

Goodbye Regina

David Ross QC*

Two States have now farewelled the Queen from criminal cases. They have replaced the Queen with the name of the State. The first was Tasmania. The technique used was a simple one. They amended their Criminal Code in 2003 by enacting “‘Crown’ means the State of Tasmania”.

The second was Western Australia. In recent times the parliament made far-reaching amendments to the criminal law. One new piece of legislation was Criminal Procedure Act 2004. Schedule 1 clause 3 (3) says this: “An indictment must be commenced in the name of the State of Western Australia”.

Look at a few cases in the law reports to see how it works. First, examples from Tasmania. Some are rulings by trial judges. *Tasmania v Farmer* was on admissibility of evidence. On the fitness to be tried is *Tasmania v Drake*.

Now Western Australia. A District Court case became important because the accused reneged on a promise to give evidence against another accused in *Western Australia v Maharaj*. And what about *Western Australia v Dick* where there is a careful ruling on the phrase “in company”. An appeal was *Krakouer v Western Australia*.

In the Northern Territory it would be so simple to replace the Queen in a criminal case. One way would be to enact a Schedule to the Code similar to the Western Australian model. Check their Schedule and form your own conclusion.

The simple question however is how wedded are we



to having the Queen in our criminal courts. Imagine *Northern Territory v Brown*. The prosecutor would announce an appearance for the Territory. In his directions to the jury the trial judge would sum up the Territory’s case. Are you aghast? Tassie and WA aren’t. They’re handling it with real style. And I don’t think the Queen would give it a second thought. She may heave a sigh of relief.

And for my part I suppose I’ll now have to become TC: Territory’s Counsel.

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1. Criminal Code (Miscellaneous Amendments) Act 2003 section 4 (a).
2. *Tasmania v Farmer* (2004) 148 A Crim R 99 (Slicer J).
3. *Tasmania v Drake* (2006) 160 A Crim R 240 (Evans J).
4. *Western Australia v Maharaj* (2004) 36 SR (WA) 52 (Fenbury DCJ).
5. *Western Australia v Dick v* (2006) 161 A Crim R 271 at 279 [37] (WA, Johnson J)
6. *Krakouer v Western Australia* (2006) 161 A Crim R 347.

chance of getting something right, there’s a 90% probability you’ll get it wrong.

If you lined up all the cars in the world end to end, someone would be stupid enough to try to pass them, five or six at a time, on a hill, in the fog.

If the shoe fits, get another one just like it.

The things that come to those who wait will be the things left by those who got there first.

Give a man a fish and he will eat for a day. Teach a man to fish and he will sit in a boat all day drinking beer.

Flashlight: A case for holding dead batteries.

Shin Bone: A device for finding furniture in a dark room.

A fine is a tax for doing wrong. A tax is a fine for doing well.

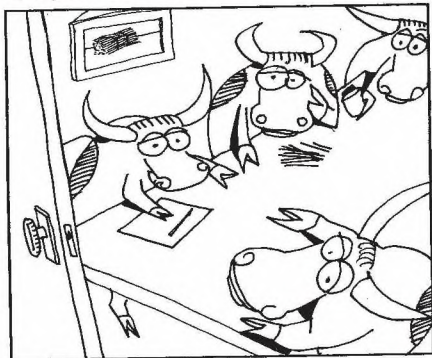
When you go into court, you are putting yourself in the hands of 12 people who weren’t smart enough get out of jury duty. to

Movers and shakers

Daniel Wauchope (formerly of Cridlands), John Newman (formerly of the Timor Sea Designated Authority) and Bill Priestley (formerly from John Toohey Chambers) are the latest to join the legal ranks at the Department of Justice.

Joining the ranks at John Toohey Chambers, is Jodi Truman who has moved to the independent Bar from Halfpennys.

The Muster Room



Some of Murphy’s lesser know dictums

Light travels faster than sound. This is why some people appear bright until you hear them speak.

He, who laughs last, thinks slowest.

Change is inevitable ... except from a vending machine.

Those who live by the sword get shot by those who don’t.

Nothing is foolproof to a sufficiently talented fool.

The 50-50-90 rule: Anytime you have a 50-50