

Scandals thus far: a big year ahead

Due to your man in Havana (or rather Edinburgh) having an extended break over the new year period, this is CLANT's first column of 2002.

The year ahead looks like a big one for criminal lawyers and our Association.

Despite not having to wrestle with the Government over that former blight, mandatory sentencing, there are still a large number of legislative and policy matters which loom in the year ahead. I am hoping our Association will be able to develop an effective and constructive relationship with the new Government.

One issue presently placed in limbo as a consequence of "political expediency" (to use a benevolent expression), is the question of mandatory life imprisonment. You will recall last year the Government announced its intention to review this "blight" only to be met by the predictable brouhaha and general wind and gas vomited up by the media and the CLP opposition. As a consequence the issue was put onto a 12 month back burner for a review period. A review of mandatory life imprisonment needn't take more than two months but "expediency" and yet more "expediency" is the stumbling block that prevents our criminal justice system being improved by its removal and replacement. Our Association is keen to contribute to this debate, if and when the Government musters up enough resolve to take it off the back burner.

Other potential issues I see ahead for CLANT could very much include the national, if not international question, of the treatment of asylum seekers. This could be regarding their treatment in the recently built facility in Darwin or elsewhere, or their processing generally. *Balance's* January issue highlighted the plight then of the Woomera refugees as witnessed by myself and discovered through dialogue with the legal team endeavouring to represent them at that stage.

The question of their treatment involves questions of international and human rights as well as legal procedural issues. Much of what I learned first hand as well as from the media's reporting of this matter

goes to a particular mean spirited approach by the Australian Government towards these men, women and children. It is, of course, policy driven and so starts from the top (Howard and Ruddock). It flows down the line to DIMA officials' direct dealings with refugees, ending with the facilities themselves policed by a privately run and seriously undermanned American company.

Of course, the whole debacle has been exposed for what it is: yet another cruel and cynical political exercise by the politicians of the incumbent Federal Government. "Little Honest Johnny" and his colleagues have been exposed for what they are on this issue: scoundrels to a man. Consistent with this regressive and shameful episode has been the increasing politicisation of entities previously unsullied. Whether that be an increase in the extent as regards the public service generally or the Australian armed forces, plus, of course, the appointment of our present GG (or should that be PB for Pompous Buffoon). Such regression inevitably strains the rule of law and impacts on individual rights. This Commonwealth Government clearly has no qualms about lying to the public as well as abusing basic human rights. One turns the TV on to watch the Australian Prime Minister lying about his knowledge, conduct and intentions regarding the "Children Overboard Affair" (very much like Heffernan's witchhunt on Justice Kirby) to be followed by the Head of the Australian Military, Admiral "Dill", likewise lying barefaced to a Senate Committee on the same matter. In between we have the Governor-General making his fourth in a row re-explanation about his pitiful explanation from the day before concerning his antediluvian approach to priests having sex with children. Of course that's the standard you get when you appoint people politically rather than on merit. All of which has recently been bettered by the Government's deliberate attack on Justice Kirby and the High Court as well as the gay population of Australia. The Cowards Castle of Parliament has been cynically used by this Government to, once again, "whistle out the dogs". No doubt considered electorally popular.



John B Lawrence, President of the Criminal Lawyers Association of the NT

Clearly, in the last few years there has been a gross deterioration in the standards of public life. They presently sit in the bottom of the gutter. One wonders how long mandatory voting can justifiably be retained in this country. This lack of scruples and integrity puts pressure on lawyers representing people affected by the legal developments which flow from it. Human rights are undermined. Protections, whether they be criminal law, procedural or constitutional, are attacked and circumvented.

PETROL SNIFFING

A major or "monster" issue which persists and festers in our criminal justice system is petrol sniffing. At the beginning of this year our Association wrote to the Chief Minister seeking dialogue with the NT Government. I am pleased to report the Chief Minister reacted positively and invited yours truly to meet with the Northern Territory's Health Minister, Jane Aagaard. That meeting will take place in the near future.

Sniffing: A "Cancer": Persistence of Evil

The sniffing of petrol by young Aboriginal males and females in communities across the NT as well as WA and SA is arguably the worst social feature of contemporary Australian society. It's a horror story of gross dimensions.

It impacts with devastating effect on the individual sniffers, their families and communities in the extreme. It also impacts, amongst everything else, on our criminal justice system. It's effect thereon is direct and indirect. It leads to sniffers' repeat stealing of petrol for consumption. It leads, further, to brain-addled sniffers committing the most serious and gross

crimes in horrendous circumstances (refer *R v Hudson*, the rape and drowning of a nine-year-old child by a brain damaged petrol sniffer).

It is of course not a new phenomenon. Sniffing petrol by Aborigines in the NT has been going on for about 50 years. (The earliest known report of deliberate inhalation of petrol fumes is, in fact, from the USA in 1934).

"Inhalation" is, in fact, the more accurate word. "Consumers" (what a euphemism?) do not actually sniff the fumes through their nose but inhale through their mouth. Children hang receptacles (normally a tin can or a plastic bottle) containing petrol around their necks for regular and close availability. The effect is a high plus hallucination depending on the extent of the inhalation. It leads to disinhibition generally including sexual conduct. It causes blood poisoning and brain damage. The age range of sniffers is from as low as seven years of age through to young adulthood. Sniffers are often capable of then terrorising some of the smaller communities. There are now instances of second generation sniffers as well as new born babies being born with five times the level of lead in their blood due to the sniffing by the carrying mother. Further, there are instances of parents so terrorised by their sniffing children that they supply them with the poison to appease them.

The resulting social, economic, health, educational and legal costs would be enormous if ever actually quantified. Suffice to say if it didn't exist the Government would have far more dollars in its coffers to expend on other areas.

From July 1999 NT journalist Paul Toohey has reported on various aspects of this scourge for *The Australian*. His articles graphically describe the deleterious affects on health the disease causes.

Internal and external damage abounds. There are 20-30 people in the NT, SA and WA who are wheelchair bound caused by its ravages.

There are many instances of serious burns plus amputations caused by intoxicated sniffers playing fire games. Brain damage occurs in many instances.

This nightmare, or "culture of nihilism" as described by Toohey has been going on now for at least 30 years. The question I ask is, how come it persists? There has never been a direct attempt by any

government whether it be federal, state or territory, either individually or combined to meet head on this disaster and attempt to erase it.

That fact in itself is remarkable. Why so? The answers may be various but the overwhelming factor has to be by virtue of it being an *Aboriginal disease*.

Can anyone seriously imagine such a malaise emerging in the northern suburbs of Darwin involving white children, or indeed, coloured children and being allowed to continue? Because of its grossness it just would not be allowed to continue in Darwin's northern suburbs. It would be expunged quick pronto by whatever means and the resources needed to so do would become immediately available.

It is conceded that it's not a simple problem producing a simple solution. It's a complex question and is necessarily related to the bigger picture of substance abuse and the dysfunctional problems which exist in Aboriginal communities.

For a shamefully long period now petrol sniffing has been addressed in an ad hoc, hand to mouth, uncoordinated fashion.

Some communities decide to tackle it and do so successfully. There are the examples of Maningrida in the 80s, Yuendumu just recently, Milingimbi and, I understand just recently, Elcho Island. However, the point surely is that there has been no concerted effort to eradicate the problem. Often attempts have been made without any success.

The particulars of its grossness are mentioned above and yet never has it been said by any Government; "enough is enough". The Government of the day should accept, with the help and in partnership of the affected communities, responsibility for killing it.

We criminal lawyers, fortunate enough to have been able to represent Aboriginal clients in communities, are well aware of the disease. And what have we done? The same as the Judges and Magistrates: the same as the teachers, health workers and Local Government employees. We have observed and touched it and to a degree have become involved in it. We have even from time to time made noises about it.

I have personally wrung my hands just as the sentencing magistrate has wrung his hands. I have uttered the platitudes just as the sentencing magistrate has uttered

the sentencing platitudes back. We have both then got on the plane and flown back to Darwin.

Its persistence says more about us and the place Aborigines have in our society than the disease itself.

Our Association is now asking of this Government to not only agree it's a major blight, but one which the Government has to have some responsibility for and tackle full on with a view to stopping it.

Our Government needs support from the Federal Government. In February 2001 in response to one of Toohey's articles, our present Prime Minister stated here in Darwin at St John's College:

I have taken a very personal interest in this issue... We have to demonstrate a commitment of money ... a determination by the Federal Government to see if we can find some way to tackle this terrible problem.

He called it "a cancer". Over the years there has been an accumulation of experience and knowledge as to how this disaster can be addressed and dealt with and such knowledge should be used.

One consideration could be establishing a permanent cell consisting of qualified experts on the subject who can, through appropriate channels to the communities involved, coordinate the knowledge, experience and, perhaps more importantly, the relevant personnel, to address that community's sniffing problem.

Of course, fundamentally the communities involved have to be the prime instigators – without that we are snookered. Having said that, let's inform them that there is a support for their desire and need to kill this problem. Let's attempt this. Let's set up an appropriate mechanism housed and manned with the appropriately qualified personnel. Of course it's probably a losing brief but so be it. The bottom line is it's incumbent on any Government with any responsibility to endeavour to its utmost to try and erase this gross scourge which still bedevils our society.

The prospects of erasing this "cancer" calls to mind an old hero of mine, Robert the Bruce who, in 1307, bunkered up in the Highlands hiding and patiently waiting for his day in the sun (Bannockburn), having observed a spider attempt unsuccessfully to eradicate petrol sniffing in his cave vowed: "*If at first you don't succeed try, try and try again*".^①