LEGAL AFFAIRS

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Crackdown on opportunistic class actions

CHRIS MERRITT
LEGAL AFFAIRS WRITER

THE federal government is planning a crackdown on plaintiff law firms that it says are launching opportunistic class actions primarily for personal gain.

It will convene a high-powered advisory panel to examine conflicts of interests and moral hazards between lawyers and the litigation funding companies that finance most class actions.

The panel will be asked to examine the entire litigation funding industry, but will give particular attention to plaintiff lawyers who run class actions and finance those cases through their own corporate vehicles.

Attorney-General George Brandis said he was worried that the current arrangements were "ripe for abuse".

"The system is entirely unregulated and it ought to be," he said.

The decision to convene the advisory panel comes soon after the Productivity Commission's draft report on access to justice called for licensing of litigation funders because of the risk of improper financial and ethical conduct.

Senator Brandis outlined his plan during an interview with *The Australian* in which he also:

- Indicated he wanted to move some lawyers from the Australian Government Solicitor's office to the Attorney-General's Department as part of a plan to make the department the government's primary source of legal advice (see accompanying report);
- Revealed that his final recommendation for reforming section 18C of the Racial Discrimination Act is likely to go to cabinet within weeks (see report on Page 32).

He said there was a place for class actions in the legal system, however, opportunistic litigation against public companies had become so common that it had changed the risk environment for business.

"There may be occasions on which those class actions are warranted, but too often they are used in an entrepreneurial way," he said.

"They are conceived by entrepreneurial lawyers who seek out shareholders and they do it for profit. They don't do it to represent the interests of the client. They do it for profit and I think that creates profound ethical and moral problems."

Senator Brandis said he had no criticism of what he described as "genuine class actions" that were the only way in which injured plaintiffs could obtain justice.

"But there is all the difference in the world, in my view, between that and opportunist litigation — particularly opportunist commercial litigation through the class action vehicle," he said.

"Let's be under no illusions; the reason it is being promoted is to line the lawyers' pockets."

Panel members, who are yet to be named, would consist of eminent lawyers and others with experience of the litigation funding industry.

Their involvement comes soon after research by John Emmerig and Michael Legg of international law firm Jones Day found that when population differences were taken into account the number of securities class actions threatened and filed in Australia was close to that of the US.

It also comes soon after the Productivity Commission's draft report favoured the introduction of US-style contingency fees — a move that would trigger more class actions, according to Tricia Hobson and Gerry Pecht of international firm Norton Rose Fulbright.

While Senator Brandis said he favoured regulation of the sector, he planned to examine the advisory panel's findings before deciding what form that regulation should take.

The Productivity Commission's draft report said litigation funders should be licensed as providers of financial products, subjected to explicit ethical standards, and monitored by the Australian Securities & Investments Commission and the courts.

Senator Brandis said some aspects of the industry were beyond the purview of state law societies and other aspects were entirely regulated by ASIC.

"So I think what we need to do is identify those moral hazards and conflicts of interest that exist and how they ought to be dealt with," he said.

"That may well best be done through the profession developing its own protocols or it may well be that it is appropriate to deal with it by regulation."

ONLINE VIDEO

"There are now very opportunistic class actions being promoted – not out of any sense of vindication of the shareholders' interests, or the plaintiffs' interests, but merely in order to create a money-making scheme for the lawyers"

ATTORNEY-GENERAL
GEORGE BRANDIS

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Public advice: a one-stop shop

CHRIS MERRITT

THE federal government is considering a major overhaul of public sector legal services that would make the Attorney-General's Department its primary source of legal advice.

If implemented, the plan would have significant implications for the government's publicly owned law firm, the Australian Government Solicitor, as well as law offices in government departments and agencies that last year cost taxpayers $363.7 million.

Attorney-General George Brandis said he believed his department should be the principal legal adviser to government and he recognised that this would affect other departments that provide legal advice.

"Our overarching objective is to get the cost of legal advice to government down as far as possible — consistent with protecting the quality of the advice," he said.

"I would like to see a greater opportunity for the private firms to provide advice to government.

"Within government, I would like to see a greater concentration of the legal advice by government lawyers within the Attorney-General's Department."

In order to elevate his department's role, he believed the focus of its operations needed to change. "In recent years (it) has become far too much a department whose focus is social policy rather than the provision of legal advice," he said.

"My view is that the pre-eminent function of the (department) should be to become the principal legal adviser to government."

He said certain niche areas of his department, such as the Office of International Law, were outstanding, but the government was also receiving legal advice from a range of other internal sources.

"There is advice that comes to the government not from the department but from the Solicitor-General and his staff, and then there is advice ... from in-house lawyers within various departments and agencies," he said.

The Australian Government Solicitor was also providing legal advice.

The National Commission of Audit has urged the government to close the AGS and investigate selling its book of work — worth about $100m last year in professional fees — to the private sector. Senator Brandis said the government had made no decision on whether to get rid of the AGS but, consistent with his views about his department's role, he believed the advisory functions of the AGS "would be better placed within the department".

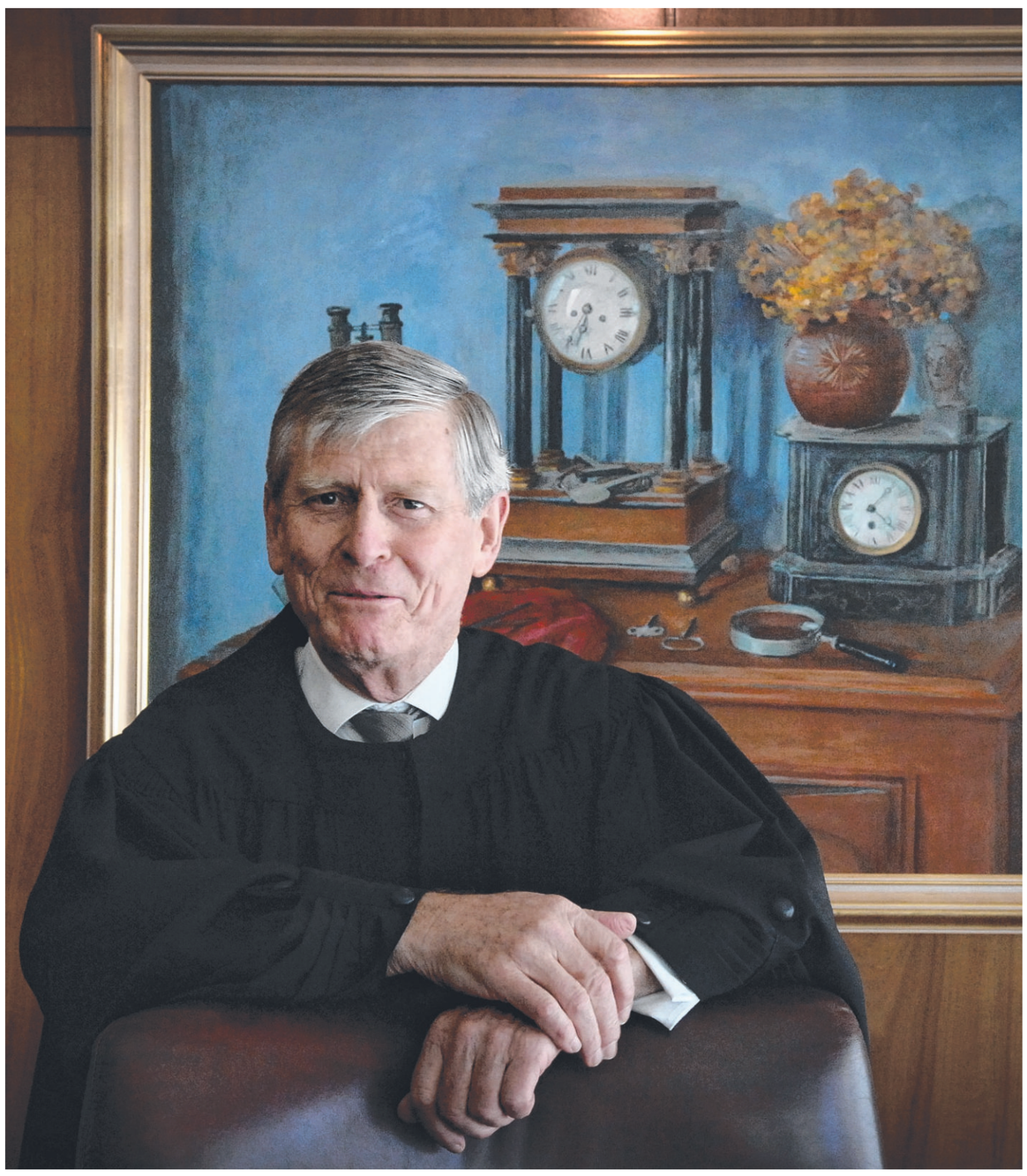
The audit commission also recommended that the Office of General Counsel — which provides advice on the core activities of government — should move from AGS to the Attorney-General's Department.

But Senator Brandis believed the advisory functions that should become part of his department should go beyond those units that provide advice on the core activities of government.

He said he had been explicit about the direction he favoured for his department.

"That, I think, will have implications for the other elements of the government which provide legal advice to government outside the Attorney-General's Department," he said.

Gleeson appointment a 'no-brainer'



John Howard and Daryl Williams, below, were of one mind in tapping Murray Gleeson for the top judicial role

This extract from Michael Pelly's new book, Murray Gleeson: The Smiler, explains the unusual circumstances that led to the appointment of the High Court chief justice

MICHAEL PELLY

WHEN John Howard was elected prime minister in 1996, he knew that within two years he would have to appoint a new chief justice of the High Court. The spotlight was soon on Murray Gleeson, then chief justice of NSW.

They had been at university together, but Howard only knew Gleeson by reputation.

"I would keep hearing about Murray from people like Bob Ellicott and Tom Hughes: Ellicott as a colleague and Hughes as a continuing friend. And you would just hear, and it was just accepted, that he was the — like the new Barwick."

Sir Gerard Brennan had succeeded Anthony Mason as chief justice of the High Court in 1995, but in May 1998 he would turn 70 — the mandatory retirement age for federal judges in Australia. His deputy, Mary Gaudron, was not in the frame because of her deep roots in the Labor Party.

After the High Court ruled 4-3 in 1996 that pastoral leases did not extinguish native title, deputy prime minister Tim Fischer said the government would be very careful about whom it chose to replace Brennan: "I'm attracted to the thought that it would be a capital-C Conservative lawyer/judge ... someone who's somewhat conservative on the matter of judicial activism."

The government's first two appointments made it clear the "capital C" criterion was in play.

In September 1997, Daryl Dawson — the lone dissenter in Mabo — was replaced by Ken Hayne, a former commercial silk who was on the Court of Appeal in Victoria. In February 1998, Brisbane QC Ian Callinan joined the court in place of John Toohey.

Callinan had been a trenchant critic of the High Court in the Mason and Brennan years. In 1994, his address to the conservative Samuel Griffith Society — "An Over Mighty Court?" — received wide attention, in particular for its criticism of "judicial activism".

Howard's attorney-general, West Australian QC Daryl Williams, had suggested the South Australian Supreme Court judge John von Doussa QC for the seat filled by Callinan but was overruled in cabinet.

The PM and his attorney, though, were of one mind when it came to the next chief justice. "Whenever I thought about it, it just seemed to me a no-brainer that we would make Gleeson chief justice of the High Court."

In early 1998, Williams started the formal process of consultation. He wrote to all state governments, bar association and law societies, then collated the names and invited further comment.

Williams had known Gleeson from his days at the Bar and had appeared against him in a contractual dispute that reached the High Court in 1984. "Murray mesmerised the trial judge, but we took it on appeal and won."

Williams said the next step he took was "possibly unique" for an attorney-general.

He personally contacted those who were potentially interested and arranged appointments with them. One staff member also attended.

"I would say: 'I want your views on who you think ought to be considered and I want your views on those people.' I would also ask them, 'Do you want to be considered?' If they said yes I would say, 'Okay, let's do this consultation in two parts. One, we will leave you out of it and you can tell me about other people, and then I want you to tell me about yourself.' I took notes and my staff member took notes, but we said the notes would not be shown to anybody else."

In 2013, Gleeson said that when he agreed to see Williams he had been under the impression — clearly mistaken — that the attorney-general was obliged to consult him as chief justice of the largest court in the country.

He declined to comment on what he told Williams, but said he was opposed to any interview process: "Beyond simply asking whether someone is available, it is never appropriate."

This was the traditional view and one preferred by Williams's successor as attorney-general, Philip Ruddock. The rumours concerning Williams's approach even forced Ruddock in 2005 to deny that he was interviewing prospective appointees.

Williams finalised a small list of candidates that included Justice John Winneke, the president of the Victorian Court of Appeal who had conducted a royal commission into the Builders Labourers Federation.

Howard said the discussion was very short. "Daryl Williams came to see me to talk about it and he said, 'I think we ought to appoint Murray Gleeson,' and I said, 'I don't think there's any argument.'"

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MORE

Online video: About the book www.theaustralian.com.au/business/legal-affairs

Chief Magistrate in line to be state's top judge

MICHAEL PELLY

THE Chief Magistrate of Queensland, Tim Carmody, has emerged as the frontrunner to replace Paul de Jersey as chief justice when the state's top judge becomes governor in July.

Attorney-General Jarrod Bleijie has told those he has been consulting that the former barrister is in contention for what would be an unprecedented elevation.

Mr Bleijie appointed Judge Carmody as Chief Magistrate in September last year.

He has been a favourite of the Newman government and is seen as an important ally in its hardline stance on law and order issues.

Judge Carmody is also said to have the support of the police.

In January, Judge Carmody dismayed senior judges and lawyers by defending the right of government to pass new bikie laws and impose stricter conditions on bail. In a speech at the Supreme Court, with Mr Bleijie in the audience, he said the separation of powers doctrine was "a two-way street".

"In return for the unfettered independence to make decisions — regardless of whether others think they are right or wrong — judges must not meddle in the administration of enacted laws by the executive and departments of state."

Tim Carmody

A spokesman for Mr Bleijie yesterday said the Attorney-General had been consulting widely on the replacement for Chief Justice de Jersey and described the talk around Judge Carmody as "speculation".

An announcement is expected by the middle of next month to allow the appointee to settle in before Chief Justice De Jersey takes over from Penelope Wensley as governor when her term ends on July 29. Judge Carmody was sworn in as a member of the District Court of Queensland and his predecessor as chief magistrate, Brendan Butler, is now serving on that court.

While it is not unusual for chief magistrates to be appointed to a state Supreme Court — Derek Price in NSW is one example — it is believed no chief magistrate has been elevated directly to a state's top judicial position.

Judge Carmody joined the bar in 1982. He was counsel assisting the Fitzgerald inquiry into police corruption and was Queensland's crime commissioner from 1998 to 2002 and then joined the Family Court as a judge in 2003. He stayed on the court for five years, after which he returned to private practice as a barrister.

Early last year, Mr Bleijie made him head of Queensland's Child Protection Commission of Inquiry and praised his work in that role when announcing his appointment as Chief Magistrate, saying: "Thanks to Mr Carmody's work, the Newman government now has a road map to make Queensland the safest place to raise a child.

"His unique blend of practical and legal experience made him the ideal choice."

Court to weigh dubious evidence

NICOLA BERKOVIC

FORENSIC experts hope the High Court will set new limits on the use of questionable scientific evidence in courtrooms in two upcoming cases.

In the first, *Honeysett v The Queen*, the High Court has been asked to consider whether "face mapping" or "body mapping" from CCTV footage constitutes "specialised knowledge" within the meaning of the NSW Evidence Act.

Anthony Charles Honeysett, an Aboriginal man, was accused of being one of three men involved in an armed robbery of a hotel in Sydney's northern beaches in 2008.

At his trial, an anatomy professor testified there were eight common features between Honeysett and the offender in CCTV footage.

The offender wore a pillowcase or T-shirt over his head, a long-sleeved top and long pants.

There was also some DNA evidence linking the accused to the crime, but he argued this was circumstantial.

Gary Edmond, a legal professor at the University of NSW, said body mapping was one of many identification techniques — including those used to match bite marks, ballistics, soil, voices and foot, shoe and tyre prints — that had never been validated.

He said such techniques were routinely used in courts in ways that no scientific study could support. "The specialised knowledge in this case is the interpretation of images," he said.

"Yes, he's a highly qualified professor of anatomy, but the question is, how do you interpret low-quality CCTV images where the person's wearing a disguise? We don't know whether he can do it or how well he can do it."

He said such techniques could be evaluated, but that had not happened.

"We've been allowing these people in and we get the same problem in case after case," he said.

Professor Edmond said research on unfamiliar face-matching had shown it to be very

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Appeal to clarify religious standing

KATHERINE TOWERS

THE extent of religious freedom in modern Australia will be tested by the High Court after a Christian group last week launched an appeal against a landmark Victorian court decision which, for the first time, elevated anti-discrimination laws over the right to religious freedom.

The appeal will be closely watched by human rights, religious, academic and minority groups across the country, as it will have wide-ranging ramifications on the extent of religious freedom in Australia and the operation of religiously motivated groups in the community. Associate professor in law and religion at the University of Newcastle Neil Foster welcomed the appeal, warning that without High Court clarification of the issue, religious groups — which often provide care to the most vulnerable people in society — might be forced out of the community.

Neil Foster

"That will be bad, not just for religious people, but also for those vulnerable persons in our community who are cared for by religious groups, often when others will not do so," he said.

Describing the case, *Christian Youth Camps v Cobaw*, as one of the most important law and religion decisions handed down in Australia in recent years, Associate Professor Foster said the High Court needed to clarify the extent of religious freedom in Australia and how those freedoms sat within the framework of an individual's right to be free from discrimination.

"We should not be elevating freedom from discrimination above all other human rights as the most important," he warned.

The original appeal decision last month by a majority full bench of the Victorian Court of Appeal narrowed religious rights in the state after it ruled that a camp site run by Christian Youth Camps had breached anti-discrimination laws by refusing to allow a support group for same-sex youth to use the site.

Christian Youth Camp argued that it did not discriminate against the group because of the sexual orientation of the individual members but because the group was advocating homosexual behaviour, which was contrary to its beliefs and doctrine.

It argued that under religious exemptions in the state's Equal Opportunity Act, it was within its rights to discriminate against something contrary to its beliefs.

But the court ruled that discriminating against homosexual behaviour was the same as discriminating against individual homosexuals, which is illegal under the act.

Professor Foster said while the details of the Victorian Court of Appeal decision involved an anti-discrimination spat between a Christian group and a

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Race act could protect opinions

CHRIS MERRITT

WITHIN weeks, federal cabinet will consider a final recommendation for reforming section 18C of the Racial Discrimination Act that will seek to prevent the censorship of opinions on the issue of race.

This goal has been nominated by Attorney-General George Brandis as the core element of the government's planned changes that must be protected to make the scheme work.

However, he also hinted that his final recommendation to cabinet might reflect some of the ideas outlined in submissions from leading groups on how to reform the restrictions on speech contained in section 18C.

"We did not engage in a period of both private and public consultation without intending to listen to what people had to say to us," Senator Brandis said.

But when asked if this meant he was open to horse-trading or compromise, Senator Brandis said that was not a phrase he would accept.

The government has received more than 5300 submissions in response to an exposure draft that would remove provisions in the Racial Discrimination Act that impose civil liability for speech on the subject of race that is found to offend, insult and humiliate.

These "hurt feelings" offences would be replaced by a law that targets the incitement of racial hatred and speech that causes fear of physical harm.

In an interview with *The Australian*, Senator Brandis drew a distinction between the expression of opinion and other statements on the subject of race that he implied were not as worthy of protection.

He said the core goal of the reform process was the removal of censorship of opinions.

"I say opinions because not all utterances are opinions," he said.

"A racist gibe is not an expression of opinion. The incitement of racial violence is not an expression of an opinion. The use of threatening language that might intimidate is not an expression of opinion.

"So although we speak of freedom of speech, what we are really concerned to protect is intellectual freedom — freedom of opinion.

"That is the core concept."

TREVOR PINDER

Columnist Andrew Bolt outside the Federal Court after it was ruled community standards should not be used to determine if his articles were unlawful

He said many of the submissions he had received on the reform of section 18C were similar to petitions — "serial incantations of the same point of view by a variety of people".

"Others are more substantial and weighty like the Human Rights Commission itself, the Law Council of Australia and various bodies that take an interest in this like Liberty Victoria," he said.

The submission of the Human Rights Commission accepts that the test for liability in section 18C should rely on community standards — not the standards of any particular group.

The submission, which was drawn up with the agreement of Human Rights Commissioner Tim Wilson and Race Discrimination Commissioner Tim Soutphommasane, accepts that liability should be determined according to community standards "in all the circumstances".

This is broadly in line with the approach outlined in the government's exposure draft. The exposure draft says liability should be determined "by the standards of an ordinary reasonable member of the Australian community, not the standards of any particular group within the Australian community". If enacted, this community standards test would overturn the way section 18C was applied by the Federal Court in 2011 when it ruled that community standards should not be used to determine if articles by columnist Andrew Bolt were unlawful.

In the Bolt case, Judge Mordecai Bromberg found that section 18C obliged him to judge Bolt's articles from the perspective of a reasonable representative of the group that had launched proceedings against Bolt.

Senator Brandis said the government never had any doubt that it would be difficult to reform section 18C because people who cared about this issue cared about it passionately.

"But in the end, even people who find themselves on opposite sides of the argument largely want the same thing — they do want anti-vilification laws and they do want appropriate protections for freedom of speech.

"My critique of section 18C is that it achieves neither of those objects well."

He said the reform process could "possibly" have been easier had the debate not been seen through the prism of the Bolt case.

"But I don't think we can escape from the fact that this issue slipped (from) the law school common rooms and emerged in the RSL clubs because of the Andrew Bolt case. I think there has been too much talk about Andrew Bolt as if this was just about one case or even one person.

"It's about a much broader principle and the principle is this: should government be passing laws telling people what they are allowed to think and what opinions they are allowed to express? My answer is 'absolutely no'," Senator Brandis said. He hopes to take his final recommendation to cabinet "in coming weeks".

This could be a better platform for Brandis

PREJUDICE

CHRIS MERRITT

WHEN it comes to free speech, George Brandis seems to have undertaken a crash course in subtlety.

Gone is the early rhetoric about people having a right to be bigots. In a free society, that principle is indeed fundamental.

But launching a reform campaign with such a confronting idea was a gift for those posturing authoritarians who believe parliament, the courts, lawyers and the human rights commission should all be mobilised — at taxpayers' expense — to prevent hurt feelings.

The Attorney-General's focus today is on far more attractive concepts — intellectual freedom and the right to express an opinion.

In a few weeks, it will be known whether this is simply another way of expressing the ideas that are part of his original draft reforms for the "Bolt provisions" of the Racial Discrimination Act. It could be.

There is also a possibility that this is much more than a change in rhetoric. It might be the first sign of a change in the underlying legal substance of the reform plan for section 18C of the RDA.

It is worth noting that Brandis, in the accompanying article, is at pains to point out that there is a big difference between the expression of an opinion — which he believes is worthy of legal protection — and mere racial abuse.

If that approach became law, the test for liability in a rewritten section 18C would take on critical importance.

If the test remained unchanged, the law would remain skewed in favour of those who would claim that an opinion is really mere abuse.

That would solve nothing.

Brandis might feel obliged to give the final reform plan a sharper focus on protecting opinions in order to show good faith with the constructive feedback he has received from some of the major stakeholders.

Those groups, led by the Jewish community, have a legitimate interest in this body of law and it is only right that their views should be taken seriously. To date, there is no evidence to the contrary.

This might help with the coming fight in the Senate over this scheme, but the only way it can safely be done is to ensure that the test for liability relies on community standards.

The law at the moment requires judges to see things from the perspective of a reasonable representative of those who complain. The perspective of the other side — as well as that of the broader community — is not part of the test.

After being done over by such a rigged system, does anyone blame Andrew Bolt for being a little grumpy?

His articles about light-skinned Aborigines were not perfect. They contained errors. But those errors are insignificant compared with the outrageous bias in section 18C.

The key to eliminating that bias — and restoring public confidence in this body of law — is for Brandis and the cabinet to ensure that the rewritten law is anchored in community standards.

After some initial divisions, this part of the government's draft plan is now supported by a consensus within the Human Rights Commission — so long as all the circumstances of the case are taken into account.

That extra condition is only fair. It would ensure that judges would take account of the impact on both sides as well as the standards of the community.

That's an enormous improvement on the current law, which seems designed for a nation of tribes, each deserving different treatment.

The headline on last week's article about barrister John Hyde Page indicated incorrectly that he is a senior counsel.

Gleeson appointment as chief a 'no-brainer'

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It was the same when cabinet met on Monday, March 30, 1998. "I don't remember anybody objecting," said Howard.

"We had lengthy discussions about the others (who were appointed to the High Court), but not about this. No argument at all."

Williams and Howard departed from the usual practice of the attorney-general informing the chosen person. "Daryl said to me, 'Well, you know Murray well, you probably want to ring him.' And I made the call," said Howard.

It was 7pm and Gleeson was at home with his wife, Robyn.

"I rang him and said, 'Would you be interested in being chief justice of the High Court?' And he said, 'Yes, thank you very much'."

Howard also called governor-general Bill Deane, an old friend of Gleeson's.

He needed to get Deane's nod to make the announcement in advance of Executive Council approval. "I rang him and said, 'I'm sure you'll be happy to know — delighted to know — that we're going to appoint Murray' and he said, 'That's terrific, that's the right appointment.' I remember him saying, 'Do you mind if I ring Murray?' And I said, 'Certainly not. I'd assumed you'd want to'."

Australia was on its 25th prime minister and 22nd governor-general but Gleeson would be only the 11th chief justice. The reaction might have been overwhelmingly positive in the media, but Gleeson's wife said she "wasn't terribly delighted". "I know that he kind of thought, 'I've had enough of being chief justice of NSW', and I had had enough of it. My only encounter with the High Court was in Melbourne (just after they were married in 1963) and I thought I had never come across such rude people."

Murray Gleeson, The Smiler is published by the Federation Press.

High Court asked to weigh dubious evidence

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error-prone, and those with experience, such as anatomists and passport officers, performed no better than ordinary people.

He said courts needed to read the need for reliability into specialised knowledge, as they had done in other jurisdictions.

"The danger is that the evidence will be misunderstood by the jury and that may lead to wrongful convictions," he said.

In the second case, *Fitzgerald v The Queen*, the High Court has been asked to decide whether a mixed sample of DNA from two or three people, taken from what appeared to be a blood stain on a didgeridoo, was enough on its own to convict the accused.

Daniel Glenn Fitzgerald was convicted of murder and causing aggravated harm, as one of a larger group involved in a family brawl that left one man dead and one with brain injuries. Other than his DNA being found on the didgeridoo in the home, he was not linked to the group, and the prosecution did not proffer a motive for him being involved.

Charles Sturt University professor Jane Goodman-Delahunty said the problem was that scientific evidence of a DNA match, even if strong, was not proof an accused was at a crime scene.

She said, in *Fitzgerald,* the question was whether the mere fact of a DNA match was unduly persuasive to the jury and overwhelmed other considerations about potential innocent explanations for the match.

"Juries are usually cautious about relying on circumstantial evidence, and prefer direct evidence," she said. "In the case of forensic scientific evidence, and DNA profiles in particular, research has shown that they do not show the same degree of caution and may infer that evidence of a match establishes that the accused was at the crime scene and committed the crime."

She said jury research showed jurors could be "blinded by science" — and mere evidence of a DNA match could increase their tendency to convict.

Independent DNA consultant Brian McDonald said he believed courts should not use DNA to convict someone with a total lack of corroborating evidence.

Appeal to clarify extent of religious freedom in Australia

Continued from Page 31

homosexual support group, the ramifications from the decision were widespread and had a "major detrimental impact" on religious groups that provide services to the community. "(The Court of Appeal decision) sends the wrong message about religious groups not being able to operate in accordance with their religious beliefs," Professor Foster said. "It cannot be a good thing to tell these groups that if they want to operate in the community, they effectively have to adopt a non-religious perspective, which denies the very reason for their existence.

"The narrow reading of the exemptions given by the majority decision in the Victorian Court of Appeal will, if applied in other areas, end up squeezing religiously motivated groups out of the public sphere altogether."

In the grounds for appeal, Christian Youth Camps argues that the finding that its discrimination against a group advocating homosexual behaviour was akin to discriminating against an individual homosexual, was wrong.

It says it didn't discriminate against the actions of the support group or the individuals involved but discriminated against the "syllabus" and teaching to be given at the camp".

Victims of sex assault 'should meet offenders'

CHRIS MERRITT

A MAJOR report by RMIT University's Centre for Innovative Justice has called for a new system of "restorative justice" meetings between victims of sexual assault and the perpetrators of these offences.

The report, which was funded by a $300,000 grant from the federal government, calls for conferences that could give rise to a range of outcomes — including an apology, financial compensation, a commitment by the offender to enter a treatment program and an agreement about future contact or disclosure to family members.

Rob Hulls, who is the centre's director, said that the proposal aimed to address a serious gap in the criminal justice system because most victims of sexual assault do not report the offence to police and, if they did, they often failed to achieve a successful conviction in court.

"There are a range of innovative justice practices that could sit alongside the conventional system that would make the justice system more accessible, flexible and responsive for victims of sexual assault," said Adjunct Professor Hulls, who is a former attorney-general of Victoria.

The report's proposals include:

- A statutory framework for restorative justice conferencing to ensure appropriate safeguards and quality;
- The establishment of assessment panels made up of forensic, legal and community experts, to determine the suitability of cases for conferencing; and
- Oversight by police, the prosecution and the judiciary.

MORE

Rob Hulls explains the plan at www.theaustralian.com.au/business/legal-affairs
The report is available at rmit.edu.au/innovativejustice