

A day in the life of an ALS lawyer

By Glen Dooley, Principal Criminal Lawyer with the North Australian Aboriginal Justice Agency.

“What a major f...-up this is!”, I’m thinking to myself. I’m in the Darwin Court cells. I’m not in trouble, my mid-40s blackfella client is. I’m the mid-40s whitefella ALS (Aboriginal Legal Service) lawyer. Been doing this sort of thing for 16 years. Taking instructions to try and help blackfellas out of f...-ups. Not sure why, it just feels good to me. F...ed up? I won’t ask Dr Rogers for a diagnosis!

This bloke is in strife. It is mid-Friday arvo. Two days ago this guy was meant to be facing the Timber Creek Court, 600 road ks away, on an assault hearing. That day he was in the bush near Pine Creek at a funeral ceremony. He was driving back to Timber Creek around 8 at night on the day he was meant to be in court. 30ks out of Katherine, heading west, he runs down an Aboriginal woman. Kills her. He was driving pretty pissed at 0.2 but there are no allegations of speeding. He hit her on a bare stretch of road near a turn-off to a small community. No street lights, pitch black, unlimited speed zone, the woman has gone on to the road as she fought with her husband. The car my punter was driving was far from a bush beast. Sounds like a chance of not guilty to the dangerous act causing death whilst drunk charge. Only the grog puts him in jeopardy.

So – it is an oral committal needed to sort out that bloody business. If the KRALAS (Katherine Regional Aboriginal Legal Aid Service) lawyers reckon he is a show of beating the initial aggravated assault charge, I’m not going to second guess them. Better check. My bloke reckons he only hit the old man because the old man was flogging a bloke who deserved a touch up, not a flogging. Defence of another! Bingo!

Now to get bail. My tactic is not to put too much emphasis on why my bloke didn’t make the Timber Creek court. These magistrates are pretty much over the “at a funeral” stuff. Let’s face it – just about every blackfella is either at a funeral or about to go to one. Life expectancy 50-odd years. Big birthrate. Plenty happening.

The aim is to pour scorn on the dangerous act



charge, to get the bench thinking ‘I’m not going to lock this bloke up for three months waiting for a committal where he will probably get off’. That way we can slip the aggravated assault hearing in at the next Timber Creek sittings before the committal and the system is still running smooth. Got to be seen to be keeping that system humming!

I think my plan is going to work. I then think – shit, that means I’ve got to sort out a place for this bloke to stay, transport back to Timber Creek, hassle, hassle. Okay – I get a field officer to start sorting out a bus ticket and a hostel room. I hit court one. The magistrate is on side, just. Punter is out. Now the job really starts. My bloke has never been in Darwin before. He’s got nothing.

Late Friday arvo, I’m lusting for a beer but I’ve got to sort this guy out. I’m not going to let this bail thing muck up. I drop him at the hostel and tell him I’ll pick him up at 7 the next morning. No drinking! Bus leaves at 8. He’s got no idea where that is so it is what some would call arse-wiping time. Personally this bloke seems to be a good fella and I haven’t been sleeping well for a long time; I’ll be up at 5.30 anyway.

At 7am on the Saturday morning, a hot, steamy Darwin build-up morning I front in my air-conditioned work car blaring Blue Oyster Cult. My bloke is in the dining hall. Good. He has not pissed off with countrymen on the booze overnight. I was on the slops, not him. Good, he’s eating toast and oats - no humbug for a feed!

He is clued up. We are at the bus stop. He points to his feet. I know what the go is. No thongs, no bus ride. I shoot off to Woolies. Damn! Where are the \$2 thongs when you need ‘em? Nothing under \$10. I now feel pretty good I got that pay rise. Back to the bus. He’s ready to board. He looks a bit worried; I ask why. “Payback... them family for that woman in Katherine might see me if I get off

Continued page 33...

Aboriginal child sex cases in the Northern Territory cont...

case was to remove customary law marriage as a defence to a charge of unlawful sexual intercourse with a minor.

The debate has now moved on to whether, despite there no longer being any technical defence of customary law marriage, such a relationship should be taken into account by a sentencing judge or magistrate as one of the circumstances tending to explain or mitigate the offence. Legislation has been passed requiring any assertion of customary law marriage to be established by formal proof. My understanding is that the intention of the legislation was that such proof should in the normal course be tested by way of the obtaining by the prosecution or at the direction of the Court an independent anthropologist's report in respect of any customary law marriage assertion made on behalf of an offender, in a similar fashion to the practice of decades in Northern Territory land claims, and it is unfortunate that that course was not followed in the recent widely publicised case of an offender from Yarralin.

In a mid-1990s case I was involved in regarding sexual offences at that same community, a report from an eminent anthropologist was obtained and that report confirmed the abhorrence of the community for the offending that had occurred and its wish that the offender be severely punished. The more recent Yarralin case has now been the subject of an appeal judgment by the Northern Territory Court of Criminal Appeal, and once again it has been stated in clear and direct terms that there is no special sentencing benefit available to Aboriginal offenders and that criminal law sanctions will apply by reference to community standards common to all Territory citizens.

That brings us to child sex offences of the kind highlighted in the recent debate prompted by Nanette Rogers' statements to the media - molestation of very young children. I have never received instructions from an Aboriginal child sex offender that criminal behaviour of that kind is sanctioned under Aboriginal customary law. I have never heard, or even heard of, any such submission being made on behalf of an Aboriginal offender in any Territory criminal Court. I would be extremely surprised if any such submission ever has been made, and I am confident that if it was it would have been automatically rejected by any Northern Territory judge or magistrate that I have ever appeared before. The assertion that cultural authorisation is being put forward as a "criminal defence" is a total furphy and a calumny on both the Aboriginal communities concerned and all players in the criminal justice system.

Equally false and misleading is the assertion that child sex offences in the Northern Territory follow a pattern of organised and jointly planned orchestration and execution. The truth is that the offences we are talking about, appalling and horrific as they are, are almost always depraved opportunistic acts by individuals fuelled by alcohol or other mind-warping substances. The offenders are frequently mentally impaired in some way. There is no magic wand to be waved here, and misleading and inaccurate commentary is going to make the everyday work of those on the ground even harder than it already is.

A day in the life of an ALS lawyer cont...

the bus in Katherine (pronounced "Kath-er-ine") and flog me". Shit! "Can you tell the driver to let me stay on the bus when we get to Katherine?"

Decision time. Harder than your average bail application. If I tell the bus driver that he might be driving into the middle of a payback exercise in three and a half hour's time he is going to refuse to take my bloke. I whip out a bit of paper and scrawl down "Hi, I'm in a bit of trouble. When we get to Katherine can I stay on the bus? Some people might want to fight with me. I'll stay quiet and duck down until we head off to Timber Creek". I tell him to give this note to the driver when they cross the Edith River - about 40ks from Katherine. Now get going!

It is 8.10am. Job done. I'm a bit hung over and worried about the potential blow up in Katherine. But it should be right. Home to the missus.

POSTSCRIPT:

Our Darwin-based service and the Katherine-based Aboriginal Legal Aid Services merged between the thong purchase and the Timber Creek hearing for the aggravated assault. So I did that court appearance. My bloke turns up barefoot. We run the hearing. Acquitted... just.

I remind him to front for his committal for the dead woman business in Katherine in a month or so. I ask him "How did you go with that payback business in Katherine and the note to the driver?" He says "The bus driver good, let me stay on bus, no worries". Bingo!