REGULARS

DownUnderAllOver
Developments around the country

FEDERAL

Same Sex: Same Entitlements?
Change is in the air

The federal government has introduced a package of legislative amendments that will substantially change the way Australian law recognises and regulates same-sex relationships — Same-Sex Relationships (Equal Treatment in Commonwealth Laws — General Law Reform) Bill, Same-Sex Relationship (Equal Treatment in Commonwealth Laws—Superannuation) Bill, Evidence Amendment Bill, Family Law Amendment (De Facto Financial Matters and Other Measures) Bill. Reforms follow decades of lobbying for equality from gay and lesbian communities and, more recently, release of the Australian Human Rights Commission’s influential 2007 report Same Sex: Same Entitlements.

In brief, the package removes discrimination against same-sex couples and their families in a broad range of areas including social security, Medicare and taxation. In particular the legislation:
- ensures that same-sex couples and their children are treated in the same way as opposite-sex couples when accessing superannuation benefits;
- provides that, like opposite-sex de facto partners, gays and lesbians cannot be compelled to give evidence against their partner in certain legal proceedings;
- gives all de facto couples access to the Family Court for property settlement upon relationship breakdown;
- recognises the birth mother and her female partner as legal parents when a child is conceived through artificial reproductive technology (see NSW report below), and recognises two male parents where a child is conceived pursuant to a legal surrogacy agreement.

As well, the government’s new ‘National Employment Standards’ will extend federal workplace rights and entitlements to all couples, regardless of gender.

It is expected that the above amendments will commence by 1 July 2009. With over 24 000 same-sex relationships recorded in the last Census, the burning question is how will Australians learn about how the new laws may impact their lives, and the lives of their children, parents, siblings, customers and clients? The breadth and gravity of the reforms, particularly in the area of social security, underscore the dire need for appropriately-funded community and professional education prior to and beyond July 2009.

HEIDI YATES is a solicitor at the Women’s Legal Centre (ACT & Region).

Major NGO report on Australia to UN Human Rights Committee

In October 2008, the Human Rights Law Resource Centre, the National Association of Community Legal Centres and Kingsford Legal Centre submitted a major non-government report to the United Nations Human Rights Committee regarding Australia.

The report, Freedom, Respect, Equality, Dignity: Action – NGO Submission to the Human Rights Committee on Australia’s Compliance with the ICCPR, was compiled with the assistance of over 50 NGOs across Australia. It is endorsed, in whole or in part, by over 200 NGOs.

The report provides a comprehensive overview of, and makes targeted recommendations regarding, the realisation of civil and political human rights in Australia, including:
- the lack of constitutional or legislative recognition and protection of civil and political rights;
- groups within society that remain vulnerable to discrimination, such as Indigenous peoples, women and children, people with disability, asylum seekers and gay and lesbian couples;
- Australia’s counter-terrorism laws and measures;
- Australia’s immigration law, policy and practice; and
- the treatment of people in detention, including prisoners and people in involuntary psychiatric detention.

The report will be considered by the Human Rights Committee in New York in March 2009.

The NGO Report is available at hrlrc.org.au under Policy Work>International Submissions>Civil and Political Rights: Major NGO Report on Australia to UN Human Rights Committee (Sept 2008).

Parliamentary Committee recommends ratification of OP-CEDAW and Disability Convention

In a report tabled on 16 October 2008, the parliamentary Joint Standing Committee on Treaties (‘JSCOT’) recommended that Australia ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Expanding on an earlier report on ratification of the Convention on the Rights of Persons with Disabilities, the Committee also recommended that ‘the Government consider expanding the role of the Human Rights and Equal Opportunity Commission to enable the Commission to provide Parliament with an annual report on compliance and implementation of the Convention and, if also ratified, the Optional Protocol’.


PHILIP LYNCH is Director of the Human Rights Law Resource Centre.
PM urged to announce human rights consultation as a priority

Three prominent former politicians have called on the government to fulfill its election commitment and announce a consultation into human rights in Australia.

Fred Chaney, Natasha Stott Despoja and Michael Lavarch have jointly written to the Prime Minister urging him to announce a public consultation into a federal Charter of Human Rights as a matter of priority. The cross-party letter outlines the authors’ views on the benefits of human rights protections and Australia’s reputation as an international citizen and regional leader. They commended the government’s commitment to a process of national consultation, stating it ‘would enable Australians to reflect on common values and assist in the articulation of a shared national vision.’ Recognising the strengths and limitations of government and existing mechanisms, Chaney, Stott Despoja and Lavarch wrote, ‘the time is right for Australia to adopt a statutory Charter of Rights’ as ‘institutions need to evolve to meet the aspirations of the society in which the institutions exist to serve.’

As former parliamentarians from different sides of politics, they acknowledged the importance of a human rights framework operating in a way ‘which respects and buttresses the sovereignty of Parliament and its role in determining policy and resource allocations.’ They recommended the Victorian Charter as a ‘worthwhile model’ which achieves the correct balance by placing the onus on the Executive and the Parliament to identify and decide if a proposed law is consistent with the rights of the Charter.

Adoption of the Victorian model at the federal level would, they said, enable ‘Australia to properly recognise human rights consistent with our role as a good international citizen and regional leader while recognising the features and strengths of Australia’s Parliamentary democracy and legal traditions.’ Chaney, Stott Despoja and Lavarch concluded by urging the government ‘to proceed with the consultation process as a matter of priority.’

PHOEBE KNOWLES is on secondment to the Human Rights Law Resource Centre from Minter Ellison.

Editor’s note: an announcement on a national consultation is expected on 10 December 2008.

ACT

Justice policy under a new minority government

The ACT Legislative Assembly election on 11 October 2008 saw the Labor party with 7 successful candidates, the Liberals with 6 and the Greens with 4 — leaving the Greens with the balance of power and the responsibility of deciding with which of the other two major parties they would form government. This decision took over two weeks to resolve but on 31 October, the ACT Greens announced that, after extensive negotiations with both parties undertaken in good faith, they would form government with Labor and support Jon Stanhope as Chief Minister.

During the 2008 election campaign law and justice issues were not, as is perhaps often the case in other jurisdictions (particularly NSW), at the forefront of public debate and discussion. There was some criticism of the Labor Government by the Liberals in relation to the new ACT jail, the Alexander Maconochie Centre (‘AMC’), but these focused on its construction, costs and planning. In particular, the Liberals criticised the timing of the AMC’s opening ceremony (during the election campaign) and its continued delay in actually opening for operation (see item below). It was originally estimated to start taking prisoners and remandees from around August 2008, but as at the date of writing, this is not expected to occur before January or February 2009.

The ACT Greens went into the election with an extensive law and justice policy which included support for re-establishing an ACT Law Reform Commission (see item below), increasing resources for the Magistrates Court, Legal Aid and community legal centres, a range of initiatives focused on enhancing the provision of safety and justice services to Aboriginal and Torres Strait Islander peoples, and implementing the Ombudsman’s recommendations on handling intoxicated people. The ACT Greens also had a specific and separate human rights policy which included support for reviewing the Discrimination Act, improving the quality of the Human Rights Impact statements prepared for the ACT Legislative Assembly, implementing a direct of right of action under the Human Rights Act, and adequately resourcing the Commissioners within the ACT Human Rights Commission.

Labor had both a Policing and Community Safety Policy and a Justice and Law Reform Policy. Within the former policy, Labor pledged to trial two Suburban Policing Consultative Committees, establish a Community Safety CCTV Partnership program, and increase the operating hours of the Gungahlin Police Station to 24 hours a day, 7 days a week. Its Justice and Law Reform Policy included a pledge to set up a Sentencing Council to conduct research on ACT sentencing practices, collect and publish statistics data on sentencing, assess the effectiveness of present sentencing options, and explore the viability of new sentencing options. That same policy also included developing a Privacy Act, ‘toughening’ up the offence of murder, streamlining the administration and jurisdictions of the courts, and conducting a review of the first five years of the ACT Human Rights Act.

The big question, however, is how the policies of the Greens and Labor parties will interact in light of their recent agreement to form minority government. Interestingly, in the agreement the Greens make clear that their support of Jon Stanhope as Chief Minister is predicated on his agreeing to a number of specific policy reforms at the outset. The only law and justice reforms outlined in this agreement are the establishment of a free legal service for homeless persons and increasing funding to the Forensic Mental Health Team at the ACT Magistrates Court — both of which are to occur within the first year of the government’s term. A positive beginning, but only that — a beginning.

E. MCLAUGHLIN is a solicitor with ACT Legal Aid.

ACT Law Reform Advisory Council

Just before it went into caretaker mode ahead of the election, the previous ACT Labor Government established a Law Reform Advisory Council. Establishment of the Council was announced by Labor during the election campaign, and is supported by the ACT Greens, who now hold the balance of power and have agreed to support Labor in a minority government.

Full membership of the Council has not been announced, but the Attorney-General’s media release identified the ‘usual suspects’: the ACT Chief Justice, the ACT Chief Magistrate, and Presidents of the ACT Bar Association and
Human Rights Commissioner inspects ACT prisons

Under the ACT Corrections Management Act the Human Rights Commissioner has the power to enter and inspect a correctional centre at any reasonable time.

The ACT Human Rights Commissioner Helen Watchirs has inspected the Belconnen and Symonston remand centres, reported *The Canberra Times* (31 October), because of ‘concerns detainees are being held in “inhumane” conditions’. The newspaper reported the ACT Attorney-General Simon Corbell confirming that ‘several detainees at the Belconnen Remand Centre were being forced to sleep on fold-out beds in the recreation room, where they did not have access to showers, because there was nowhere else to put them’. The problem of space has been compounded by delays to the opening of the new ACT jail (see item, previous page).

SIMON RICE teaches law at ANU.

NEW SOUTH WALES

Parental recognition for lesbian mothers

Major changes in NSW accord parental recognition to lesbian mothers who have children through assisted conception. NSW has amended the Status of Children Act 1996 (NSW) to include section 14(1A) which accords parental status to the female de facto partner of a mother who conceives through assisted conception in the same way that male partners have been recognised for the past 25 years.

This reform means that both mothers of children born in NSW through assisted conception can be recorded as parents in the birth register, can have their children listed as siblings, and can appear on their child’s birth certificate. The provisions apply regardless of whether conception took place through a clinic or informally. The new provisions apply to children who have already been born as well as those born after the passage of the law: there is a simple process for mothers to apply to the Births Deaths and Marriages Registry to add the second mother to the birth certificate. This system does not require court approval unless the birth mother (and/or a named sperm donor) does not consent to amending the register.

These changes bring NSW into line with similar laws in place in Western Australia, the Northern Territory and the ACT. In Victoria a Bill to the same effect has passed the lower house, but at the time of writing (November 2008) is still before the upper house.

Importantly, after considerable initial resistance, similar provisions have been included in the federal government’s wide-ranging same-sex reform package, following recommendations by Senate Committee inquiries.

Amendments to s 60H of the Family Law Act 1975 (Cth) (‘FLA’) will accord parental status to children born through assisted conception in the FLA. Parental status accorded by the FLA will then be reflected in federal law through interpretation clauses that pick up the new definition of ‘parent’ from the FLA.

As well, an amendment to s 60H FLA will recognise the intended parents of children born through surrogacy arrangements for purposes of the FLA and federal law, provided that they have already undertaken a transfer of parental status under State or Territory law. Such a transfer system is currently in operation only in the ACT through the Parentage Act 2004 (ACT), but is before parliament in Victoria and recently under consideration by Parliamentary Committees in Queensland, South Australia and NSW.

JENNIFER MILLBANK teaches law at University of Technology, Sydney.

Limits on questioning sexual assault complainants in court

The New South Wales Barristers’ Rules have been amended to prevent sexual assault complainants from being inappropriately cross-examined. The new Rule 35A and 35B will supplement the existing Rule 35, which calls for barristers to exercise professionalism in their forensic judgments, and not to misuse the proceedings merely to cause harassment or embarrassment. Rule 35A, which applies only to sexual assault complainants, prevents questioning that is misleading, confusing, or unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive. Where the witness is ‘vulnerable’, the rule also requires barristers to adopt a ‘manner and tone’ that is appropriate. Rule 35B provides that, even where the barrister is challenging the truthfulness or accuracy of the witness, or dealing with matter that is offensive, distasteful or private, it is not justifiable to breach Rule 35A. The rules apply in both criminal and civil proceedings.

The amendments were made in May 2008, and bring the Rules into line with changes to the Criminal Procedure Act (NSW) and the Evidence Act (NSW), both of which give judges additional powers to control proceedings. S275A of the Criminal Procedure Act (NSW) was amended to require a judge to disallow ‘improper questions’ in criminal proceedings. ‘Improper questions’ include those covered by the new Barristers’ Rules, as well as questions that are belittling, insulting or have no basis other than a sexist, racial, cultural or ethnic stereotype. The NSW Evidence Act will also be amended shortly, and the new s 41 will make the same types of questions ‘disallowable’, as well as those reflecting stereotypes about age, mental, intellectual or physical ability. Whereas the current s 41 operates in civil proceedings only (referring to the Criminal Procedure Act for criminal matters), this limitation will no longer apply; further, the current Act says only that the court ‘may’ disallow such questioning, whereas the amendment says that the court ‘must’ disallow it.

KATHERINE BIBER teaches law at University of Technology, Sydney.

QUEENSLAND

Mulrunji’s Death-in-Custody (Pt IV): the judicial merry-go-round moves to Brisbane

Readers may recall this column’s reports on the death, in late 2004, of Mulrunji (Cameron Doomadgee) in the Palm Island watchhouse. Mulrunji’s death sparked a riot on
the island, during which police buildings were burnt. (See DownUnderAllOver, Vols 30(2), 32(1) and (3), and 33(2).)

The centrepiece of the Palm Island rioting trials has now concluded in Brisbane in a guilty verdict; Lex Wotton had been accused of inciting the riot. Evidence was led that Mr Wotton told police their lives would be endangered if they did not leave the island.

Rioting carries a maximum penalty of 3 years under s 63 of the Criminal Code. However with the addition of ‘destruction of a building’ to the charge, the maximum sentence ballooned to life (s 65 of the Code). The Crown sought 10 year’s imprisonment. Mr Wotton was sentenced to 6 years, but with just a two year non-parole period.

Mr Wotton faced trial in Brisbane, having successfully pleaded for a change of venue from Townsville. As early as July 2006, District Court Judge Skoein accepted that Mr Wotton could not receive a fair trial in Townsville (see Wotton v OPP (Q) [2006] QDC 202). Judge Skoein found that the test, in Yanner’s case, of a ‘grave crime’ coupled with ‘considerable local hostility’, was easily satisfied, thanks to survey evidence produced by Sydney-based solicitors, Levitt Robinson.

In the survey of almost 400 Townsville residents, a majority expressed prejudice towards local Indigenous people. Over a third were aware of Wotton’s identity and almost half admitted their preconceptions would override the basic juror obligation to focus on the evidence. Only 5 per cent expressed positive attitudes towards Indigenous Palm Islanders. Around 40 per cent claimed to have experienced anti-social behaviour, most blaming it on Indigenous people and alcohol.

In 2007 Senior Sergeant Chris Hurley was acquitted by a Townsville jury of the manslaughter and assault of Mulrunji. Might the strongly entrenched views of Townsville residents have had an influence on the jury in Sergeant Hurley’s case? In Mr Wotton’s trial, a police officer friendly with Sergeant Hurley yet involved in the initial investigation of Mulrunji’s death, admitted to lying when Sergeant Hurley had been accused of driving over a woman’s foot. This evidence re-opened wounds about the propriety of the original police investigation.

A several-hundred page Police Service report, reviewing flaws in the initial police investigation, is yet to be released. In the interim, all 22 officers stationed on the island in the aftermath of Mulrunji’s death received police bravery awards.

In retrospect, was there not room for a less adversarial approach? Either a truce in the legal battles or a ‘truth and reconciliation’ process would have been more productive than the endless vagaries of the criminal justice system.

As the cruel saga of Mulrunji’s death stretches into its fifth year of legal consequences, black Queenslanders will feel not just that justice is elusive, but that the machinery of the criminal law remains trained on them.

FOI: push before pull

To its credit, the Bligh Government in Queensland has taken on board criticisms of its predecessor’s approach to limiting access to governmental documents.

Premier Bligh not only commissioned a report from an independent panel, but moved quickly to accept the bulk of its 141 recommendations. The panel was chaired by the highly-respected lawyer and journalist, Dr David Solomon. (Fittingly, as Dr Solomon was involved in the post-Fitzgerald, Electoral and Administrative Review Commission, that gave Queensland FOI law 16 years ago.)

Only two recommendations were rejected outright: these concerned Cabinet documents. The report recommended limiting the exemption to: (a) actual ministerial submissions and formal records (like agendas and minutes) and (b) a public interest exemption where collective ministerial responsibility might be undermined. The government instead will phase in a reduction of the Archive Act’s 30 year embargo on cabinet documents to 20 years. Even then, Cabinet material will be FOI-able, subject to a public interest exemption, after 10 years.

The Report’s one big idea is to implement a holistic and proactive approach to FOI. In this age of cheap and accessible publication via the internet, a government-wide policy should mandate the regular and easily searchable publication of significant documents by all departments and agencies. This would be a ‘push rather than pull’ approach, in contrast to the present reliance on struggles with FOI officers for the release of nominated categories of documents to particular individuals.

The complex host of exceptions to FOI requests are to be abolished. In its place will be a single test of whether the release would be ‘contrary to the public interest’. Whilst that test may seem nebulous, the Report lists 37 factors that will guide the ‘public interest’.

The report also pre-empted the announcement, at Commonwealth level, that ministers will lose the power to shield documents through ‘conclusive certificates.’

The only real criticism of the report is its tendency to fall into jargon of the sort that would upset Don Watson. Thus, information is painted as a ‘core strategic asset’ and ‘public sector norming’ is invoked to fill the gaps between law and practice. Perhaps this merely reflects how far corporate jargon has infected the public sector managers who are an important audience of the report.

The full report, titled The Right to Information (June 2008) is available at: foireview.qld.gov.au.

GRAEME ORR teaches law at the University of Queensland

SOUTH AUSTRALIA

‘Tough on Crime’ in South Australia

Crime reduction strategies are a hot political item. South Australia’s Rann government continues to promote the benefits of its ‘tough on crime’ policy. Although the ‘tough on crime’ talk has been going on for a few years, we have recently seen the introduction of key legislation. Perhaps most notably, the Serious and Organised Crime (Control) Act 2008 — the so-called ‘Bikie Bill’ — puts into place a tough regime of new laws designed to deal with these modern day outlaws.

Although acceptable to many citizens, the new laws faced some criticism. The Law Society of South Australia, for example, noted the threat to society posed by the Bikie Bill because it ‘undermines basic and fundamental civil and political rights of all groups and individuals’. Any laws that undermine well established principles such as the presumption to innocence or the right to silence must be treated cautiously.

In response to these criticisms, the government argued that community safety is of course paramount and, sometimes,
keeping the community intact justifies sacrificing one or two of our civil liberties. In any event, the government said, citizens want tough laws to deal with outlaw gangs; from this perspective, the laws are warranted and critics simply out of touch with the people.

Premier Rann’s opening address at the recent National Victims of Crime Conference in Adelaide lauded the achievements of his government’s ‘tough on crime’ policy. The implication is that a ‘tough on crime’ policy means less crime and therefore less victims. I won’t go into an analysis of South Australian crime statistics here; it’s enough to say some types of crime have decreased while others have increased. The relationships between ‘tough on crime’ policy and the statistics remain, at best, clouded.

Irvin Waller, a keynote speaker at the same National Victims of Crime Conference takes a different approach than Premier Rann. Waller argues against ‘tough on crime’ policy, claiming it to be little more than popularist policy making. His book Less Law, More Order, illustrates alternatives to ‘tough on crime’ policy that focus on treating the causes of crime. Crime reduction is complex.

The public may feel safe knowing increasing numbers of wrong-doers are being locked up. There are, however, doubts about the sustainability of ‘tough on crime’ policy. As SA prisoner numbers continue to increase, so do the associated costs. The government expects 200 new prison officers to be trained during 2008. Over the next four years, 209 additional bed spaces will be made available for prisoners at an estimated cost of $35 million. The costs of upgrading and maintaining prisons are significant and increasing in ‘tough on crime’ states.

Citizens want effective crime reduction strategies that don’t cost our fundamental rights. Striking the right balance is certainly a difficult task for governments.

PAUL MARKS is a lecturer at Flinders University

TASMANIA

The push for a Tasmanian Charter of Rights continues to gather momentum. On 6 October 2008 — International Tenants Day — the Tenants’ Union of Tasmania launched a major campaign poster for the enactment of a Charter of Rights in Tasmania that includes the right to adequate housing. The campaign launch follows the release in October 2007 of the Tasmanian Charter of Rights and Responsibilities Act 2006, which includes the right to adequate housing and, more broadly, economic, social and cultural rights. As Sandy Duncanson, the principal solicitor with the Tenants’ Union of Tasmania said:

Adequate housing provides a base from which all Tasmanians are able to enjoy the right to work, express ourselves and protect our children. Adequate housing therefore allows us to build safety, security and freedom in our lives. It is therefore a fundamental human right that must be enshrined in a Charter of Rights.

On 31 October 2008, and less than a month after the campaign launch, Premier David Bartlett announced that he had asked Attorney-General Lara Giddings to fast-track recommendations on a Charter of Rights with a preferred model likely to be determined by Cabinet prior to the end of the year.

BENEDICT BARTL is solicitor at Hobart Community Legal Service.

VICTORIA

VCROSS Report: Using the Charter in Policy and Practice

VCROSS has released a new report, titled Using the Charter in Policy and Practice: Ways in which community sector organisations are responding to the Victorian Charter of Human Rights and Responsibilities.

The report examines changes that had been made by community sector organisations to incorporate the Charter — and human rights principles more broadly — into organisational policies, procedures or service delivery. It includes substantial appendices providing examples from the organisations surveyed including a project plan, a Human Rights Committee’s terms of reference, Watching Brief, and examples of revised policies. It also includes a review of the barriers that organisations have faced in successfully implementing the Charter, and further resources that organisations felt would assist in its implementation.

The report follows a series of forums conducted in 2007 with the Department of Human Services’ staff and funded community sector agencies, intended to inform decision-makers about potential responsibilities under the Charter and to inform best practice in working within a human rights framework.

The report is available for download at vcoss.org.au.


Application of the Charter in a planning context

A recent decision of a planning panel appointed under the Planning and Environment Act 1987 (Vic), to recommend a planning scheme amendment for the construction of a mosque, demonstrates the potential significance and relevance of the Charter of Human Rights and Responsibilities Act 2006 (Vic) to planning and environment law.

In 2004, Hobsons Bay City Council resolved to sell a parcel of public use-zoned land owned by the Council to the Islamic Society of Newport Inc for the purpose of building a new mosque to replace one that was too small and provided substandard facilities for worship.

Since the proposal involved selling land to a private entity, as well as the use of that land for what was not a ‘public purpose’, rezoning was necessary to facilitate the construction of the mosque. The application contemplated the construction of the mosque, and the development of an adjoining park site (in
consultation with the local community), using funds set aside for that purpose by the Council.

The Planning Panel endorsed the rezoning by reference not only to the relevant planning policy framework, but also to the Charter.

The planning principles cited by the Panel included the recognition of social needs by providing land for cultural facilities, and the policy to support the provision of facilities which will meet the needs of the community throughout the municipality. Interestingly, the Panel took the analysis a step further, recognising the human rights protected by the Charter — in particular ss 14 and 19 (dealing with freedom of thought, conscience, religion and belief and cultural rights respectively) — in the context of its consideration of the planning scheme amendment. The Panel also referred to s 38 of the Charter, which makes it unlawful for public authorities (including local councils) to (a) act incompatibly with protected rights and (b) when making a decision, fail to give proper consideration to a human right.

In this regard, the Panel perceived a positive obligation on the part of the local council to act in a way that was compatible with the protected rights.

The Panel then considered whether development of a new mosque justified rezoning the land. Again, the Panel noted that: ‘the Charter of Human Rights and Responsibilities establishes an obligation to ensure that people can practice their religious beliefs, including communal religious observance’, saying that ‘The Charter of Human Rights and Responsibilities, the policy predisposition in favour of meeting needs for community facilities, and the conspicuous need for a new mosque support approval of the [planning scheme amendment]’.

On one reading, the Panel seems to have proceeded on the basis that the Charter creates an obligation on local government to provide people with places of worship. While it might be doubtful that the Charter extends this far, the Panel’s reasoning does provide a good example of how established planning policy can be considered in an integrated manner with rights and freedoms protected by the Charter.

The Panel decision is available at dse.vic.gov.au/planning>Planning schemes>Amendments to a planning scheme>Planning Scheme Amendments Online> Planning Scheme Amendments Online>Planning scheme amendment information>H>Hobsons Bay>C058>Panels.

NATALIE WILKINSON is a lawyer on secondment to the Environment Defenders Office from Deacons.

WESTERN AUSTRALIA

Court intervention programs

In June 2008 the Law Reform Commission of Western Australia (‘the Commission’) released its Court Intervention Programs consultation paper. Court intervention programs are defined by the Commission as ‘programs that use the authority of the court in partnership with other agencies to address the underlying causes of offending behaviour and encourage rehabilitation’. They are distinguished from other diversionary and rehabilitation programs because the judicial officer is directly involved in monitoring and, in some instances, managing the offender during the program.

Traditionally, the monitoring and managing of offenders has been undertaken by agencies such as corrective services. The involvement of the judiciary (as well as lawyers and police) represents a significant change in the way in which the criminal justice system responds to the causes of offending behaviour. The Commission’s paper examines various programs currently operating in WA and Australia, including ‘drug courts’, ‘family violence courts’ and mental impairment programs. General court intervention programs that address a variety of different underlying issues (such as the Court Integrated Services Program in Victoria) are also discussed and supported.

In its consultation paper the Commission has focussed on practical ways in which the legal system can be reformed to better facilitate the use of court intervention programs in WA. A number of legislative and policy reforms have been proposed. These include a general legislative framework under the Criminal Procedure Act 2004 (WA) to facilitate the use and development of a wide variety of programs available at different stages of the criminal justice process and available to different courts. Some specific reforms to bail and sentencing legislation have also been proposed to provide realistic incentives for offenders to comply with the requirements of the program, while at the same time ensuring that fundamental legal rights are protected. The Commission also proposes the establishment of a specific unit within the department of the Attorney-General to oversee and coordinate the various court intervention programs operating in WA.

The Commission’s preliminary view is that it is important to provide a coordinated administrative and policy approach to ensure that resources are properly allocated and the experiences and skills of those working with specific programs can be effectively utilised throughout the state’s justice system. It is also envisaged that the establishment of a separate unit will enable all court intervention programs (whether in metropolitan or regional areas) to access the most experienced staff and up-to-date information required to assist offenders overcome the various issues which lead to offending behaviour.

Submissions from interested organisations and individuals closed on 1 October. The Commission’s final report is expected in early 2009.

VICTORIA WILLIAMS is co-author of the Court Intervention Programs paper.