



By Ben Cochrane

This, the first edition of *Precedent* to take criminal law as its theme, is particularly timely given the NSW state government's response to the recent riots in Cronulla and the ongoing effort to diminish the rights of terrorism suspects at the federal level.

When we first called for contributions to this edition, the response was excellent. We had more articles than we could publish and will run further criminal law articles throughout the year ahead.

With our membership in mind, we present a mix of papers on practical issues and policy questions and address a number of issues at the intersection of criminal and civil law.

Andrew Haesler is a senior Public Defender with the NSW Attorney-General's Department. His article on DNA evidence is an excellent primer on a complex topic of fundamental importance to lawyers specialising in criminal law. A longer version of this, together with other papers, is available on the Public Defenders' website. For details see p13.

Other practical articles include Richard Carew's and Emily Ollenburg's paper on the Commonwealth *Proceeds of Crime Act*, and Jennifer Saunders' on sentencing. The former

explores the difficulties caused by the reverse onus of proof in confiscation matters and the latter provides insight into an area of law that tends to be poorly covered and seldom researched.

Bob Galbally covers the first wave of anti-terror laws, while David Hamer provides an excellent summary of the contemporary law on adverse inferences drawn from an accused person's silence in court, and Michael Vasta QC and David Byrne QC offer differing views on the double jeopardy debate sparked by *R v Carroll*.

Papers on the civil liability of parole authorities and recovery of antecedent costs for criminal or coronial inquiries will also be of interest to practitioners with criminal and tort strings to their bows.

Kevin Booker revisits the APLA High Court challenge, analysing the judgment which, while not the outcome members had hoped for, will influence the future interpretation of Chapter III and the rights of access to lawyers that it might imply.

Lastly, I draw readers' attention to Lara Radik's case note. The ACT Supreme Court directly invoked the new *Human Rights Act* to overturn a decision on the basis that the original hearing was unfair, contrary to the Act. That *ratio* and *obiter* arguably set a useful precedent. ■

Ben Cochrane was formerly the Alliance's Legal and Policy Officer, and is now a criminal lawyer with the Aboriginal Legal Service.

EMAIL brcochrane@optusnet.com.au

NATIONAL COUNCIL National President Richard Faulks President-Elect Simon Morrison
DIRECTORS ACT John Little NSW Robert Whyburn NT Nicole Dunn QLD Ian Brown
 SA Brendan Connell TAS Brian Hilliard VIC Clara Davies WA Phillip Gleeson
BRANCH PRESIDENTS ACT Mark Blumer NSW Richard Royle NT Nicole Dunn
 QLD Ian Brown SA Anthony Kerin TAS Sandra Taglieri VIC Richard Morrow WA Greg Burgess
STAFF Chief Executive Officer Eva Scheerlinck eva@lawyersalliance.com.au
 Finance Manager Maggie Galley maggie@lawyersalliance.com.au
 Conference Manager Maja Maunic maja@lawyersalliance.com.au
 Communications Manager Kyrn Stevens kyrn@lawyersalliance.com.au
 Member Services Officer Gerry Ferretter gerry@lawyersalliance.com.au
 Publications Officer Renée Harris renee@lawyersalliance.com.au
 Legal and Policy Officer Patrick McCarthy patrick@lawyersalliance.com.au
 Conference Assistant Kaushalya Mataraaratchi kaushalya@lawyersalliance.com.au
 Administrative Assistant Courtney Oliver courtney@lawyersalliance.com.au
 Personal Assistant to the CEO Jo-Anne Barnes joanne@lawyersalliance.com.au
PRECEDENT Editorial Committee Andrew Freer, Phil Gleeson, Michal Horvath, Lisa Maynard, Brian Nugawela, Amber Sprague, Penelope Watson, Victoria Webster, Ben Zipser **Managing Editor** Ben Cochrane brcochrane@optusnet.com.au
Editor Renée Harris renee@lawyersalliance.com.au Phone: (02) 9258 7721 **Design** Tianli Zu tian@artstudiozz.com.au

This issue of *Precedent* is cited as (2006) 72 PRECEDENT. ISSN 1449-7719 © 2005 APLA Ltd, ABN 96 086 880 499

Trading as the Australian Lawyers Alliance, GPO Box 7052, Sydney 2001, DX 10126, Sydney Stock Exchange Phone: (02) 9258 7700 Fax: (02) 9258 7777

Email: enquiries@lawyersalliance.com.au Website: <http://www.lawyersalliance.com.au>

PRECEDENT is published bi-monthly by the Australian Lawyers Alliance Ltd. Contributors and advertisers should submit their copy and/or artwork in electronic form by the agreed deadline.

Disclaimer: Views expressed by the contributors are not necessarily endorsed by the Australian Lawyers Alliance Ltd. No responsibility is accepted by the company, the editor or the contributors for the accuracy of the information contained in the text and advertisements. The Alliance does not necessarily endorse any of the products or services advertised.

Copyright in this material is retained by the publisher, the Australian Lawyers Alliance Ltd. No part of this material may be reproduced or transmitted in any form or by any means, electronic or mechanical, without permission in writing from the publisher, the Australian Lawyers Alliance Ltd. Enquiries should be directed to enquiries@lawyersalliance.com.au.

