

At some point it becomes necessary to translate the 'compendious or generic expression' (prisoners' rights) into a fairly precise set of rule-requirements which are specific enough to be tangibly expressed in penal practice. Otherwise the assertion of prisoners' rights will merely (be) . . . emotive rhetoric . . . (id, p 70)

He recommends that a statement of standards for the treatment of prisoners be formulated, reflecting the provisions of the ICCPR. He suggests that the draft *Minimum Standard Guidelines for Australian Prisons*, which are based on the United Nations Standard Minimum Rules for the Treatment of Prisoners, and were published in an updated form by the Australian Institute of Criminology in 1984, form the basis for discussing the proposed standards. In order that the standards, when formulated, are recognised and accepted by prison authorities he recommends that the National Correctional Standards Council, which is comprised of prison administrators from each state, continues to be the body charged with the task of formulating the standards.

The Report's failure to consider prisoners' grievance mechanisms in any detail meant that it did not present a complete picture of the current position of prisoners' rights in Australia. To the extent, however, that the major finding of the report was that prisoners, whilst possessing discretionary privileges, have no rights, the report's findings coincide with the findings of the Australian Law Reform Commission's research. The major recommendation of the report, that standards be formulated for the treatment of prisoners, is in line with the recommendation made by the Commission in its 1980 interim report on the Sentencing of Federal Offenders (ALRC15; Recommendation 80). The Commission continues to endorse the urgent need for standards to be formulated and implemented as well as the need for appropriate procedures to be established to ensure that prison management conforms with such standards.

reforms in victoria. Having briefly surveyed the current dismal state of prisoners' rights in Australia it is encouraging to note that in the Victorian Corrections Bill, which is yet to come before the State Parliament, there is a Division entitled Prisoners' Rights (Division 4 — s49). The rights currently provided by the Bill are fairly limited and relate only to a selection of the most basic subject matter. For example, s49(b) provides 'the right to be provided with food that is adequate to maintain the health and well-being of the prisoner'. As the bill is yet to be finalised views as to its content will not be included at this stage, except to note that the Bill, as currently formulated, provides no machinery for the enforcement of the rights provided.

judicial commission

Do not judge, and you will not be judged;
because the judgments you give are the judgments
you will get, and the amount you measure out
is the amount you will be given.

Matthew, 7:1

The New South Wales Government has released proposals for reform of the State's court system. The proposals include the following:

- a Judicial Commission whose prime responsibility would be the education and training of judges and magistrates, particularly in establishing guidelines for sentencing;
- a Conduct Division within the Judicial Commission to consider any complaint concerning a sitting judge or magistrate;
- a Director of Public Prosecutions to conduct criminal prosecutions in the higher courts and decide applications for no-bills (which result in the discontinuance of a case and are at present decided by the Attorney-General);
- a Justice Information System to collate sentencing statistics;
- legislation to give the Supreme Court and District Court the responsibility

for registry functions formerly exercised by the Clerk of the Peace;

- an independent Criminal Listing Directorate of New South Wales to take over the function of listing cases at present undertaken by the Solicitor for Public Prosecutions; and
- a Court Division within the Attorney-General's Department to meet the logistical requirements of the Courts so that the Department can focus more effectively on court related problems.

judicial commission. Although most of the proposed reforms have attracted a wide degree of support, the proposal for the Conduct Division of the Judicial Commission has aroused a great deal of controversy and opposition. It is proposed that the Judicial Commission itself be comprised of the Chief Justice as Chairman, the heads of jurisdiction of the Industrial Commission, the Land and Environment Court, the District Court, the Compensation Court and the Local Courts, two representatives of the public, one of whom would be a lawyer and the other a person of high standing in the community.

conduct division. The Conduct Division would deal with any complaint concerning a sitting justice or magistrate. It would be chaired by the Chief Justice and contain the head of the court to which the judge about whom the complaint is brought belongs and another judge or retired judge appointed by the Chief Justice.

role of parliament. Although the Chief Justice of the Supreme Court, Sir Laurence Street, originally indicated his support for the idea of a Judicial Commission, that support was withdrawn when the Chief Justice became aware of the proposal that judges might be removed on a recommendation from the Commission to the Governor rather than at the request of both Houses of Parliament as is presently required in the case of Supreme Court judges (*Sydney Morning Herald*, 17 September 1986).

The Chief Justice released a statement on behalf of 31 of the judges of the Supreme Court opposing the abolition of the role of Parliament in the removal of Supreme Court judges. More than 20 judges of the District Court supported the stand taken by the Supreme Court judges in insisting on the inclusion of the Parliamentary process in removing a judge. The Government subsequently agreed to retain a role for Parliament in the removal of judges (*Sydney Morning Herald*, 18 September 1986).

further criticisms. The Bar Association and the Law Society requested that the proposals for a Judicial Commission be deferred to enable full public discussion and expressed full confidence in the judiciary (*Sydney Morning Herald*, 19 September 1986).

The Council for Civil Liberties criticised aspects of the draft legislation to create the Commission. The Council's Secretary, Mr Tim Robertson, made the following criticisms:

- the proposals would destroy the independence of judges;
- a judge has no right to confront his or her accusers;
- there is no right for a judge to cross-examine witnesses;
- there is no right to secure material under subpoena to contest an allegation;
- a judge has no right to call witnesses to defend or explain conduct concerning which a complaint has been made;
- there is a strict liability offence for publishing evidence given before the Conduct Division even if it was published inadvertently without the offender knowing it was privileged information;
- the Conduct Division need not dismiss a complaint that has not been substantiated (*Sydney Morning Herald*, 19 September 1986).

progress of the legislation. Although the Government agreed to a certain period of Parliamentary delay in the passage of the reforms to the legal system (*Sydney Morning Herald*, 20 September 1986), it rejected a plea from the judges of the Supreme Court to defer the legislation and hold an inquiry into the establishment of the Commission (*Sydney Morning Herald*, 1 October 1986). A statement signed by the Chief Justice, Sir Laurence Street, and supported by 32 of the Supreme Court's judges made the following points (among others):

- since a proposal such as that contained in the legislation has the potential to compromise the independence of the judiciary, it requires extensive examination and public debate;
- the present legislation has been introduced with extraordinary haste for which there is no justification;
- the Californian Judicial Performance Commission and the Canadian Judicial Council on which the New South Wales proposal is based have had adverse effects on the standing and independence of the judiciary;
- it is inappropriate for Parliament to have the responsibility for the removal of all judges and magistrates rather than only those on the Supreme Court which has prerogative powers to prevent unlawful action by executive government and to control all other courts and tribunals.

At the time of writing, the Government was still proceeding with the proposed legislation. However, Cabinet has approved an amendment to legislation which will strengthen the role of Parliament. Under the proposed alteration, the Conduct Division would not make a specific recommendation for the removal of a judge or magistrate but would merely submit a report on the sufficiency of evidence to warrant the dismissal of a judge. Parliament would remain the ultimate arbiter (*Sydney Morning Herald*, 15 October 1986).

new trends in industrial law

For most people life begins at 5 o'clock on Friday arvo.

Craig McGregor, *Profile of Australia*, 1966

two cases. In recent months, a number of industrial disputes and their aftermath have received widespread media coverage because they appear to signal a new militancy on the part of employers and employer groups, and a movement away from the established principles of conciliation and arbitration. This has coincided with the emergence of the so-called New Right, in particular the HR Nicholls Society, which wants radical changes made to Australia's industrial relations system. In two cases, *Mudginberri* and *Dollar Sweets*, the forum wherein the dispute was ultimately fought out was not the relevant industrial tribunal, but the Federal Court and the Supreme Court of Victoria respectively, and the principles applied were those of civil, not industrial, law.

the mudginberri saga continues. A year ago, *Reform* reported a series of legal proceedings in what was already a long running dispute between Mudginberri Station Pty Ltd and the Australasian Meat Industry Employees' Union, and foreshadowed that the repercussions of the dispute were likely to be felt for some time to come. ([1985] *Reform* 146.) In recent months, two significant judgments have been handed down in the case. First, the High Court upheld the decision of the Federal Court to impose fines on the union for contempt consisting of both past disobedience to an injunction restraining it from, among other things, maintaining a picket line, and future acts of disobedience. Secondly, in an action for damages for loss suffered by Mudginberri as a result of the dispute, Justice Morling of the Federal Court awarded damages of more than \$1.7 million against the union. The union has since lodged an appeal against this judgment.

contempt of court. The decision of the High Court is significant in that it has settled once and for all the vexed question of the power o