Judge Jones in the *Hakopian* case in Victoria, at first instance, gave a reduced sentence to the rapist of a sex worker based on an assumption that sex workers suffer less trauma from rape.[10] This case highlights the particular issues confronting sex workers in the courts in terms of detrimental stereotyped judgments made by an uninformed judiciary.

The increased health and welfare services proposed for sex workers will not be sufficient to reach workers in an underground, unstable industry. What use is educating general practitioners to ensure appropriate service provision if sex workers and clients choose not to disclose their occupation or sexual activity because of fear of prosecution? Government guarantees of confidentiality are not enough when that same Government has deemed one's livelihood illegal.

Measures are proposed to ensure that safe sex materials are not admissible as evidence. However, this does not address the underlying difficulty created by the illegal status of the sex industry in disseminating education and resources for safer sex, and in safeguarding against harassment and discrimination for possessing them.

## What next?

The time for lobbying seems almost at an end. Opposition policy holds no strong position on prostitution law reform apart from a commitment to effective spending of public moneys on police resources. This could be utilised to generate strong criticism of the package since there are many indications that this is not going to be a cost-effective approach.

It seems the Goss Labor Government will fail to meet the challenge of an informed and sensible approach to regulation of the sex industry in Queensland. In this context of structural disadvantage and discrimination, workers in the sex industry and their support networks will continue to work to ensure that the needs of sex workers are made known and met.

*Meg Vann works at the Women's Legal Service, Brisbane.*

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# MISCARRIAGE

# Compensation for wrongful imprisonment

## JOHANNA SUTHERLAND discusses the Kelvin Condren case.

Whether those who have been dealt with wrongly by the criminal justice system in Queensland should be compensated by the Crown is a highly discretionary matter. There are no guidelines publicly available by which potential claimants can assess their compensation prospects.

On 2 October 1993, it will be ten years since Kelvin Condren was wrongfully charged with murder. There have since been committal proceedings, a Supreme Court trial, two hearings by the Court of Criminal Appeal, a partial hearing by the High Court, two unsuccessful petitions to the Queensland Governor for a pardon, the entry of a *nolle prosequi* by the Director of Prosecutions, and an inquiry and report by the Criminal Justice Commission (CJC). Kelvin Condren has spent nearly seven years in prison.

New evidence has rendered his 1984 conviction (*Condren* (1987) 28 A Crim R 261) a miscarriage of justice. The Queensland Court of Criminal Appeal in 1990 unanimously set aside his murder conviction, and found by majority that there had been and would be a miscarriage of justice unless the new evidence available from three new witnesses was properly considered by a jury hearing the charges (*Condren* (1990) 49 A Crim R 79). Earlier the High Court was also strongly persuaded that the new evidence would likely lead to an acquittal.[1] The fact that the Criminal Justice Commission inquiry and report[2] found that the available evidence did not support further consideration of criminal or disciplinary charges against particular police officers involved in Condren's case should not detract from Condren's claim to compensation for wrongful imprisonment.

In the United Kingdom the Government has incorporated part of its *ex gratia* scheme into law in order to comply fully with the International Covenant on Civil and Political Rights (ICCPR), Article 14(6), and the criteria for *ex gratia* payments are on the public record. Compensation applications can proceed under two schemes. Under s.133 of the *Criminal Justice Act* 1988 (UK) the Home Secretary can authorise compensation where a conviction has been quashed following an appeal made outside the normal time limit, or following his or her decision to refer a case to the Court of Appeal under s.17 of the *Criminal Appeal Act* 1968. But to qualify a decision must be based on a new or newly discovered fact which shows beyond reasonable doubt that there has been a miscarriage of justice and the non-disclosure must not be wholly or partly attributable to the convicted person. Under a non-statu-

tory scheme compensation can be paid where a wrongful charge or conviction, and imprisonment, has resulted from serious default by a police officer or some other public authority. Compensation may also be payable where facts emerge at trial that completely exonerate the accused.[3]

International human rights standards are narrow but it would nevertheless be consistent with the spirit of Article 14(6) of the ICCPR to award compensation to Condren. Article 14(6) provides:

> When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

When ratifying the ICCPR, Australia entered the following reservation:

> . . . that the provision of compensation for miscarriage of justice in the circumstances contemplated in paragraph 6 of Article 14 may be by administrative procedures rather than pursuant to specific legal provision.

Under Article 14(6), to be a final decision it must be one which is no longer subject to appeal.[4] Having reviewed the history of the drafting of the Covenant and the interpretation given to comparable European provisions, Kaiser has concluded that the essence of 'final decision' is non-reviewability.[5] In the *Condren case*, the narrow 'final decision' requirement appears to be unsatisfied as the adjourned High Court hearing and subsequent reference back to the CCA were appellate and review procedures still available after the erroneous 1984 conviction.

To maintain confidence in the criminal justice system, however, it is important that miscarriages of justice are seen to be redressed and that all relevant guidelines are made public. Acquiescence with the rule of law entitles citizens not to be charged and convicted for crimes which they did not commit. The absence of positive proof of innocence should not detract from the merits of compensation applications since all citizens enjoy a presumption of innocence until proven guilty beyond reasonable doubt. In New South Wales, Paul Alister, Ross Dunn and Tim Anderson are reported to have been awarded compensation despite the reported absence of a clear conclusion of innocence.[6] It is also anomalous to have compensation schemes for the victims of crime when the victims of miscarriage of justice often remain uncompensated.

For the other 80 people who are reported to be seeking a review of their convictions and imprisonment because of the alleged verballing and fabrication of evidence which was found to be rife by the Lucas Committee and Fitzgerald Inquiries, compensation is most unlikely.[7] Now it appears that only those who are still in gaol and who did not raise the allegations of verballing before their jury will be able to have their cases referred to the Criminal Justice Commission for investigation, thereby disentitling many to relief.[8] The Government is reported to have abandoned its proposed Remediation of Miscarriages of Justice Unit to review these cases, and compensation payments may also never eventuate.

*Johanna Sutherland teaches law at James Cook University.*

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# ABORIGINAL HERITAGE

# A new partnership?

## BRUCE WHITE and JOHANNA SUTHERLAND report on the new Office of the Queensland Parliamentary Counsel and its first interaction with the Rainforest Aboriginal Network.

The *Legislative Standards Act* 1992 (Qld) has conferred important functions on the newly established Office of the Queensland Parliamentary Counsel (OPC). Its new function of drafting legislation to accommodate Aboriginal and Islander tradition is particularly important, but it is one which the OPC may be ill prepared for, given its unfamiliarity with, and remoteness from, that tradition.

The Act was introduced following recommendations by the Electoral and Administrative Reform Commission (EARC) that the OPC should be a statutory office so as to substantively and symbolically reinforce the independence of drafting staff consistent with their role in providing independent advice and ensuring quality control standards in legislation.[1] EARC's recommendation followed an earlier comment in Commissioner Fitzgerald's report that 'Parliamentary Counsel . . . should not tailor advice to political expediency or fail to point out fundamental errors in principle or obligation . . . '[2]

The Office is now expected to behave as an independent, statutory body with a responsibility to advise government on legislative standards, such that government is clearly aware of any threat to individual rights or liberties (fundamental legislative principles).

EARC had intended that by requiring Aboriginal traditions to be specifically addressed by drafters, the effective and efficient functioning of the OPC would ensure that any overrid-