

dp 10: secondary offences and offences by corporations. The section of this DP likely to have the most significant long term consequences is that which deals with the basis for corporate criminal liability. The Review Committee asserted its support for the principle that a corporation can be criminally liable, however, it sought submissions as to just what the basis of this liability should be. Three options were put forward. The first of these involved combining an adoption of section 4B of the Crimes Act (which is yet to come into operation) with clauses 34 and 35 of the UK draft Criminal Code. Section 4B provides that bodies corporate can be guilty of indictable and summary offences and that where they are found so guilty they shall be liable to a pecuniary penalty not exceeding five times the amount of the maximum pecuniary penalty for individuals. Clauses 34 and 35 are detailed provisions establishing the basis for corporate criminal liability. Amongst other things, they draw a distinction between the basis of liability in offences involving a fault element and those which do not. Alternatively, the Review Committee suggested that less stringent provisions along the lines of sections 84 and 85 of the Trade Practices Act 1974 (Cth) (without the reversal of onus of proof) could be incorporated in the consolidating law. The third option put forward was that an equivalent of section 43 of the Crimes Act be re-enacted but that the principles of corporate criminal liability be left to be determined by the common law.

Of the other matters dealt with in the DP of the Review Committee was basically satisfied with the operation of the current provisions dealing with accessories after the fact (s 6 Crimes Act) and incitement (s 7A Crimes Act), al-

though some slight changes were recommended. In respect of the operation of s 5 of the Crimes Act, which deals with secondary parties, the Review put forward various options for modernising and improving the provision. Finally, in respect of current procedural impediments to the trial of corporations, it was recommended that the Commonwealth should seek to reach agreement with the States as to the form of legislation required to make adequate provision for the trial of corporations for indictable offences.

submissions sought. The Review Committee invites comments on all matters raised in their Discussion Papers. Comments should be addressed to the Secretary, Review of Commonwealth Criminal Law, PO Box 237, Civic Square, ACT, 2608.

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police powers of arrest and detention

N.T. amendments. Amendments to the Northern Territory Police Administration Act came into effect on 30 March 1988. The amendments bring about significant changes to the laws relating to arrest and detention in the Northern Territory. While a person taken into custody must be brought before a court as soon as is practicable, a member of the Police Force is empowered to detain a person who has been taken into custody 'for a reasonable period' to enable the person to be questioned or for investigations to be carried out. The court is given a very wide discretion to determine what is a reasonable period but is required to take into account factors such as

- the time taken for investigators to attend to interview the person
- the time taken to interview witnesses
- the need to transport the person to a place where there are facilities to conduct an interview
- the need to visit the place where the offence was committed
- the time taken to communicate with a legal advisor, friend or relative of the detained person and for the legal adviser, friend or relative to attend the place of interview
- the time taken in awaiting the completion of forensic investigations or procedures
- the time during which the investigation or questioning was suspended to allow the person to rest, receive medical treatment or because of intoxication.

The Aboriginal Legal Services and the Criminal Law Committee of the Northern Territory Bar Association have been very critical of the proposals which they regard as a major encroachment on a person's rights while in police custody.

The Northern Territory changes are a significant increase in police powers and go further than the current laws in other Australian jurisdictions. They also go further than has been proposed by law reform commissions and other inquiries in recent years.

alrc proposals. The Australian Law Reform Commission in its Report: *Criminal Investigation* (ALRC 2, 1975) proposed that the Police should be required to bring a detained person before a justice or to release the person unconditionally or on bail as soon as reasonably practicable and in any event

no longer than four hours after custody begins. This period could be extended on application to a magistrate. This proposal was later adopted in South Australia.

nswlrc proposals. The New South Wales Law Reform Commission currently has a major reference on Criminal Procedure. In a Discussion Paper published in August 1987 entitled *Police Powers of Arrest and Detention* (DP 16) the NSWLRC set out its tentative views on the procedure to be followed after a person is arrested. A person may be 'detained in the custody of a police officer for such time as is reasonable in all the circumstances . . . but for no more than four hours from the time of arrest.' (DP 16, p 103). After this time the person must be released (though conditions may be attached to this) or brought before the nearest available court. This approach is very similar to that proposed by the ALRC.

victorian proposals. A 1984 amendment to s 460 of the Crimes Act 1958 (Vic) required an arrested person to be brought before a court within six hours of the time of arrest unless the person is released either on bail or unconditionally. However, a Consultative Committee on Police Powers of Investigation under the chairmanship of John Coldrey QC, the Director of Public Prosecutions for Victoria, published a report in April 1986 which concluded that the 6 hour period may be inadequate in certain circumstances even though a survey it conducted showed that in only 0.5% of cases were police unable to conclude investigations within this period. It proposed that a person should be brought before the court within 'a reasonable period' and listed the factors which the court might

have regard in determining the reasonable period.

These factors are similar to, but not as extensive as, those proposed for the Northern Territory. In addition the Victorian proposals provide certain safeguards, in particular

- the statutory recognition of certain basic rights such as the right to communicate with a friend, relative and legal practitioner and the right to an interpreter, and
- the requirement for tape-recording (which includes video-recording) of the questioning of a suspect before any admission made during such questioning can be used as evidence.

The Crimes (Custody and Investigation) Bill 1987 which will implement these proposals is currently before the Victorian Parliament.

review of commonwealth criminal law. The Committee which is currently reviewing the criminal laws of the Commonwealth considers that

a proper balance between the individual's right to liberty and the legitimate demands of society that crime should be properly investigated would be struck if the law allowed police officers a reasonable opportunity to question, under proper safeguards, a person who had been arrested on a reasonable suspicion or belief that he or she had committed a crime, provided, of course, the person arrested was willing to be questioned. Clearly it would not be right to allow indefinite detention for the purpose of questioning (Discussion Paper No 3, *Arrest and Related Matters*, September 1987, p 25).

The Committee proposed that

the law should specify a time for which an arrested person may be held before being brought before a justice, but

should make provision for extension of that time in proper cases. (p 25.)

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names: registration at birth and death

Rose is a rose is a rose is a rose.

Gertrude Stein, *Sacred Emily*

'get me to the registry on time'. In 1985, a case was heard before the New South Wales Equal Opportunity Tribunal. It involved a dispute between a married couple over the registration of their child's surname. The Registry of Births, Deaths and Marriages deleted the mother's surname from the Register and, in accordance with its standard practice where the parents are married, registered the father's later notification of his surname. The couple were living apart at the time of the birth of their child. The Equal Opportunity Tribunal held that the Registry's practice was discriminatory on grounds of sex and marriage and obliged it to register the first name lodged with it. Is such a decision fair?

reference. Following this case and together with other complaints and representations, the then Attorney-General of New South Wales, the Hon Terry Sheahan referred consideration of the law and practice relating to the registration and certification of names at birth and death to the New South Wales Law Reform Commission for inquiry and report. In December 1987 the NSW LRC issued a discussion paper concerning such registration and certification of names.

function of the registry. Every birth, death, marriage, adoption, legitimation and stillbirth occurring in New