

## PATRON'S SPEECH

### CLANT 2017

I know it is not usual for the patron of CLANT to say anything at this conference. Patrons are like little children at the dinner table; they should be seen but not heard. If they must say anything, it should be brief. So I guess that's why I have only got fifteen minutes. Which is probably fourteen minutes longer than strictly necessary.

I really enjoy coming to these conferences. The exotic location. High quality papers. A chance to socialise with criminal lawyers from all over the country. Good food. The chance to learn something new....The exotic location. But seriously, the CLANT conferences are as good a conference as you can get. The main point of it all is to share ideas about the criminal law, and to discuss current issues that are troubling to those of us who care.

The theme of this conference is justice on the smell of an oily rag. What this implies is that there is an expectation that we will deliver justice at minimal cost to government. A recurrent complaint is that we are asked to do more with less. And some also question whether the money which is spent on criminal justice is spent wisely.

Let us consider sentencing, for example. The Murdoch press, especially in Victoria, is very critical of allegedly very lenient sentences being imposed by the judiciary. They want longer, harsher sentences; mandatory minimum sentences; new offences to specifically cover certain criminal acts already punishable by the law, such as the one strike homicide cases; and stricter bail laws. There are also criticisms of parole being granted to certain types of prisoners. Home detention and suspended sentences have been removed as a sentencing option in some jurisdictions. To make sure that the judges are compliant with the new tough-on-crime mantra, there is a call to have a sentencing council to advise, or, as some might say, to put pressure on, the judiciary. If these changes are right, it could mean more remand prisoners, longer periods of remand possibly in inadequate remand facilities, longer sentences, which means incarceration rates increase, which means more, or bigger gaols. It could also mean long delays in getting to trial unless there are more judicial appointments, more courtrooms and prosecutors and so on. These have been perennial problems now ever since the first Bali Conference in 1987.

On the other hand, trials are getting longer and are more complicated than ever. Forensic science has provided important, new investigative tools such as DNA evidence, the internet, mobile phones and so on. Evidence previously inadmissible, is now able to be led by the prosecution. For example, perhaps someone will tell us all about the latest decision of the High Court which was delivered only this month in *Hughes v The Queen* which has settled a difference of opinion, by a bare majority, in the way the Courts decide cases where the prosecution wants to call tendency evidence.

Longer trials have consequences. More judges and prosecutors are needed to carry the extra load. The costs for legal aid agencies spiral. Yet, every state and territory jurisdiction is complaining about a shortage of judges, so much so that most jurisdictions have found it necessary to rely on retired judges to take up the slack. There is even a danger that over-reliance on acting judges could be held to be unconstitutional.

And the more complex the evidence, the greater the chance there is of a mistrial or a successful appeal.

Another problem is recidivism. Some jurisdictions have legislation which permits a court to decide that a particular prisoner must be kept beyond the sentence imposed because he or she is seen as a

danger to the community if released. Yet there is no proven scientific methodology to determine whether a particular individual will re-offend when released.

If prisons are supposed to be institutes of correction, we might well ask the question: how successful are they? Do they have the right programmes? Is what is being done to rehabilitate prisoners back into the community upon release, satisfactory? Or are released prisoners expected to find employment after several years in gaol even when they have no home to go to, no skills, no money and no work experience?

Some sections of the community present as high risk when it comes to the statistical chance of spending time behind bars. The poor, the drug and alcohol addicted, the uneducated and the unemployed fit into this category, and in this country that often translates into being of Aboriginal descent. Chief Justice Martin will no doubt enlighten us in his key-note address about the problems of ensuring justice for our first Australians on the one hand and protecting the community on the other. Getting qualified interpreters in Aboriginal languages would be a good start, one might think. But what about those who speak only a form of English called Aboriginal English?

Domestic violence is another challenge, and often the root causes of it can be traced to these same factors. One jurisdiction has established a specific court to deal with these types of cases. Whether that is a good idea or not, only time will tell. But one might wonder whether putting people behind bars, or the threat of it, means as much to the poor, the drug-addicted and the uneducated unemployed as specific government-funded programmes aimed at bridging the gap between the rich and the poor.

Juvenile justice is another area of concern. The Royal Commission into the Don Dale facility in the Northern Territory will no doubt throw considerable light on the problem of how to deal with some children who are perpetual and sometimes dangerous offenders. But in the meantime, we might ask the question whether enough is being done to prevent children from committing offences in the first place? Some Judges have touched upon, from time to time, some of the underlying problems, such as overcrowded housing, poverty, lack of English skills, irresponsible parenting, domestic violence and drug addiction.

Then there is the problem of terrorism, and how to best deal with it. Will this mean ASIO reports being given to the Parole Board, or handed up to the Court by the prosecution during sentencing submissions? Will these reports have to remain secret? Or might we also need to change opinions, deeply held, about such matters as religious tolerance and equal rights for women, for example.

It has been said that the quality of a liberal democracy is in the way it provides justice for all. Presumably this means justice not only for the accused, regardless of race, religion and ethnicity, but also for the victims of crime and for society generally. Is not a truly just society one which provides as near as humanly possible, equal opportunities in life for all. What I am sure most of us are hoping to get out of this conference is valuable guidance which will help us all to find the correct path to achieving justice for all without betraying the principles of individual freedom that separate our society from despotism.