

Knee-jerk reaction to Dietrich from Victoria?

The Victorian Parliament has reacted swiftly to the High Court's decision in Dietrich v R. The result is the Crimes (Criminal Trials) Bill. That follows the rather draconian Sentencing Act Amendment Bill. The question on Dietrich, though, is whether Parliament's reaction is the correct one because it imposes incredible funding implications on an already exhausted legal aid budget. RAY RINAUDO writes...

Two pieces of legislation introduced into the Victorian Parliament over recent weeks should have Victorian practitioners twitching and lawyers throughout the rest of the country at least nervous.

It seems that in Victoria, at least, gaol is the flavour of the month.

The problems arise from the *Sentencing Act Amendment* [Indeterminate Sentences] Bill and the *Crimes (Criminal Trials) Bill*.

Both bills have come in for some pretty heavy criticism and both, it seems, will be passed into law without amendment.

Indeterminate sentences have proved a disaster wherever they have been introduced, and I believe that in New South Wales alone there has been almost a 50 per cent increase in the number of people in gaol.

Whilst the *Criminal Trials Bill* has some good points, the main opposition is that it may well increase the costs it has been designed to reduce, and particular concern has been raised about clause 27 of the Bill (introduced so quickly that it is not numbered correctly in the bill).

This section is designed to avoid problems arising from the recent decision of the High Court in *Dietrich v R*.

The relevant part of the clause is as follows:

"(2) If a Court is satisfied at any time before or during the trial that

(a) it will be unable to ensure that the accused will receive a fair trial unless the accused is legally represented

in the trial; and
(b) the accused is in need of legal assistance because he or she is unable to afford the full cost of obtaining from a private practitioner, legal representation in the trial -
the Court may order the Legal Aid Commission of Victoria to provide assistance to the accused, on any conditions specified by the Court and may adjourn the trial until such assistance has been provided."

The Court cannot adjourn or stay a trial solely on the basis that the accused person has been refused legal assistance.

The appropriate consequential amendment has been made to avoid a clash with the provision of the *Legal Aid Commission Act* (Victoria) 1978.

In her second reading speech on the bill, Victorian Attorney-General, Jan Wade, said of this clause referring to the *Dietrich* decision:

"The High Court held that it may be unfair for a Court to proceed to hear a serious criminal charge where the accused is not legally represented and accordingly the Court should adjourn the charge until the person obtains legal representation.

"The effect of the decision is that if legal aid is not made available to such a person the prosecution is thwarted indefinitely...

"However, because there are indications that large numbers of accused persons are starting to use

the *Dietrich* device as a means of avoiding or delaying prosecution, I believe an urgent response is required...

"This provision is intended to have an immediate effect in limiting those aspects of the decision in *Dietrich v R* which would result in large numbers of serious criminal matters not proceeding to trial."

No mention by the Attorney about the serious erosion of the independence of the Victorian Commission, the loss of control by the Commission of its budget, and it goes without saying that there is no suggestion that the Government will provide extra funds should the Commission be required to meet this new demand.

No doubt things will come out all right in the end.

Don't they always in Victoria?

Redback should also ask here (because it wouldn't fit onto page 5) who was the couple who, following a meeting, adjourned to a pub? The couple consisted of male and female.

The pub was full of sailors in Darwin for a military exercise.

The female, being the only member of the species in the pub on that day, was miffed because the only one to get an offer was her male companion.

Of course, it's probably a lot of nonsense; we all know there are no gays in the services, don't we?