DownUnderAllOver
Developments around Australia

FEDERAL DEVELOPMENTS

Homelessness and the human right to vote

On 10 October 2005, the Federal Joint Standing Committee on Electoral Matters tabled its *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*. <http://www.aph.gov.au/house/committee/em/elect04/report.htm>. The issues of homelessness and voting are considered in detail at pages 14–17 and 129–133.

In its Report, the Committee makes the following findings and cites the following evidence in relation to the franchise of homeless voters:

- The right to vote is a fundamental right that is not exercisable by some people due to disadvantage and social circumstances.
- At the time of the 2004 Federal Election, up to 76% of the 64,000 homeless people who were eligible to vote did not do so.
- At least 64% of homeless people want to vote, but do not due to the complexity of the enrolment and voting processes.
- Further impediments to enrolment and voting for homeless people include: social exclusion; lack of information and misinformation about enrolment and voting (particularly itinerant enrolment); inaccessibility of enrolment information; and the inaccessibility of voting stations.

The Committee also notes concerns about government proposals to close the electoral roll on the day an election is called and to impose more onerous proof of identity requirements on enrolment, both of which have the potential to further disenfranchise homeless people.

Having regard to these findings and evidence, the Committee makes the following recommendations in relation to the enfranchisement of people experiencing homelessness:

- The Committee recommends that the Commonwealth Electoral Act be amended to require that electoral enrolment forms and information be displayed prominently at all times in every Australia Post, Centrelink and Medicare outlet to enable and encourage eligible people to enrol and vote [Recommendation 1; PILCH Recommendation 14].
- The Committee recommends that, in consultation with homelessness assistance services, the Australian Electoral Commission (AEC) formulate, implement and report against a detailed, ongoing action plan to promote and encourage enrolment and voting among homeless persons and other marginalised and disadvantaged groups. The Committee also recommends that the AEC be adequately funded to develop and implement such a plan [Recommendation 2; PILCH Recommendation 1].
- The Committee recommends that, at a minimum and prior to the next Federal Election, the AEC target homeless people in its public awareness campaigns to inform them about itinerant elector enrolment and other voting options, and that the AEC ensure that its training programs alert AEC staff to the needs of the homeless and other marginalised citizens [Recommendation 26; PILCH Recommendations 1, 6–7, 11].

If implemented, these recommendations have the potential to significantly enhance the franchise of people who are homeless.

PHILIP LYNCH is the Coordinator and Principal Solicitor of the PILCH Homeless Persons' Legal Clinic.

Sentenced to hardly labour: criminal record discrimination in the workplace

Following a Discussion Paper issued in December 2004, the Human Rights and Equal Opportunity Commission (HREOC) launched guidelines on criminal record discrimination on 11 November 2005: 'On the Record: Guidelines for the prevention of discrimination in employment on the basis of criminal record'.

Submissions made to HREOC in response to the discussion paper indicate that more and more employers are asking job applicants to undergo criminal record checks.

The guidelines, at <www.humanrights.gov.au/human_rights/criminalrecord/on_the_record> include:

- employers should only ask job applicants and employees to disclose specific criminal record information if they have identified that certain criminal convictions or offences are relevant to the inherent requirements of the job.
- oral and written questions made during the recruitment process should not require a job applicant to disclose their spent convictions unless exemptions to spent convictions laws apply.
- criminal record checks should only be conducted with the written consent of the job applicant or current employee.
- job advertisements should clearly state whether a criminal record check is a requirement of the position
- information about a person's criminal record should always be stored in a private and confidential manner and used only for the purpose for which it is intended.

The guidelines are not legally binding. At the State level, only Tasmania and the Northern Territory laws prohibit discrimination on the basis of criminal record in a range of areas including employment. In Western Australia and the ACT, discrimination on the basis of spent convictions is unlawful.

For residents in other places, complaints about criminal record discrimination can be made to HREOC against any employer under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). Conciliation is attempted, but if this is unsuccessful, HREOC's powers are limited to preparing a report with recommendations to the Attorney General for tabling in federal Parliament.

An example of the HREOC procedure is Christensen's case, in which a woman's application to work as a bar attendant at the Adelaide Casino was rejected because she had a conviction for stealing two bottles of alcohol from a shop when she was 15. HREOC found the conviction had occurred seven or eight years before her application, she had held other positions and 'the connection between the rejection of Ms Christensen's application on the basis of her criminal record and the inherent requirements of trustworthiness and good character is not tight or close ...'. In that case, HREOC recommended that Ms Christensen receive an apology, and not be further excluded from applying for employment because of the conviction. The recommendation was rejected by the Casino. .

YASMIN GUNN is a solicitor with Legal Aid Queensland.

NORTHERN TERRITORY

Novel forensics in the trial of Bradley John Murdoch

Bradley Murdoch was charged with murdering Peter Falconio, and with assaulting Joanne Lees and depriving her of her personal liberty.

Among over 100 witnesses called by the Crown were two forensic experts with arguably novel areas of expertise: Dr Jonathan Whittaker in relation to Low Copy Number DNA (LCN), and Dr Meiya Sutisno with respect to face and body mapping. Voir dires were held in relation to both topics and the evidence was ruled admissible by Martin CJ of the NT Supreme Court.

All methods of DNA analysis involve a process of *amplification*, which copies small amounts of DNA until there is enough to produce an observable result. The less DNA on the original swab, the more times it has to be copied, and the greater the margin for error. The quantity of DNA obtained from the Kombi van and the cable ties allegedly used to bind Joanne Lees was extremely small. The current DNA testing systems accepted in Australia have difficulty with such small quantities, and when the DNA swabs were analysed in Darwin, there were no clear results.

Consequently, they were forwarded to Dr Whittaker's laboratory in the UK, where further testing was carried out using the LCN system. The LCN system involves a step prior to amplification, where the DNA is cleaned and concentrated. The testing stage is then conducted at least twice, in order to check and confirm results. These additional precautions reduce the possibility for error, allowing useful results to be obtained from smaller quantities of DNA.

Dr Whittaker's laboratory in the UK is currently the only place in the world where the LCN procedure is used. His methods have gained widespread acceptance in the UK, both in the scientific and legal communities; however they have not been adopted in the US. They have also been used in cases in Sweden and New Zealand. This is the first time LCN evidence has been led in an Australian case.

The evidence of Dr Sutisno was led in order to assist the jury to analyse footage of man entering a Shell Truck Stop. Comparing that footage with videos taken of the accused, she made a list of 'unique identifiers' which she claimed made it possible to identify the man at the truck stop as the accused.

Unique identifiers include posture, limp, fidgeting, facial features, gait, and habitual characteristics. Dr Sutisno, whose expertise is in forensic anatomy, claimed that she had the training to recognise these identifiers. She claimed that when there were a sufficient number of identifiers in combination, it was possible to make a positive identification of a person on CCTV footage. Dr Sutisno's evidence is currently under appeal in some other Australian matters.

At the time of writing, the Crown has closed its case and the accused is under cross-examination.

CAROLINE HESKE is a Northern Territory lawyer.

SOUTH AUSTRALIA

Statutes Amendment (Relationships) Bill 2005

2005 marks the 30th anniversary of the decriminalisation of homosexuality in South Australia, which was the first State to enact such reform. Despite a once-deserved reputation as a leader in law reform on social issues, South Australia has for some time been the only State or Territory in Australia to have no legal recognition of same sex relationships. Late in 2005 the State missed an opportunity to catch up with the rest of the country (and many parts of the world) on this issue.

The Labor government indicated at the last election that it would introduce legislation for same-sex relationship recognition. In accordance with this, a government inquiry was held in 2003, followed by the introduction of the *Statutes Amendment (Relationships) Bill* to Parliament in 2004. As its title indicates, the purpose of this legislation was to amend dozens of other statutes in order to treat same-sex relationships identically with heterosexual de facto relationships under State law.

As in other jurisdictions, a large number of legal rights and duties were affected by the Bill: these include the ability to inherit in cases of intestacy, the ability to transfer property without payment of stamp duty, the right to claim compensation when a partner is killed in an accident, and the duty to disclose conflicts of interest involving a partner in certain situations. Most significantly, the definition of 'putative spouse' under the *Family Relationships Act 1975* was to be replaced with a definition of 'de facto partner', making the sex of the partners irrelevant and reducing the required term of co-habitation from five years to three.

The progress of the Bill through Parliament was interrupted in late 2004, when the Legislative Council decided to refer the Bill to its Social Development Committee (despite the earlier government inquiry). This Committee undertook public hearings from January to March 2005.

The Bill was supported by a number of community, professional, governmental and religious organisations, including the Lets Get Equal Campaign, the Multicultural Communities Council, the Law Society, and the Equal Opportunity Commissioner. Most of the opposition came from religious groups. While the report, tabled in May, was in favour of the Bill, it recommended that, at some future time, the government investigate extending some forms of relationship recognition to 'domestic co-dependents'.

A minority report from the same committee took a stronger line on this matter, arguing that 'in seeking to only address perceived discrimination against same-sex relationships, the Bill effectively discriminates against other long-term caring relationships' (Legislative Council (SA) Social Development Committee, 21st Report, p 178). The minority report recommended that the Bill be amended to correct this apparent discrimination.

In the end, a number of compromise amendments to the Bill were debated and passed in November 2005. These had the effect of introducing a new category of 'domestic co-dependent' which people in relationships of caring and dependence could opt into. Such relationships would attract many of the same rights and duties as same-sex and heterosexual de facto partnership relationships. However, the government did not prioritise the legislation and the House of Assembly failed to conclude debate on the Bill before the close of the session, the last before the State election in 2006. Same-sex couples continue to be discriminated against by the law in South Australia.

MARGARET DAVIES is Professor of Law at Flinders University.

VICTORIA

Making PERIN fairer

Community legal centres have warmly welcomed the report and recommendations of the Victorian Parliament Law Reform Committee Inquiry into Warrant Powers and Procedures in relation to the PERIN system (Penalty Enforcement by Registration of Infringement Notice).

The Committee recognises that it is imperative to justice and civic compliance that the PERIN system be fair, consistent and efficient. The Committee further recognises that this requires that people be informed about their rights, that the system consider any special circumstances (including financial or social disadvantage) that a person may have, and that people be treated with dignity and respect.

The Committee's report highlights that, while the PERIN system operates efficiently and effectively for a significant portion of the community, it operates in a disproportionate, discriminatory and detrimental way for marginalised and disadvantaged people. According to the Committee, the PERIN system impacts particularly harshly on people with disabilities, people experiencing mental illness, homeless people, and people living in poverty.

The Federation of Community Legal Centres PERIN Working Group strongly supports the 35 recommendations made by the Committee:

- that all issuing agencies develop training programs and implement policies so that people with special circumstances are cautioned or diverted to appropriate support services in preference of being issued with an infringement notice [Recommendations 89–91]
- that issuing agencies withdraw matters at the earliest possible opportunity where evidence is provided of special circumstances [Recommendations 92–94]
- that offenders be provided with the opportunity to convert unpaid fines to community work [Recommendation 95]
- that the law be amended and policies developed so that the penalty and costs associated with an infringement notice are reduced on evidence of financial hardship [Recommendations 96–97]
- that issuing agencies and the PERIN Court grant extensions of time to pay and allow payment by instalment on evidence of financial hardship [Recommendations 98-100]
- that the PERIN Court review and expand its definition of special circumstances under cl 10A, expand the range of materials that may support a special circumstances revocation application, and that the Government expand funding for the Enforcement Review Program and the Special Circumstances List [Recommendations 103-106]
- that infringement system forms contain comprehensive and accessible information about a person's rights and options and where they can seek assistance [Recommendations 107–111, 117–118]
- that the submission of a revocation application or an application for an extension of time to pay or payment by instalment operate as a stay on further enforcement action [Recommendation 115]
- that the mandatory sentencing regime which operates when a person is taken before the court following execution of a penalty enforcement warrant under Part IV of Schedule 7 of the Magistrates' Court Act 1989 (Vic) be repealed and that the person be sentenced under the Sentencing Act 1991 (Vic) instead [Recommendation 119]
- that the Government introduces overarching legislation to implement the recommendations [Recommendation 123].

The Committee referred extensively to submissions and evidence of the PILCH Homeless Persons' Legal Clinic, West Heidelberg Legal Service, Fitzroy Legal Service, Western Suburbs Legal Services and the Victorian Council for Social Service in making its findings and recommendations. For a copy of the report, go to <http://www.parliament.vic.gov.au/lawreform/default.htm>.

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