniles on remand in NSW. As a result, the Attorney General has promised to 'clarify' the *Bail Act*.

In 2007, s 22A of the *Bail Act* was introduced to ensure that applicants had only one opportunity to seek bail, unless they were not legally represented at their first application, or 'new facts or circumstances' had arisen since their first application. The intention of the amendment was to prevent accused people from 'judge shopping', in what the Attorney-General, John Hatzistergos, said were 'repeat and frivolous' bail applications.

Legal aid advocates, advocates for Indigenous and juvenile bail applicants, and criminal law scholars all regarded the amendments as having a punitive effect on people who had not been convicted of offences, with particularly harsh outcomes for young people whose personal circumstances made it more likely that they would be remanded into custody until a court had heard the charges against them. The BOCSAR report shows that the amendments have, in fact, led to a growth in the juvenile remand population. (See item below).

Between 2007 and 2008, the juvenile remand population grew by 32 per cent, and the cost of keeping juveniles on remand grew by 29 per cent, from $36.7 million to $47.2 million. Prior to the amendments, juveniles spent an average of 10-15 days on remand; the current period is now close to 35 days. BOCSAR attributes these increases to two factors: the increased rate of police arresting juveniles for breach of bail, and the increased length of time served on remand by juveniles. The most common breaches of bail conditions are curfew breaches and breach of the requirement to be accompanied by a parent. Only in a minority of cases is bail breached by the commission of a fresh offence.

The Attorney-General, acknowledging these figures, blamed lawyers' 'narrow interpretation' of the legislation for preventing applicants with genuinely new circumstances from applying for bail. As a result, he said, the Government will clarify the legislation, enabling fresh applications to be made wherever there are new facts or circumstances, including 'new information'. This new information could include a report from the Department of Juvenile Justice or the Department of Community Services.

The Attorney also announced that in order to provide alternatives to remand for young people, the Department of Juvenile Justice will be allocated $7.3 million to develop a bail hotline for an after-hours bail placement service.

The Attorney's announcement can also be seen in the light of a decision of the Supreme Court of NSW in late 2008, in which the Department of Juvenile Justice had argued that crowding in juvenile detention, caused by the bail amendments, justified the transfer of juvenile detainees to adult prisons. The Court, in *ID, PF and DV v Director General, Department of Juvenile Justice and Anor* [2008] NSWSC 966, held that the Department had denied procedural fairness to these prisoners by transferring them to achieve population control within the prisons, disregarding factors relevant to each detainee in support of their continued detention in a juvenile facility.

The BOCSAR figures are available at <www.bocsar.nsw.gov.au> > Publications.

KATHERINE BIBER teaches law at UTS in Sydney.

No need to privatise prisons?

There has been a steady increase in both the adult and juvenile remand populations in NSW over the last few years. This increase has coincided with various amendments to the *Bail Act 1978*, including extending the presumption against bail to serious and repeat offenders and the restricting the number of bail applications that can be made in any court (see previous item). The resulting increase in the remand population has placed significant strain on the Department of Corrective Services.

The NSW Government had announced plans to privatise Cessnock and Parklea prisons, citing cost savings in the overtime and sick leave budgets of prison officers. In May 2009, amid protests from prison officers and inmate advocacy services, the Government abandoned plans to privatise Cessnock prison, but not Parklea, which is to be sold to a private operator. In June 2009 a NSW Upper House committee reported on its inquiry into the privatisation of prisons and prison-related services.

The Upper House Inquiry did not reject the policy of privatising prisons but made 18 recommendations, among them recommendation 3: 'that the Department of Corrective Services publish details of its costing methodology, focusing on the allocation of departmental overheads to both public and private New South Wales prisons'. In other words, the Government ought be more transparent in presenting cost savings in departmental overheads.

But the cost savings in privatising prisons may be a superfluous argument: if the remand population was decreased there would be less strain on the Corrective Services budget.

The Upper House Inquiry report is available at <parliament.nsw.gov.au/> Committees > General Purpose Standing Committee No 3 > Reports. The NSW Government's response is due by 5 December 2009.

LESLEY TOWNSLEY teaches law at UTS in Sydney

QUEENSLAND

The Fitzgerald Report and police corruption, circa 2009

The Fitzgerald Report was submitted to the Queensland Parliament on 3 July 1989, detailing corruption on the part of politicians, police officers, business identities, lawyers and companies. The report ushered in a wave of governance and justice reform in Queensland, including the establishment of a standing commission to investigate corruption, today known as the Crime and Misconduct Commission (CMC).

As if to remind everyone that the task of addressing corruption is never finished, the CMC chose the month of the 20th anniversary of the Fitzgerald Report to release a report, *Dangerous Liaisons*, which implicates 25 police officers in corruption or misconduct with prisoners. Three officers are facing criminal charges, and the others disciplinary action (a number have resigned from the force already). Although the corruption uncovered is isolated, the CMC has warned that despite the change in police culture which has occurred since 1989, it is inevitable that as time passes ' "slippage" in the ethical standards of our police will occur'.

The report comes very shortly after the conviction and sentencing of former Beattie government minister Gordon Nuttall, who was found guilty of corruptly receiving $360 000 from two prominent businessmen while serving as a minister, and has been sentenced to seven years' jail. The two implicated businessmen face trial later this year.

The CMC report is available at <www.cmc.qld.gov.au> > Publications.

Mulrunji's Death-in-Custody (Pt V)

Readers may recall this column's reports on the death, in late 2004, of Mulrunji (Cameron Doomadgee) in the Palm Island watchhouse. (See DownUnderAllOver, Vols 32(1) and (3), and 33(2) and 33(4)) In the latest development in this tragic saga,

the Queensland Court of Appeal has set aside a key finding of the original coronial inquiry into Mulrunji's death — that the injuries which led to the death of Mulrunji were caused by Senior Sergeant Chris Hurley's punching Mulrunji. The Court also ordered that the inquest be re-opened, and that a different coroner be appointed (see *Hurley v Clements & Ors* [2009] QCA 167).

According to *The Australian* (17 June 2009), the re-opened inquest is likely to take place in Townsville in November. The Crime and Misconduct Commission is still reviewing a police ethical standards unit report into the death, with no report imminent. It is now more than four and a half years since Mulrunji's death.

STEVEN WHITE teaches law at Griffith University.

SOUTH AUSTRALIA

A new *Mental Health Act*

In June 2009, the *Mental Health Act 2009* (SA) was assented to by the South Australian Governor. The Act replaces the *Mental Health Act 1993* (SA), and follows from a 2005 report entitled 'Paving the Way – Review of Mental Health Legislation in South Australia', which set out key recommendations for bringing South Australia's mental health law into line with contemporary standards.

The *Mental Health Act 2009* (SA) is built on many of those recommendations, and seeks to provide a modern framework for providing care and treatment to people with serious mental illness. While the Act provides for the treatment of voluntary patients, it is primarily designed for treating patients on an involuntary basis either under a Community Treatment Order or a Detention and Treatment Order.

The Act has a new focus on rehabilitation and recovery, and makes provisions to ensure that patients' freedom, rights, dignity and self respect are protected as far as is possible.

Children are now better protected under the Act, as they are expressly mentioned and attract additional rights and protections. For instance, the Act specifies that children should be cared for and treated separately from other patients. Additionally, services provided to children must take into account the different development stages of children. Children should also be consulted in the development of their own Treatment and Care Plans.

Treatment and Care Plans have been introduced to ensure that treatment is correct, comprehensive, and rehabilitation focused. The plans provide for individualised treatment and care, and govern the treatment and care of voluntary patients and also those under higher level Community Treatment Orders and Detention and Treatment Orders.

In defining who a relative is for the purpose of the Act, Aboriginal and Torres Strait Islander kinship rules are now recognised. The Act also specifies as a key principle that services for:

> patients of Aboriginal or Torres Strait Islander descent, [should] take into account the patients' traditional beliefs and practices and, when practicable and appropriate, involve collaboration with health workers and traditional healers from their communities.

It is now easier for Community Treatment Orders to be made (where appropriate) in place of a more restrictive Detention and Treatment Order. This is in line with the Act's goal of providing the best treatment and care in the least restrictive way.

The Act established the position of the Chief Psychiatrist, replacing the old position of Chief Advisor in Psychiatry. This new position comes with new functions, including promoting continuous improvements to South Australian mental health services, and monitoring the treatment of patients. The Chief Psychiatrist may also, with Ministerial approval, issue binding standards regarding patient care and treatment.

Another new position is that of the Principal Community Visitor who, along with Community Visitors appointed by the Governor, has the primary function of visiting and inspecting treatment centres, referring on matters of concern, and acting as an advocate for patients.

Most of the changes from the old Act go towards ensuring that those with serious mental illness get the care and treatment they need, with as little curtailment of their rights and dignity as possible.

JEREMY DAVID BROWN is a law student at Flinders Law School.

A new *Equal Opportunity Act*

South Australia's anti-discrimination laws have lagged behind the rest of Australia for some years, in both procedures and substantive provisions. A Bill to update the 1984 *Equal Opportunity Act*, first introduced in 2006, has finally been passed, but not without compromise. The SA Attorney-General says that 'two years of discussion between the Opposition and the minor parties' led to the 'watering down of the Bill'.

The Bill that was finally passed is the Equal Opportunity (Miscellaneous) Amendment Bill 2009, and it drops the vilification provisions that had been in the original 2006 Bill. It does however extend discrimination protection to a range of people including carers, contract workers, people with learning difficulties, breastfeeding mothers and people wearing religious dress.

But after three years in the making the changes are still not in place: a commencement date for the new law is yet to be fixed.

SIMON RICE teaches law at the ANU.

TASMANIA

Judicial Appointments

Following widespread criticism of the Government's non-appointment of a magistrate in 2007, the Bartlett Government recently announced a new protocol for judicial appointments, which it is hoped will significantly reduce the opportunity in future of the process being politicised.

In 2007 the then Attorney-General Steven Kons, who had already signed a document recommending an appointment to the Magistracy, did not follow through with the appointment following a phone call from the Premier's office, and the document was subsequently shredded. A parliamentary committee found that the Government and senior members of the public service had interfered in the judicial appointment process, and called for the Government to significantly strengthen that process.

The new process requires that all vacant positions for the Tasmanian Magistrates and Supreme Courts be widely advertised and filled according to selection criteria. A

selection panel, which will include a representative of the legal profession, will be responsible for interviewing candidates and making recommendations to the Attorney-General. The new protocols were launched in a timely manner with three of Tasmania's 13 Magistrates having recently retired and Supreme Court Justice Pierre Slicer announcing that he will be retiring in September 2009.

The Protocol for Judicial Appointments is available at <justice.tas.gov.au/corporateinfo/policies/protocol_for_judicial_appointments>.

Dying with Dignity

In other law reform news, Nick McKim MP, the leader of the Tasmanian Greens, has tabled a Private Member's Bill to decriminalise and regulate voluntary euthanasia for terminally ill people in Tasmania. The Dying with Dignity Bill 2009 was launched shortly after a new survey found overwhelming support in Tasmania for euthanasia law reform.

A poll commissioned by Nick McKim found that more than three-quarters of those interviewed were in favour of changing the law to allow voluntary euthanasia for the terminally ill. Mr McKim was reported in *The Mercury* as saying that the Bill specifically addressed many of the concerns raised against the decriminalisation and regulation of voluntary euthanasia for the terminally ill:

> It includes some very stringent safeguards, including the requirement that you have to be over 18, there are significant cooling-off periods built in, you have to be assessed by a number of medical experts including a psychiatrist to confirm that you are mentally competent to make the decision, and there are clear sanctions for anyone attempting to influence a doctor's decision.

The government has referred the Bill to a parliamentary committee, with recommendations to be released on 2 October 2009. The Bill is at <www.austlii.edu.au/au/legis/tas/bill/dwdb370200924 1/>.

NOELLE RATTRAY is solicitor at the Hobart Community Legal Service. **BENEDICT BARTL** is solicitor in Tasmania.

VICTORIA

New Victorian *Coroners Act*

Victoria is recognised as a leader in progressive Australian coronial practice, and another significant wave of coronial law reform commences on 1 November 2009. The reform follows a sweeping review of the Victorian coronial jurisdiction by the Victorian Parliamentary Law Reform Committee, which published its final report into the *Coroners Act 1985* (Vic) in 2006. This process has culminated in the *Coroners Act 2008* (Vic).

The new Act rejuvenates and modernises the coronial system and seeks to build on the modern preventative role of coroners. A key move has been to legislatively enshrine death prevention as a function of the coronial system, by explicitly stating that the Act's purpose is 'to contribute to the reduction of the number of preventable deaths and fires through the findings of the investigation of deaths and fires, and the making of recommendations'. The Act establishes the Coroners Court as an inquisitorial court, and establishes Australia's first Coronial Council, to advise and make recommendations to the Attorney-General.

Such reforms highlight that an important aim of the new legislation is to reduce the number of preventable deaths. The new Act requires that advice and recommendations of the Coronial Council be about 'matters relating to the preventative role' played by the Court, and about how coronial practices engage with families and respect cultural diversity. Another theme of importance in the legislative reforms emphasises the need to have regard to factors such as the distress that death can cause to family, friends and the community; exacerbation of that distress by unnecessarily lengthy or protracted coronial investigations; the different beliefs and practices surrounding death of different cultures; and the need to keep family members affected by a death informed of the particulars and progress of the investigation.

Reforms in 2004 were intended to respond to the discovery that multiple child deaths in a family had gone unnoticed. But those reforms captured child deaths that bore no risk indicators for child protection, and the new Act refines those provisions. Another important issue addressed by the new Act is public accessibility to coronial findings and the visibility of coroners' decisions; the new Act requires comments and recommendations made following an inquest to be published on the Internet.

Much has been written about the impossibility of coronial recommendations preventing death unless responses to the recommendations are mandatory. Initially the Coroners Bill 2008 made no provision for mandatory responses, but debate on the Bill culminated in last minute amendments requiring public statutory authorities or entities to respond to prevention recommendations within 3 months, and to specify a statement of action they will take, all of which will be published on the Internet.

In addition to the legislative reforms, the Victorian Government has established a Coroner's Prevention Unit as a four-year pilot, to assist the Coroner in formulating death prevention recommendations and to help monitor and evaluate them.

REBECCA SCOTT BRAY teaches socio-legal studies at Sydney University.

Discrimination exceptions inquiry by the Scrutiny of Acts and Regulations Committee

The Victorian Scrutiny of Acts and Regulations Committee is inquiring into whether any amendments should be made to the exceptions and exemptions in the *Equal Opportunity Act 1995* (Vic).

In their joint submission to the inquiry, PILCH and the Human Rights Law Resource Centre noted that the permanent exceptions have facilitated and condoned discrimination, and called for the repeal of the permanent exceptions on the grounds that they are overly broad, have institutionalised systemic discrimination, do not adapt to natural shifts in community values, and do not allow for a balancing of rights when particular rights conflict.

The submission called for the repeal of the permanent exceptions in the Act, and recommended that individual exemption be granted on a discretionary basis having regard to factors set out in section 7(2) of the Victorian Charter of Human Rights. As well, the submission supported the recommendation of the Gardner Review that the Act be amended to reflect the legal distinction between permissible discrimination and temporary special measures.

The Committee's inquiry webpage is at <www.parliament.vic.gov.au/sarc/EOA_exempt_except/default.htm>.

SIMONE CUSACK is a lawyer with PILCH (Vic).

WESTERN AUSTRALIA

New 'name and shame' laws proposed for juvenile offenders in WA

The WA Government is drafting legislation that will provide for young offenders to be named. The proposed legislation was an election promise by the Liberal government which vowed to 'toughen up' the juvenile justice system if elected.

It is currently an offence in WA to name juvenile offenders. The proposed laws could allow the news media to identify and publish photographs of juvenile offenders, and could permit courts to impose prohibitive behaviour orders, including banning juveniles from the scene of their crime. Proponents of the proposed laws claim that juvenile offenders who commit serious crimes should be held accountable for their actions, that public safety would be increased if the public are aware of the identity of repeat juvenile offenders, and that the 'naming and shaming' of juvenile offenders will act as a deterrent.

Not surprisingly, the proposed laws have been slammed by critics. The shadow Attorney General, John Quigley, has suggested that rather than having a deterrent effect, the naming of juvenile offenders and publication of their photograph may be something of a 'badge of honour' and may indeed encourage more criminal activity. What is of genuine concern, however, is that the proposed laws are clearly antithetical to the rehabilitation of juvenile offenders and contrary to international human rights standards.

WA Attorney General, Christian Porter, has advised that it is likely the legislation will be introduced to Parliament later this year.

ALANA McCARTHY is a Perth lawyer.

West Australians feel reverberations caused by the end of the property and mining boom

The global financial crisis has affected, and will continue to affect, West Australians. ASIC has reported that last year not only did court-ordered liquidations increase dramatically in WA, but that voluntary administrations increased by 42.72 per cent, indicating a weakened corporate morale. The ever-increasing rise in corporate redundancy only adds to this sense of corporate gloom. Not only has the legal and commercial world been hit with a steady increase of companies entering into liquidation, but the economy has seen the price of gold plunge dramatically, an issue which will affect the WA economy with the introduction of new gold mines in rural WA.

In situations of weakened resolve such as the present, the people of WA are clinging to large schemes, specifically gold mines, which are to be opened in the state and which bring with them the promise of employment and increased wealth. People may place their hope in a potential surge of jobs, but will schemes such as the two new gold mines bound for rural WA – Boddington and the AngloGold Ashanti and Independent Group joint venture – actually deliver relief, or will the decrease in gold prices lead to further commercial disappointment?

LAUREN SEPAROVICH is a law student at the University of Western Australia.