

Criminal Lawyers Association of the Northern Territory

15th Biennial Conference

Bali

With all due modesty, I understand the title of this conference, Curing Injustice, arises directly out of my experience from the 2013 conference which was entitled Victims of the System. As some of you will recall I was to be the keynote speaker. On my arrival, and as I walked through a new part of the terminal, I fell into a deep concrete hole fracturing my ribs in five places. I became a victim of the system. That was the end of my conference. I spent the week in bed curing that injustice. Dean Mildren delivered my address. He later kindly observed that the content of the address wasn't much chop but the delivery was perfect.

This is a difficult conference because of the uncomfortable fact that Australians have died and there are other people facing the death penalty for criminal offences which were committed on this beautiful island. That difficulty has achieved a sharp focus for Australian lawyers because of the plight of the two Australians who have been executed. The fact is that the members of this organisation deplore capital punishment wherever it may be practised. Although there are persuasive arguments that the conference should have been shifted elsewhere by way of protest it is my view that the conference organisers were right to continue as they have. It is better to engage and persuade rather than

confront and punish those who have different views from our own strongly held views.

This is the 30th year since CLANT commenced coming to Bali. In that time the conference has addressed many significant and troubling issues. Over the years papers delivered at the conference have had a significant impact upon the development of the criminal law, particularly in the Northern Territory. One pertinent example is the stance taken on ameliorating the harsh consequences of the “life means life” for murder provisions of the *Criminal Code* by allowing for the setting of non-parole periods. Following that debate the legislation was amended. The minimum non-parole periods we are now able to set for such offending remain the harshest in Australia but at least we can set non-parole periods.

The conference has provided an appropriate and powerful forum for discussing and seeking to address the significant problems we experience in the application of the criminal law. The conference provides a unique opportunity to identify and then seek to cure injustices within our criminal justice system. Although we are uncomfortable at the moment we must continue to use this forum as a source for positive reform.

In that regard I am pleased to see the Attorney General attending this conference. It is a healthy sign that the Northern Territory government is open to listening to the views of those directly involved in the criminal justice system. I trust the discussions we have in the next few days will inform the decisions made when we return home.

The theme of the conference is curing injustice. There is injustice everywhere but there is particular injustice in the criminal justice system. This arises from many causes. In the Northern Territory there is the huge problem of the plight of many of the aboriginal members of our society. I refer in particular to those who live in atrocious, overcrowded conditions where alcohol abuse is rife, violence is commonplace and the way out is unable to be seen. I am concerned that the growing abuse of methamphetamine might add even further misery to that part of our community. At present it is not uncommon for more than one generation of such people to be in prison together for similar offending. It is entirely predictable that the children of those families, who are brought up with no boundaries, limited education and very poor role models will follow the path of those who have gone before. They know no other way.

In the Northern Territory the greatest injustice is that delivered to those children who are doomed to live their lives in such pathetic ways. It is a tragedy that 30% of our population produces 86.4% of our prison population. It is a tragedy that in 2010 73% of indigenous prisoners received into the Territory's prisons were unemployed.¹ It is a tragedy that Indigenous females make up 73% of domestic violence victims in the Northern Territory. It is a tragedy that when I am told that an Aboriginal offender was educated to year 12 I must still ask the questions: Can he read? Can he write?

¹ Northern Territory Department of Justice Correctional Services, statistical summary 2001 – 2010 quoted in Coates: Law and Disorder in Aboriginal Communities 2011.

Of course it is easy to identify these injustices but it is another thing to find an answer. It is plain that there is no single answer but addressing health, education and opportunity for coming generations must be the place to start. Dealing with the alcohol problem is another place where immediate impact can be seen as has been evidenced in Katherine in recent times.

What seems to me to be obvious is that cutting back services such as those provided by legal aid bodies, mental health agencies and other health agencies is a major step in the wrong direction. We should raise our voices against this disturbing and negative trend in our society.

In recent times the Federal government announced a dramatic reduction in funding to such bodies. There followed an enormous outcry from around the nation including from all the State and Territory Attorneys General. Thankfully the decision was reversed. This was a sensible decision and demonstrates the power of the community has to impact upon bad decision-making by government. It does not always work but when it does the feeling is of having averted a catastrophe. Of course the funding available to legal aid bodies and the like is always at risk and we must be vigilant to ensure that the services provided to the most vulnerable in our community are maintained. We will all suffer if they are not.

Another concern is to avoid ever increasing punitive responses to crime. In recent times there have been calls for longer sentences because, so it is argued, when people are in gaol they do not commit crimes. It seems to me that is a very superficial response. Once a term of imprisonment has been served, however

long it may be, the person will return to the streets. Whilst there must be an appropriate response to crime, and punishment and general deterrence must be considerations in determining appropriate sentences, we will only reduce crime if we look to the causes and address those. When a crime has been committed we must look to rehabilitation of the offender in order to reduce recidivism.

We need to give meaning to the lives of people who live in profoundly deprived circumstances. We need to ensure that education is delivered to them. We need to ensure that meaningful employment is available. We need to move away from welfare dependence and provide meaningful work in its place. We need to address the alcohol problems that lead to most of the violent offending. We need to face the fact that ice may become a similar problem if we allow it to spread into the Aboriginal population. We need to address the health issues that bedevil whole communities. We need to develop positive rehabilitation programs for those who are incarcerated including education and other practical responses like the sentence to a job program.

All of these things are, I think, well known. What must be avoided is a mentality that thinks that locking people up for longer and longer periods will somehow be an answer. As our experience has shown, it will not.

I look forward to the discussions in the days ahead.