

6. See Mackay, M., 'Law, Space and Justice: A Geography of Aboriginal Arrests in Victoria', in *People and Place* (1996) 4 (1) *People and Place* 28-9.
7. Aboriginal Affairs Victoria, 'Royal Commission Into Aboriginal Deaths In Custody: Victorian Government 1994 Implementation Report', Department of Health and Community Services, Melbourne, 1995, p.100.
8. Aboriginal Affairs Victoria, above, p.100.
9. Victorian Legislative Council, 1991, p.1739.
10. Jan Wade in Legislative Assembly, 1991, p.688-9.
11. Harding, R.W., Broadhurst, R. Ferrante A. and Loh, N., *Aboriginal Contact with the Criminal Justice System and the Impact of the Royal Commission Into Aboriginal Deaths In Custody*, Hawkins Press, Sydney, 1995, pp.87-8.
12. James, S., 'We Don't Have the Aboriginal Problem': Local Responses to Public Drunkenness', Unpublished Honours Thesis, Department of Criminology, University of Melbourne, 1992. For a brief description of this thesis, see James, S., 'Aboriginal People, Local Government, and Public Drunkenness in Victoria', in (1994) 18(1) *Humanity and Society* 39-52.
13. Aboriginal Affairs Victoria, above, p.101.
14. James, above, p.11.
15. House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 1994, *Justice Under Scrutiny: Report of the Inquiry into the Implementation by Governments of the Recommendations of the Royal Commission Into Aboriginal Deaths In Custody*, AGPS, Canberra, p.133.
16. Recommendation 82 of the RCIADIC states '[t]hat governments should closely monitor the effects of dry area declarations and other regulations or laws restricting the consumption of alcohol so as to determine their effect on the rates of custody in particular areas and other consequences'.

HUMAN RIGHTS

The 'loophole' in victims compensation

TIM ANDERSON argues for the rights of prisoners convicted of serious crimes

Bipartisan moves in New South Wales to exclude prisoners from the State's victims compensation scheme will most likely violate Australia's human rights obligations, and this will draw the Federal Government into an international legal challenge.

NSW Premier Bob Carr and Opposition Leader Peter Collins have both said they want to close the 'loophole' which allows, for example, a person convicted of murder to claim compensation for a serious assault suffered whilst in jail. Both politicians have said it is outrageous that Andrew Garforth, the convicted killer of Ebony Simpson, and former hotelier Andrew Kalajzich, should be able to make a claim. Garforth was severely bashed in jail by other prisoners, while Kalajzich, jailed for the killing of his wife, was stabbed at Lithgow Jail.

Undoubtedly many people will feel great sympathy with moves to deny ordinary rights to those convicted of horrific crimes. However the NSW Council for Civil Liberties has decided to support a challenge to the United Nations Human Rights Committee, under the International Covenant on Civil and Political Rights, if new laws entrench discrimination and

violate the principal of equality before the law. The Federal Government would then have to decide whether to support the State laws, or abandon them and protect Australia's reputation on human rights. When Tasmania's anti-gay laws were challenged, the Keating Government chose the latter course.

The Council for Civil Liberties will support a challenge, despite its unpopularity, because it recognises that human rights are often eroded with popular support. It is easy to support the rights of those with whom one sympathises; but human rights only have meaning when they are universal, and rights are easily corroded by populist attacks on unpopular citizens.

Are those convicted of murder entitled to be called citizens? If you support the international agreements on human rights: yes, certainly. The arguments against denying rights, and victims compensation, to those convicted of serious crimes are these:

- there is a popular but false dichotomy between 'victims' and 'criminals' — many people are both;
- when the state imposes punishment for a crime, it demands that a person accepts responsibility for his or her actions — yet no democratic society can demand responsibility without also protecting rights;
- the moral argument for rehabilitation disappears if those already serving prison sentences are also denied basic civil rights;
- just as there should not be 'worthy' and 'unworthy' rape victims, so making this distinction is dangerous in victims compensation.

The current political arguments against compensation for serious offenders parallel those run by the *Daily Mirror* in the late 1970s, when it defended a defamation action by the late prisoner and escape artist Darcy Dugan. The *Mirror's* defence was not that it had a run a true story, but that under the ancient English doctrine of 'attainder', Dugan, as a convicted capital felon, was of 'corrupt blood' and simply had no civil rights.

In 1978, the conservative majority of the High Court held that this ancient doctrine applied in Australia. Chief Justice Barwick argued that the merit of the doctrine was not for the court to decide. In his leading judgment, Justice Jacobs said there was 'no clear authority' on whether those convicted of a serious crime were to be denied civil rights, but that as Darcy Dugan was still serving a commuted death sentence, 'attainder' applied to him.

However, the lone and proverbial dissenter, Justice Lionel Murphy, decried the old doctrine as violating 'the universally accepted standards of human rights', as spelt out in several international agreements. Murphy addressed some of the flaws of the current proposal, when he wrote:

The civil death doctrine does not accord with modern standards in Australia . . . There is an overwhelming weight of evidence against the doctrine that a convicted person should, while under sentence, be without redress for a personal wrong, whether the wrong arises before, during or after imprisonment . . . Although the [civil death] doctrine treats the person as dead if he seeks to be a plaintiff, it treats him as alive when he is a defendant. The doctrine is anachronistic.

After this case a NSW Labor Government introduced the *Felons (Civil Proceedings) Act 1981*, which ensured a

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divided (the book has a comprehensive index.)

Part One — Access to Justice — introduces our legal system, its processes, participants, and our rights and responsibilities within that system. Topics include: Lawyers and Fees, Going to Court, Alternatives to Court, Dealing with the Government, etc.

Part Two — Personal Concerns — covers Your Family (which includes areas such as Domestic Violence, Custody and Access, Property Settlements, etc.), Health and Safety, Children and the Law, Your Job, etc.

Part Three — Property Concerns — covers Your Home, Your Neighbour-

hood, Purchaser's Problems (including Consumer Protection and Credit Issues), Wills, etc. The book's intention is not to be a substitute for legal advice, but a point of reference, outlining various options and allowing the reader to make the most of the legal services that are available.

Furthermore, the book does not attempt to address every legal issue that you might encounter. Rather, it covers the most common areas in greater depth and each section ends with suggestions for further reading should you wish to take your research to the next level.

I found the book to be extremely clear in its explanations of the legal

concepts involved in each area as well as offering a number of practical suggestions for dealing with the realities of the legal system.

So who will buy this book? Lawyers won't need it, and the general public would probably rather buy the latest Danielle Steele. This is a shame because this book has a lot to offer your typical Steele reader.

Perhaps, you could slip a copy into someone's Christmas stocking (better put in a CD as well). Recommended.

DAMIEN HOGAN

Damien Hogan is not a lawyer.

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The national firearms register: The APMC resolved that all jurisdictions should have integrated gun licence and registration systems linked through the National Exchange of Police Information. This will mean NSW, Queensland and Tasmania must establish registration systems. The other jurisdictions already have gun registration.

Safe storage of guns: The APMC agreed on a national standard for gun storage. Category A and B guns must be stored in a locked hardwood or steel receptacle weighing more than 150 kg or fixed to a building. Category C, D and

H guns must be stored in a steel safe fixed to the building. All ammunition must be stored in a locked container separate from the guns.

Amnesty and compensation: Anyone who currently owns a prohibited weapon will be able to hand it in and receive compensation during a 12-month amnesty. The compensation will be based on the value of the gun in March 1996. People who currently own guns without a licence will have 12 months to apply for a licence. After the amnesty, penalties for breaches of the law will be severe.

What happens next: These measures will reduce the private arsenal in

Australia by taking certain types of gun off the market, and by making many current owners ineligible to own guns, since they will be unable to prove genuine reason. But the laws are not secure. The agreement is only the start — now comes the implementation phase, in which each State and Territory will amend their laws. The gun lobby may still succeed in pressuring politicians to water down the agreement when it comes to drafting State laws.

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controlled right for convicted felons to institute 'any civil proceedings in any court'. Current moves to deny such rights would have to amend this Act and reverse this reform.

An international challenge to new legislation which seeks to extinguish prisoners' rights would argue against the necessarily discriminatory nature of such laws, and against the denial of equality before the law. Politicians who seek to deny universal rights by closing this alleged 'loophole' will distinguish themselves from their predecessors, who helped establish these universal rights.

Tim Anderson is a lecturer in social policy at the University of Western Sydney, and a committee member of the NSW Council for Civil Liberties.

MORE NOTICES . . .

'Pickle Street' Educational CD Rom

The New South Wales Board of Studies has released a CD Rom which 'brings Australian law to life'. By meeting the residents of Pickle Street, discussing and evaluating their problems, users become familiar with legal and non-legal solutions to issues in family, housing and criminal law. The disk also includes commentary on the law by a number of prominent Australian legal, political and popular culture personalities. In addition there is a reference database containing over 100 articles. The CD Rom is available from the Board of Studies (NSW), phone (02) 9927 8111.

Coalition for Class Actions News

The Coalition for Class Actions is a group of community organisations seeking to reform the law on class actions in NSW to bring it in line with Federal Court

procedure. It was formed after the High Court decision in *Carnie v Esanda* which made class actions more widely available by holding that a class action can still be launched where there are separate contracts and where damages are claimed. The Carnies returned to the NSW Supreme Court in September last year where Justice Young decided that the 'class' would be defined on an 'opt in' rather than 'opt out' basis. The Carnies, wheat farmers in NSW who are legally aided, were required to foot the bill for sending out the letters inviting people to opt in. The Coalition can be contacted through PIAC tel 02 299 7833.

SUPPORT GUN CONTROL IN AUSTRALIA

Send a donation to the Coalition for Gun Control, P.O. Box 167, Camperdown NSW 2050.
Tel 0419 603 527.