

A VIOLENT RESPONSE TO THREATENING GLOBAL LEGAL ABUSE (CAN CAN: KICKING AGAINST THE PRICKS)

The ALRC direction on family and related violence is wrong, wrong, wrong!

This submission to the Australian Law Reform Commission (ALRC) inquiry into family violence addresses key proposals in the ALRC discussion paper summary 'Family Violence – Commonwealth Laws', on the assumption that the autonomous adult ideally has a right to know the apparent truth. People should hear it broadly, early and often or they are likely to be improperly rehearsed for life and to make poorer decisions through lack of better practice. The roles of open and independent news, education, entertainment and promotional media are therefore also vital for free and protective social development.

I was recently in the US, where US Homeland Security sensibly says, 'If you see something, say something', thus increasing the potential of the total population for better communication to deal with possible terror which may spring from any source. In its paper on family violence, the ALRC appears alternatively intent on creating police states based on trying to restrain family members from any loose talk in order to maintain many apparently kindred and professional secrets in highly straightened conditions of communication and so understanding. I fled such ignorant situations throughout life as they drove me nuts. In being polite, one may also risk being badly misunderstood, even if one is already an exceptionally smooth communicator talking to peers already in the professional know. Many simply fall silent when cast in verbal circumstances. In my case, however, the strong desire to smash their teeth in led me to higher education levels.

Under the ALRC proposed circumstances, where many more professionals appear set to claim to protectively keep the hidden keys to individual financial, biological or other status, behaviour and related secrets, it could be impossibly costly for any person to guess who is, or who should, or should not be - caring for, supporting, supervising or hurting or relying upon whom - either ideally or in real life. That surmise will be the privileged information of an increasing number of lawyers, which means it is only available to be revealed at great cost in court. More open disclosure is the best protection against family violence, however defined. Later, Mirabella's action is discussed in a related estate management case. It is argued that as an old man's ex-girlfriend, executor and possible will beneficiary, she should also have been more forthcoming about his financial affairs. On the other hand, one can see many good reasons why she would not be. How common.

The first key ALRC proposal, 3-1 is:

that the Social Security Act 1991(Cth) should be amended to provide that family violence is violent or threatening behaviour, or any other form of behaviour, that coerces and controls a family member, or causes that family member to be fearful (p. 10).

It is foolish to make no clear distinction between talking to people on one hand and acting upon their bodies on the other, as the ALRC wants to do in its definition. Firstly, an autonomous person ideally can and should try to talk on equal terms to anybody they feel might help them solve a pressing problem. Google, politicians, teachers, police or many others may assist. Personal truth in speech may be highly emotional and wrong when seen broadly and calmly. Nevertheless, my story matters. To define words as violent is wrong. It is authoritarian speech as the vital distinction between any physical reality and social perception has been wiped out. It is important to avoid this as it leads to rubbish policy making. For example, US citizens think guns protect them yet the US has by far the highest murder rate in the OECD. What people think is so, is often not so. When this seems the case it should be pointed out clearly. Otherwise many lies are perpetuated. The global financial crisis was driven by this sort of constant lying about concrete reality.

The ALRC position yet again encourages matters into the authoritarian hands of people with vested professional interests in seeing states as ideally being regulated by feudal law and the supporting medical assumptions that biological states ideally and naturally rule all personal worlds through related perceptions. Hence the animal spirits of the markets drive fatty foods, drugs and all related higher vocations. The ALRC position is spawned by pressure towards US political faith in gambling, in which stock prices are wrongly defined as a reflection of business reality and the role of government is constantly market driven back to defense of faith in the American dream, assisted by legal and financial service providers and a wide caste of related and lesser paid professional handmaidens in universities and elsewhere. We need better planned ways forward, as proposed in attachments, as the US policy direction naturally leads to more guns and more inequality.

The ALRC claims to be working towards autonomous individuals but is rowing in the opposite direction by wanting to keep information from people and claiming it is for their protection. All knowledge is power towards flourishing life or death. OECD Guidelines on Privacy naturally assist more reliably protective communication and data gathering. In the longer run, openness appears the only protection against feudal or tribal ignorance, tyranny and related want and destruction. (*Unlike Jesus, I've so far had no real trouble but still keep my fingers crossed. Look at me and hurry up and fix the house and garden.*)

The ALRC paper claims to seek 'seamlessness' which apparently is '*ensuring that from the point of view of those engaging with the legal frameworks in which issues of family violence and child abuse arise, the key focus must be upon the experience of those participants – to see the system through their eyes*' (p.3). However, the writers have already defined violent or threatening behaviour as being any kind that a person claims to feel frightened by, so have aligned themselves automatically with a single complainant. The fact that a person finds a spider threatening does not make it so and risks the ignorant mistreatment of spiders. The same is true of people. This biased ALRC view is not the way to find the truth. Any mother who acts in such a fashion with siblings has at least known them both intimately for years and one hopes that she wishes neither any harm.

The ALRC takes a far from logical or reasonable place from which to start assisting or judging any matter, especially if those engaged in the inquiry claim to value 'autonomy'

as distinct from ‘paternalism’ (p. 7). An autonomous person who feels frightened (affronted?) would respond to a matter of upset themselves. In a university, for example, if persons were upset by the words of a colleague, they should not run secretly to the dean to sort out their upset state for them by quizzing it to silence it or to ban it on their behalf. This destroys the fabric of what the institution is ideally set up to do, which is to protect sceptical debate to assist more open scientific and cultural development. Downgrading the concept of violence to ban unwanted speech creates more problems than it resolves.

The legal mind always tries to fix lack of clarity or sense in law by simply adding to it. For example, the Commonwealth Ombudsman appears to think the ALRC definition would ‘*potentially minimise the need for a person to retell their story and obtain different types of evidence for agencies they will commonly need to approach when experiencing or fleeing family violence such as Centrelink and child support agencies*’ (p. 4). As the ALRC discussion paper supports a National Legal Response which seeks ‘*to ensure that legal responses to family violence are fair and just*’ (i.e. driven by courts and lawyers) the Ombudsman’s wish seems highly unlikely to bear fruit. Is he accusing Centrelink and child support agencies of being violent? Should anybody complaining about domestic violence be found a house to live in? If so, who should pay for this and how?

The above are not idle questions about how to improve all property management services, on which we all depend for somewhere to sleep and work, let alone fairly. They also relate to how to provide more manufacturing jobs driven by more sensible approaches to service. As the Minister for Resources, Energy and Tourism recently pointed out at Sydney Uni. China currently accounts for over 40% of the world’s primary resource consumption and millions live per day on less than the cost of a cup of coffee at Sydney Uni. For any who care about meritocracy, let alone equality of opportunity or the poor, TV and other information sources have been available for years at much better quality and less cost than those generated by professional education and related service methods. Planning service provision to improve the quality and breadth of all services to people should ideally also be the generational lever for many greener jobs in manufacturing. However, certainly do not expect Martin Ferguson to accept it, especially if wearing his mining hat. Australian and Chinese interests in better health and education universally could be fruitfully generated in mines safety and related partnerships in Broken Hill.

As lawyers, the ALRC writers naturally discuss the importance of privacy without consideration of the benefits of disclosure. Yet public disclosure of the apparent truth – which is the complete antithesis of individual or feudal privacy - has been the key principle of women’s emancipation and related movements for more equal rights for homosexuals, blacks and many other people, at least until lawyers got all their related communities under increasingly mythic control as income sources for mates. The most protective game for people who are wronged in comparatively fair societies, like Australia, is usually open disclosure and ideally they have the UN Declaration of Human Rights and related community sentiments about equal treatment or equality of opportunity on their side. Judge Judy on TV appears as a model of US public education. Would we differ much? Related management directions are in directions attached and on www.Carolodonnell.com.au

The article 'It's time to put money into the equation' reports that economist Steve Keen pointed out that orthodox economic models of how the economy works do not incorporate money and debt (SMH 26.9.11, Business p. 3.). This invisibility of the power of financial service also helped Wall Street speculators and lawyers to obscure and distort production to take more money for their related 'services'. The George Soros Institute for New Economic Thinking gave Steve \$125,000 to make a model to fix the problem starting with bank loans. However, Steve predicted Australian house prices would lose 40% in value after the 2008 global financial crisis. Ever since the crash I'd instead been ringing my hands with glee that I'd put pre-retirement money into helping my daughter buy a flat, instead of into superannuation or anywhere else advised by experts. Grow up.

Disclosure and related communication are on the path likely to lead to more public and individual knowledge and hence to much less anxiety about the unknown. The ALRC is retreating from the value of open information, autonomy and all forms of better communication in the public and individual interest, in order to support and extend even more expensive, dysfunctional red tape and related forms of hidden or unclear being and action. Their view of domestic violence calls for more expensive mafia-like protections writ large by comparatively sheltered women. What else is new? Open the books to deal with questions without hiding. The ALRC fights the last war. It takes more than cake.

Cumulatively wrong ALRC directions and the example of Sophie's wrong choice (Those poor Greek girls are so mixed up)

There must be recognition of the historical context of any problem in order to judge or resolve it fairly. One may also want to know about all the money involved in any issue as lots of people may wish to hide it, or may think or pretend there is more or less than there is, for various reasons. The intended ALRC direction in domestic violence will present huge and cumulative problems for fair and effective work and estate management and for all related public policy settings and data gathering, including in commerce, housing, taxation and investment. This is because women's and therefore men's lot has changed a such a lot since reliable birth control was made available to women for the first time in history, slightly before the 1975 no-fault divorce. One can only judge fairly on the basis of information about particular circumstances and often aimless laws grown like Topsy.

Women's demands for equal treatment with men at work also led to the passage of anti-discrimination legislation and to removal of many practices which had prevented females doing traditionally male education or jobs or remaining in paid work if married. The male wage was expected to support a wife and two children on the largely true assumption that nobody married had, or could have, much decent or effective control over reproduction. My mother's generation needed a husband's earnings that my daughter's should not. My generation has been between dependant and autonomous status. Adversarial law cannot deal with the human diversity of family misery, as Tolstoy clearly saw. Open the books.

When I was young there was concern police saw domestic violence as a private matter between partners, in which it was undesirably dangerous for them to intervene. The book

'Family Violence in Australia', which I co-wrote in 1982, dealt with related problems. It seemed to us then, that as the comparatively powerless people in de-facto relationships which were typically socially stigmatized, women de-factos ought to have the same or similar protections and benefits as wives, who were traditionally expected to care for the daily and extended family welfare, supported until death mainly by a single male wage.

There is ideally and in fact more equality of opportunity between most men and women today than before 1975, and either partner may logically choose de-facto status with the aim of protecting their independence and assets against any future risks to their well-being that they may associate with a partner's behaviour. Today it therefore seems a mistake to treat de-facto couples as if they had decided to marry. One assumes men and women should ideally be encouraged to act increasingly autonomously and broadly, to protect any children of their union from any emotional or physical harm which might be done to them by aggrieved persons. In any wind-up of affairs the antidote to distrust is ideally open-book judgment by others in any communities they trust, to help them sort out problems. What consenting adults arrange ideally is their own choice, but children need protection.

Estate management and many related public, charitable and private investment directions require more openly informed consideration in related regional contexts. For example, the article 'Mirabella in hot seat over QC lover's dying days' in the Sydney Morning Herald (23.9.11, News 7) raises many policy related questions about matters usually shrouded in mystery. Take the changing relationships which may nowadays occur between older men, perhaps towards the end of their careers, who have already had families, and younger women who have just started out on various careers, since the advent of effective birth control and no-fault divorce in 1975. There was a time when men might be expected to pay unseen for everything? Not any more? Confusion reigns.

Anyhow, the story is that when she was starting out on her career in law and politics in the late 1990s, for some years the live-in lover of Sophie Panopoulos was a QC, forty years her senior. Later she became Sophie Mirabella and is now the opposition spokeswoman for innovation, industry and science. The earlier relationship was cordially accepted by the QC's adult offspring, who appear to have often worked overseas, and whose mother is not mentioned. Should one assume she had died a lot earlier and so needed no support? I guess not. In 2011 the QC died at the age of 83 after a fall while living in a farmhouse about 400 metres from Sophie's house. *(They made a risky choice. He had a good innings. She looked after him? What more do you want?)*

In 2006, Panopoulos married and became Mirabella. The QC told his offspring he had given Sophie \$100,000 so the new couple could buy a house in her electorate at Wangaratta. He asked they keep this a secret. However, Lesley and Mervyn, the QC's offspring, were concerned about this apparent gift and asked Mirabella about it. She became angry and cut off contact. Their father soon transferred his full power of medical and financial attorney to Mirabella. As the article states, *'His married ex-girlfriend, the executor and possible beneficiary of his will, was now also to have sole power over his affairs as he aged'*. I guess he had very little money left to live autonomously, but was too embarrassed to be truthful about it. I guess that Sophie was angry that her good faith

towards him and as a solicitor should be questioned under the real circumstances of the case and that Lesley and Mervyn might try to start ordering her life about. I guess this on the basis that you may take the family out of Greece but you can't take the Greek family out of the girl. How could she possibly stop caring for such a close old friend or lover?

Apparently it is clear to the siblings that their father's positive feelings for Mirabella did not waver, before or after her marriage, but they ask 'Did she do the right thing'. They insist they are not after their father's money and he made it clear to them they should expect none. However, they feel aggrieved that 'we did not get to see him; we missed a chunk of the last five years of his life'. On the other hand, these were probably far from the nicest years of the QC's life and they do not appear to have tried very hard to see him. My guess is that for various reasons he had had a sharply diminishing amount of money in his later life and that Sophie Mirabella has been comparatively kind in not shutting off from her parental obligations in regard to a key relationship of her youth, especially if it had become more onerous and obsolete to her. What more would you expect of a dutiful, busy, ambitious, Greek daughter and lawyer? (*She should have opened up the books!*)

I knew a mature-aged male student who married a Spaniard who had been in Australia for twenty years. The Catholic Church had looked after her mother in Madrid over her many declining years but the two turned up shortly before her death and appeared aggrieved by the idea that the church would claim her apartment. To put it mildly, I am no fan of the Catholic positions on marriage, birth control, sexual practices and expectations about death. However, I guess it must be common that a religious welfare state is naturally provided to old people in Catholic communities which younger generations have left. The Mirabella case is welcomed – not as a threat but as an opportunity to open lots of books in order to deliver a wide range of services better to people. Related discussions attached.

To all lawyers, doctors and others who naturally and increasingly value the disciplines of psychiatry and psychology, this is a Jungian approach to faith and public matters. God was revealed to Jung in his dreams of a huge crystal cathedral with a roof suddenly shattered by His Giant Poo. (This Poo was not golden, like that beside Sony in Tokyo.) Jung accordingly realized from his recurrent dream that he must challenge the religious authority of his pastor father in order to meet the international and internal needs of faith or belief, including his own, which he now felt he foolishly trampled upon himself. He later challenged a symbolic father, Freud, who appeared to have been inordinately clingy and dominating at the same time, particularly with Jung, who was very busy. Freud had an exceptionally good lot of excuses for his objectionable behaviour. What are yours?

Nowadays, fortunately, there appears to be a completely new Papal approach to managing risk, even in Rome. (You'd better believe it.) According to an article 'Condom incident threatens papal visit' (SMH World 26.4.2010, p. 6) a Vatican spokesman, Father Frederico Lombardi, told the Italian bishops' conference:

'This is the age of truth, transparency and credibility. Secrecy and discretion, even in their positive aspects, are not values cultivated in contemporary society. We must be in a position to have nothing to hide'.

Men everywhere will naturally be thrilled to hear it. The next stage must be learning about the joys of speech and writing. The pen is not so much seen as mightier than the sword, but different to it. Email and Google are equally exciting. I write in sisterhood with Mary, praying she gets a better idea where babies come from so key indicators for responsible autonomy - thoughtfully informed personal choice and financial support - can be set up more realistically and cheaply than in the currently dominated regional contexts. See attached and related discussion of direction in Australia, Afghanistan and beyond.

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See more on www.Carolodonnell.com.au

Hi Cheryl,

Thank you for your very interesting letter. While you speak of love and betrayal you do not speak of paternity tests (evidence) or money (except for compensation) which I assume are also highly relevant in settling this law case. Would you accept the following general propositions? (I accept these propositions may not be reasonable in every case because of the perceived interests of the child – eg in violent relationships)

1. A man whose sperm did not father a child should not normally ever be forced to pay for that child's ongoing support.
2. A man who has believed and acted as if he were the father of a child, (including paying for the child's support) should have ongoing access to the child, even if he finds out that his sperm did not father the child. However, under such circumstances, he may also be expected to continue paying for his/her upkeep.

What exactly does Liam Magill want? What exactly would you consider a fair resolution of the case if you were on the bench?

(If he and you cannot answer this, one can hardly expect the Governor General or Parliament to be able to, in my opinion.)

If he loved and supported a child who he then found out he had not fathered, I do not personally think Liam should be given back support money that he paid for the child he loved (or still loves) when he was under the impression he was the father. Do you?

I am not a lawyer and I also wonder if you have any definition of the term 'conflict of interest' because I often do not know what the concept actually means. (I know the law, unlike the common dictionary, is usually most unhelpful about definitions.)

I also ask the question because I think that the quality of a person's discussion about a case and the reasons for the judgment are always much more important than any alleged or actual interest they may have in any matter.

I often find it difficult to know when a person has a 'conflict of interest' because all of us, as individuals, have so many passionate connexions to the world – which may often be helpful to our attempt at fair judgment – as well as dangerous to it. For me, the quality of our argument is paramount in our judgment, not our passionate personal allegiances.

I often find I don't know what lawyers mean by 'conflict of interest' and fear one might end up arguing forever about who has one and who does not. For example, if a judge had a son who was an alcoholic, should he sit on a case in which an alcoholic was involved, or should the judge be considered as having a conflict of interest and excuse himself?

My personal view is that the term 'conflict of interest' is often unhelpful because it draws focus and concern away from the quality of the argument about rights and duties in any particular case, which is ideally the main consideration. However, I would agree that one should be encouraged to declare anything that may potentially bias one's views in the eyes of others, so they also know this when trying to judge the quality of one's position.

(I should tell you, for example, that I do not share the general belief of our society in the supreme importance of enduring monogamy for good human relationships. A major personal struggle in my life has therefore involved my desire to master my jealousy.)

I am extremely interested in any answers you have to the above. (I also wonder if you have any personal reason for what appears to be your very strong attachment to Liam Magill's case but do not ask you this question because it seems to me not the main point.)

I'm afraid the attachments I sent you are far too long to put in the body of an email. You can see the sort of line I peddle on law and other things by going to www.Carolodonnell.com.au)

Cheers and hoping to hear from you further,
Carol

Hi Cheryl

Thanks for sending me the letter you sent to Robert French, the Chief Justice of the High Court which I found enormously interesting although I am not a lawyer and have no idea why Liam Magill thought that one of the judges on the bench (Susan Crenan) had exercised the same mischief against another person in her own life that he was protesting against as being unjust.

As I understand it, your complaint is that Robert French wrote to the Attorney General to defend Susan Crennan from Liam Magill's charge that she should not have been sitting on his case, because French's action breached the separation of powers. You claim the only solution is for the matter now to go to a Royal Commission.

For what it's worth, I strongly disagree with you because the legal process and the separation of powers are both highly flawed from any democratic, scientific and related

management perspectives and a Royal Commission costs taxpayers heaps for an individual case when the money could probably be much better spent in other ways.

From your letter, Robert French appears to be happy that ‘The allegations were brought to the attention of the Daily Telegraph a few months ago, which decided not to publish any story about them’.

You state this means ‘the media was silenced and the mighty Fourth Estate failed’. You assume some pressures were brought to bear on the Daily Telegraph not to publish. I certainly agree that this is one possibility since talk of lawyers naturally scares us all. However, an equally likely possibility, in my opinion, is that the Daily Telegraph genuinely agreed with the views of Robert French and decided against giving Liam Magill more of what they considered would be more unfair air play. While you appear to equate his case with the struggle for land rights others may not. I gather the matter was related to the care and support of children since you are an anti-paternity fraud advocate?

In your position I would probably pursue the matter further with the Daily Telegraph by trying to see journalists who received the allegations (whoever sent them and whatever matter they were exactly concerned with.) I’m not sure how the Press Council is normally approached but I would then try to go there if I could not get to see a relevant journalist or get related information from the Daily Telegraph.

Anyhow, thanks for sending me your letter. In general I’m on the side of anybody who wants to kick the stupid legal system in the guts as distinct from keeping on feeding lawyers at taxpayers expense (e.g. through Royal Commissions) while calling the process justice. I accordingly attach some more recent submissions of mine hoping you may possibly find somewhere useful to stick them.

Cheers Carol