

## Act to be trialed in Gosford and Orange

On 9 February the Government announced that it would trial parts of the new law in two areas, Gosford and Orange from 13 March. The parts of the Act relating to parents's responsibility for their children's offences would operate throughout the State.

The parts relating to young people in public places would be restricted by the Regulations and Police Instructions. For the Act to operate in only those areas, the Regulations would then have to list prescribed places of refuge that were located in Gosford and Orange. This is where the Government is running into difficulties because none of the accommodation providers for children and young people will co-operate with the legislation as they are so opposed to it. The Government may have to resort to finding private homes, or even worse, a detention centre located in one of the areas. Imagine the police picking up a young person and taking him or her to a stranger's home, where they could be detained for 24 hours, and then fining them \$500 if they felt unsafe or threatened and tried to leave.

On the same day the Police Minister released the Police Service's Youth Policy. The document is based on the White Paper and, like the White Paper, is inconsistent with the approach of the new Act. The police youth policy proposes fair treatment of young people and protection of their rights. Both police and young people in NSW must be receiving some very mixed messages. On the same day they can be citizens with the right to be treated with dignity and potential criminals who must be banned from public places.

By enacting this legislation, the Government and the Opposition have failed to address some of the real issues facing young people and their families. These include domestic violence, homelessness, alienation from the education system and lack of income support. When this cumbersome law is fully proclaimed, NSW will join WA and Tasmania in the international hall of shame for the human rights violations that laws such as this allow.

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## REFUGEES

### *A failure of democracy*

#### STUART RUSSELL calls for the release of David Kang.

On 26 January 1994 David Kang, a 24-year-old Macquarie University student, lunged at the Prince of Wales firing a starter's pistol, to dramatise the plight of the boat people in Australia. Before the conclusion of the committal hearing in February 1995 a number of extremely serious charges against him were withdrawn. At that time he was committed to stand trial before a jury in the New South Wales District Court on the charge of affray, which carries a maximum penalty of five year's imprisonment. At the same time as Kang's committal, the Commonwealth Government introduced legislation to make it more difficult for Chinese boat people to seek asylum

in Australia, by disallowing refugee claims on the basis of China's one-child policy and to claimants who have been granted protection by another country. Most of the boat people from China were Vietnamese refugees who had been granted asylum in China. The Federal Government has thereby even more firmly shut the door on those powerless refugees fleeing oppression and persecution.

I can fully understand why David Kang lunged at Prince Charles on Invasion Day/Australia Day last year, because we share a few things in common. I, too, started out my career as a political and legal activist at the age of 15 by writing hundreds of letters to the biggest polluters in Canada. I was deeply concerned about the eroding state of our environment, and I was told this was the most effective means to get action. Secondly, like Kang I was passionately involved with refugees in the 1980s, as a refugee lawyer in Canada. And so I can perfectly understand, and even sympathise with, the frustrations that resulted from the all too predictable inaction on the part of government authorities, when his hundreds of pleas for justice fell on deaf ears.

But what exactly is Kang's crime? His misdemeanor was to take the democratic ethos too seriously. He was simply doing what most 'democratic' societies implore us to do when confronted with a problem: *write a letter!* To the editor, to one's MP, to the Prince. But the complete hypocrisy of this incantation is that it presumes that action *will* be taken on the complaint, when in fact such pleas usually fall on deaf, bureaucratic, uncaring ears. Of course, one can go further, and pursue a number of other possible avenues of redress, including the courts and political channels, but real justice is an endangered species in those forums these days.

So what does the proverbial 'concerned citizen' do when all the prescribed possibilities for justice have been exhausted? History has shown that governments are congenitally incapable of affecting positive change suggested by its own citizens, except for relatively minor reforms, unless they are forced by massive protests or after major disaster strikes. We must not forget that Kang's cause was not individualistic in nature, but rather he acted purely out of sincere altruism, which is regrettably a rare commodity in Western societies. He acted as a samaritan, solely to advance the welfare of a group of severely disadvantaged people — refugee claimants who have in many cases spent up to four years behind bars simply for the 'crime' of fleeing persecution. The UN, Amnesty International, and many human rights organisations and individuals have strongly condemned the Commonwealth Government's detention policy, and yet the Government sat on its hands, in violation of the legal maxim that justice delayed is justice denied.

The plight of refugee claimants in Australia is a massive international human rights violation. When I practised as a refugee lawyer in Canada, detention was used in only very rare circumstances, and even then only for a few weeks, or months at the most. Most refugee lawyers regarded detention of over a few weeks as scandalous, and frequently writs of habeas corpus would be sought in such circumstances, which were often granted. Once a Tunisian client of mine had been detained in an ordinary prison, rather than an immigration detention centre, for six months, and due to mistreatment he commenced a hunger strike. A short time later he was officially declared to be a refugee and released.

Australia's refugee policy is one of the most regressive and draconian in the world. Even in the United States, notorious for its extreme anti-refugee policies, one does not

normally find long-term detention of refugee claimants. Not only do refugees who come to Australia suffer terrible persecution in their home countries, they suffer the added persecution of a long and perilous journey, long-term detention in isolated locations like Port Headland and a strong possibility of deportation. Not only does this shame the Commonwealth Government, but it should shame all Australians, who have allowed this massive injustice to continue, without speaking out or taking action to end it. If the Federal Government had a *humane* policy on refugee detention, David Kang would *not* be behind bars, Australia Day would not have been spoiled and the Prince would have had an uninterrupted and peaceful visit.

The question is not why do people like David Kang attack symbols of repressive government policies, but rather *why such attacks do not occur more often?* The general public is outraged by real or attempted attacks or assassinations on public figures, but where is that sense of outrage at the injustices and killings that go on every day, like the continuing deaths in custody, still disproportionately affecting Aboriginal people? Hardly a word of protest is raised, and it is left by and large to the Aboriginal community and a few brave supporters to condemn such deaths. Similarly, who speaks for the hundreds of refugees behind bars in this country? A small number of overstretched refugee advocacy groups, a few academics, some churches, and immigrant groups who are frequently the victims of endemic racism. It is no wonder that governments can conveniently ignore the plight of refugees and Aboriginal people, who make up some of the most disadvantaged people in our society.

And so we should not blame David Kang for lashing out symbolically against the Prince, but rather the Commonwealth Government for the inhumane refugee detention policy he was seeking to condemn. What kind of a democracy do we live in which forces those of its citizens who are full of compassion, altruism and justice to *get arrested* and face possible death in order to draw attention to the plight of *others*? Why is it that more and more people worldwide are forced to take *illegal* action because of the inflexibility of government and its unwillingness to change?

But such illegal acts may even be countenanced by our criminal justice system, in special circumstances. The common law defence of necessity can be used by an accused person where he or she is forced to break the law to avoid even more serious consequences. The defence has been relied on by countless political activists in the United States who have been criminally prosecuted, mostly for acts of civil disobedience connected with the nuclear or peace issue, and some have been acquitted. In the 1980s I used the defence on several occasions to defend political activists protesting the importation of uranium from Namibia, contrary to UN Resolutions, and the demolition of apartments to make way for multi-million dollar condominiums. In only one case, however, did it succeed. A woman had campaigned ceaselessly to stop pesticide spraying in her neighbourhood. She had circulated petitions, written letters, garnered the support of the council, and yet the spraying continued. And so one day she simply laid down in front of the spray truck, and was swiftly arrested. A brave judge in suburban Montreal agreed that she had done everything possible to stop the harm, and that the potential danger was much greater to society than holding up a spray truck for a few hours, and thus she was acquitted.

The defence is, understandably, *extremely* difficult to succeed with, since we are constantly reminded the spectre of anarchy and mass lawlessness lurks around the corner, if the door were to be opened too far. As one judge in New South Wales ruled, 'public policy has required a sparing use of the defence'. But it is an extremely powerful instrument because it allows, in a limited number of circumstances, citizens to 'take the law into their own hands' for the good of society while avoiding the hardship of a criminal record. It is thus in furtherance of *participatory* democracy, because it encourages people *themselves* to be active participants in the democratic process by taking action to correct social problems. In David Kang's case he had done everything possible to bring an end to long-term refugee detention (as did human rights organisations and the international community). He acted sincerely and in good faith, and he seized the stage in order to avoid a greater evil, namely the continued injustice of hundreds of refugee claimants wasting their lives behind bars. It must be kept in mind that only a starting pistol was used. He never intended to cause physical harm to the Prince, but only to engage in a symbolically-charged act of political theatre.

The only honourable action in David Kang's case is to immediately release him and all the refugee claimants in detention, and for the Federal Government to make urgent and sweeping changes to its refugee detention policy.

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## LAW AND ART

### *A vivid picture of injustice*

**ANIA WILCZYNSKI discusses an artist in residency program at Macquarie Law School.**

*These paintings are not intended to please in the traditional expectation of objects designed to aesthetically delight the senses . . . The first concern was to use the language of the visual image to give expression to the understanding of a fundamental and disturbing feature of the human condition*

*David Boyd*<sup>1</sup>

Artist David Boyd has always had a passionate commitment to issues of social justice. He once said that he decides what to paint about by 'work[ing] up anger on a particular issue'.<sup>2</sup> His earliest work as a painter was a series on Australian explorers in the late 1950s, followed by 'The Tasmanians' series based on the dispossession and genocide of the Tasmanian Aborigines. Another series painted in the mid 1960s examined the power and authority of the Church and State.

However, Boyd is best known for his paintings on legal themes, beginning with the 'Trial' series in the early 1960s. His interest in the legal system was inspired by outrage at the injustice suffered by the earliest Australians. A stint as a clerk in a solicitor's office as a young man, a great-great-grandfather who was the first Chief Justice of Victoria, and a grandmother involved in penal reform and women's rights, also