

feature

Terrorism: the new law and order auction?

The Law Council has warned that moves by South Australia and Western Australia to introduce "the toughest" anti-terrorism laws in Australia may foreshadow a new and dangerous auctioning off of individual liberties.

Ross Ray QC, Executive Member of the Law Council, said, "Any new anti-terror laws need to be justified and proportionate. They also need to be nationally uniform and developed through widespread consultation."

"Auctioning off our liberties by governments is not the way to go. Anti-terror policy should be developed following careful consideration, not by way of competing press releases," Mr Ray said.

The Law Council believes proposals by the states to grant State Police the power to issue their own search warrants is completely unacceptable and should not proceed at all.

"The courts are quite capable of exercising the necessary supervision of warrant applications without causing disruption or delay to ongoing investigations. This highlights the importance for national uniformity in policies on anti-terror."

"There's far too much politics in terror at the moment – we need thoughtfulness, not grandstanding," Mr Ray said.^①

Sentencing Children: some issues of principle cont...

⁶⁵ Heblos v The Queen M 136/2000 (10 August 2001) per Gaudron and Kirby JJ.

⁶⁶ [2002] VSC 94

⁶⁷ GAS & SJK v The Queen (2004) 78 ALJR 786 at [5]

⁶⁸ [2002] VSC 94 at [37]

⁶⁹ ibid at [52].

⁷⁰ DPP v SJK & GAS [2002] VSCA 131

⁷¹ ibid at [65] – [66].

⁷² GAS v The Queen, SJK v The Queen [2003] HCA Trans 393 (Gummow and Hayne JJ). There were no reasons given for not granting special leave to appeal on these grounds.

The Uniform Evidence Act - Request for Submissions

By the Hon Austin Asche AC QC, President of the NT Law Reform Committee

The Attorney-General, the Honourable Peter Toyne, has asked the NT Law Reform Committee (NTLRC) to "review the Evidence Act NT and other laws of evidence which apply in the NT, and advise the Attorney-General on the action required to facilitate the modifications of the existing provisions of the Uniform Evidence Act".

A sub-committee of the NTLRC is presently carrying out the review requested by the Attorney-General.

It is important to note that New South Wales, Tasmania and Norfolk Island have, with some local variations, adopted and enacted the Uniform Evidence Act and the Governments of both Victoria and Western Australia have clearly indicated that they will follow.

If any member of the legal profession in the NT wishes to contribute to the research presently being undertaken, the sub-committee of the NTLRC will be interested in hearing their views.

Note that this is not an invitation to produce a "new and improved" Evidence Act, differing from either the Uniform Evidence Act or the Territory Act. The Uniform Evidence Act is the product of a vast amount of research by the Australian Law Reform Commission from 1985 onwards, during which many distinguished academics and practising lawyers were consulted. That does not mean that a perfect solution was found, but one workable enough to be adopted throughout Australia for the sake of uniformity.

A spate of new models, no matter how impeccably superior to anything previously existing, would re-create the confusion of statutes, which, it is hoped, the Uniform Evidence Act will overcome.

The sub-committee would appreciate submissions as to whether the NT should keep its present Act or move to the Uniform Evidence Act; and if the latter, the most effective way to do so.

Likewise, submissions as to the desirability or non-desirability of specific sections of either Act, and suggestions for amendments in either case will be most welcome, subject to the rider mentioned above that they can be accommodated within the existing framework.

The sub-committee will be interested to receive your views either verbally or in writing.

If you wish to discuss these matters please communicate with the Secretary of the NTLRC, Mr Chris Adepojib, on 8999-6505. At your request he will also provide you with the full Terms of Reference and with "Material for Consideration", a preliminary paper prepared by the sub-committee.^①

⁷³ GAS & SJK v The Queen (2004) 78 ALJR 786

⁷⁴ ibid at 795 [38]

⁷⁵ PP v The Queen [2004] HCA Trans 207 (18 June 2004) per Gleeson CJ and Hayne J. The grounds of appeal addressed the issues discussed above and included that the Court of Appeal erred by failing to hold that rehabilitation is the primary purpose of the sentence imposed on a child.

⁷⁶ Ryan v The Queen (2001) 206 CLR 267 at 294 [90] per Kirby J.

⁷⁷ The High Court did consider the question of youth to a limited extent in Inge v The Queen (1999) 199 CLR

295, holding that the South Australian Court of Criminal Appeal erred in holding that the youth of Inge, aged 23 at the time of the murder he committed, counted against him in the fixing of a non-parole period.

⁷⁸ Fuller-Cust v The Queen [2003] HCATrans 394 (Gummow and Hayne JJ)

⁷⁹ Dang v The Queen B 62/1999 (21 June 2000), Gleeson CJ, Kirby and Callinan JJ. Special leave refused by majority.

⁸⁰ Barrister, Victorian Bar. Any comments on this paper are welcomed. E-mail: lcarter@vicbar.com.au