



# Foreword

By His Honour  
Judge R.W. Grubb, National President

The articles in this issue of A.C.P.C. "Forum" are devoted wholly to the question of illegal drugs, the laws which outlaw them, the varying ways the courts in the various States have proceeded to deal with those laws and accused persons brought before the courts charged with breaches of those laws.

The articles also express the views of judges, academics, professionals, and one layman as to those laws and how the courts have dealt with them. There is a paper from His Honour, Mr. Justice Kirby, Chairman of the Law Reform Commission, in which he sets out the tentative view of the commission that much needs to be done to reform the Commonwealth laws concerning parole and treatment of those imprisoned for breaches of the Commonwealth laws which make illegal the use, possession, dealing in and importation of certain proscribed drugs.

Mr Justice Kirby repeats the call in *Mr Justice Williams' Report* calling for a national strategy against drug abuse, in which Report the learned Judge argues strongly for a uniform Drug Trafficking Act.

By way of a tangential comment, I am sure all readers of "Forum" will note, with great interest, Mr. Justice Kirby's reminder that the Commission he chairs "criticises the provision of a ceiling for maximum compensation (for victims of crime) existing in all the current Australian legislation". As you know, we have been, as a Council, recently urging our governments, State and Federal, to provide more generous and accessible compensation for the victims of crime. But, to return to the theme of this current issue.

Controversial? Some of it, yes. And so it should be. Informed debate is essential. Iconoclastic? Some of it, yes. The polemics become obvious, fairly quickly. You may wonder why I seem so well-informed. For this issue I undertook the enormous task of acting as proof-reader. I realise now, most clearly, just how much we, as a Council, and our publisher, owe to John Purcell, who has performed this essential but tedious and time-consuming task for so long — and for no reward! Be that as it may, I am confident that you will find this issue of the greatest interest. I am most grateful to all those who wrote papers for this "Forum", or allowed prepared papers to be published by us. I believe there is more than enough here to engender informed, even objective comment, perhaps argument, on what soon becomes an emotional and subjective topic. If it does promote that kind of debate we will have achieved something. I commend this issue of "Forum" to your earnest attention.

No matter what one may feel about the repeated warnings by many of the authors that we seem to be obsessed with legal

sanctions and law enforcement; and that we, out of lethargy or because of our emotional views or prejudices (which are never objective and which are all induced by the naughty media), do nothing, as a people and demand no other action by our governments but more and more draconian penalties, one cannot but be jolted by the facts presented by His Honour Mr. Justice Woodward. That paper highlights the difficulties faced by Law Enforcement when it is opposed by Organisational Crime. For myself, I gave the closest attention to His Honour's words on "civil liberties". This phrase has become as much an emotional catch-cry as has the "drug problem". It seems to me, more emotional and political nonsense is uttered about so-called civil liberties, than about our illegal drug problems.

I recognise the lovely, simplistic logic in the assertion that we only have a drug problem because certain drugs are outlawed. That logic is not acceptable, either politically or by public opinion; that leaves a small minority to glory in its logic — informed perhaps, but a minority. Hence, the importance of informed and objective debate on the topic of illegal drugs. Hence, my very great pleasure in having read the contents of every one of these papers.

Certain things emerge as being essential. None could argue against *Grant Wardlaw's* assertion that there is an urgent need for an extensive study in this country of the link (if any) between drugs and crime. I stress his conclusion —

"If our policies are to be realistic and rational we must not over-emphasise one aspect of the situation and must not expect to find simple and direct links between what are, in fact, complex social, economic and physiological phenomena". As *Deniis Lander* pointed out, after noting his feelings of *deja vu*: "Moralizing, exaggeration and lack of understanding are as much part of Australia's current (drug) debate as they were of the North American one when the former President Nixon declared his "War on Drugs".

*Dr. Tomasic's* review of what has happened (and not happened) to the many recommendations made in the recent rash of Australian drug inquiries, makes the essential point of his article. He, too, is most critical of the role of the media in fueling the drug debate —

"The inertia of the public and its susceptibility to distorted stereo-types as purveyed by the media, adds a further hindrance to concerted action as it relates to drug reform."

Speaking personally, I was very interested to read *Ian Elliott's* paper. I was the trial Judge in *Lindsay* to which he refers. I used the words approved by the House of Lords in *Majewski* in my charge to the jury. Our Court of Criminal

Appeal approved and the appeal against conviction and sentence was dismissed. Now, because of the High Court's refusal to follow *Majewski*, its back to first principles. This is not such a bad thing. I agree that, essentially, these are questions properly left to the jury.

*Lindsay Tanner* is an advocate for the view that our "so called" drug problem stems only from the fact of illegality. Good fuel for debate. On the other hand, it seems to me to indicate a somewhat ambivalent view, to attack us for our bland assumptions and then, in the very next sentence, to ask us to accept the author's bald assertion that all our present problems stem from the assumptions of "the ruling elite in Australian society". I feel it is not too much to ask these angry young men (if they be such) to more precisely define and identify their terms. Slogans merely annoy and preclude informed debate.

*Matthew Goode* is always readable, controversial and a master of logic. As a judge (and Mr. Goode's godfather!) I must acknowledge how fortunate we are to have young academic lawyers, like he is, to point out the error of our judicial ways. I always get a little overwhelmed by his uncontrolled spate of angry adjectives. Mr. Goode makes the point that "reform based on *defensible* social policy is, in fact, impossible in the present feverish social and political climate".

There is nothing feverish (or purple or impassioned) in the paper by *Mr. J. Willis* who calmly develops his theme that "in a certain sense, the present public reaction to the drug "problem" is a bigger problem than the adverse effects of the drugs

themselves." His quote from *Wilkins* sticks in my mind — "A society can control effectively only those who perceive themselves to be members of it."

The article by *Maurice Whitta* was an intriguing exposition of the importance of and the use of *Phenomenology*. What a word! I noted Mr. Whitta's warning about generalisations.

The comments on sentencing for major marijuana offences by *Fiori Rinaldi* was most thought provoking — and another which added to my satisfaction at being a South Australian. Like Mr. Justice Kirby, Mr. Rinaldi urges that it is long past time when we should, in this area of the law at least, regard ourselves as being one country and not a series of unrelated States. I am sure most of us will agree.

The reminiscences of the anonymous (at time of proof reading, anyhow) Judge filled in, at a personal level, many of the gaps left in the broader sweeps of the other articles and papers. A most informative and revealing article.

In addition to acting as editor of this special edition, *Dr John F. Walsh of Brannagh* has written a sound and well-researched paper which encompasses the main provisions of the present law, both at a Commonwealth level and for his own State of Victoria.

Again, I say how grateful I and the Council are to all of the learned authors. They have, between them, done a great deal to promote informed and objective debate on one of today's burning issues — and I intend no grassy *double entendre* when I use that word.



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