**Criminal Liability and Self-Induced Intoxication by Florian Andrighetto, MP**

**Chairman, Self-Induced Intoxication and Criminal Liability Subcommittee, Victorian Law Reform Committee**

In 1997, the Canberra Raiders rugby player, Noa Nadruku violently struck and injured two women in a Canberra bar. Nadruku was acquitted in the ACT Magistrates' Court on the basis that he was so drunk that he did not intend to commit the assaults – he didn't know what he was doing. The decision was controversial and there was public outcry at the Magistrate's decision. On 29 October 1997, the Federal Attorney-General urged the Victorian, South Australian and ACT Attorneys-General to "do something" about the 'defence' of self-induced intoxication.

In a Report entitled, Criminal Liability for Self-Induced Intoxication, **the Victorian Law Reform Committee has unanimously recommended that the High Court's 1980 decision in O'Connor's case continue to state the law in Victoria. That is, evidence of self-induced intoxication can be used in determining questions of criminal intent and "voluntariness"**.

The issue of how the law should treat self-induced intoxicated offenders has been with us for hundreds of years. The law concerning intoxication and criminal liability varies dramatically not only in the Australian States but in the US States and in other common law countries. The Victorian Committee was faced with the choice of enacting legislation adopting an English approach which distinguishes between offences of "specific intent" and "basic intent" (the approach adopted by New South Wales and the Commonwealth) or retaining the O'Connor principles. The distinction between offences of specific and basic intent is confusing, artificial and arbitrary - for example, there is no general agreement as to whether rape is an offence of specific or basic intent.

Almost all the Victorian witnesses (and most interstate witnesses) supported the view that the O'Connor principles correctly interprets our longstanding common law traditions and safeguards. They were also of the view that the magistrate's decision in Nadruku was wrong. How can a magistrate say 'The two young ladies were unsuspecting victims of drunken thuggery' and then dismiss the charge? It's small wonder that the public thinks that the law is an ass.

The problem was not one of law but one of poor decision-making. Witnesses, including prosecutors and defenders urged the Committee not to confuse Victorians with silly and artificial distinctions between "basic" and "specific" intent but to reduce aberrant decision-making as far as possible. In my opinion the reason why self-induced intoxication has become an issue is because of confusion about the law. Sometimes the law is its own worst enemy by making simple issues sound so difficult. What the community wants is to be able to have confidence in the courts to administer sensible and practical judgments. The Nadruku decision was not unique. The Committee heard evidence of a similar acquittal in the Portland Magistrates' Court. Action has to be taken but not at the expense of fundamental principles of criminal law.

The Committee's solution to this question of public confidence in legal decision making is to require that in serious offences, 'the defence' of self-induced intoxication must be heard before a judge and jury. If the Committee's recommendations are accepted, any person who wants to plead not guilty on the basis that he or she had consumed too much alcohol will be forced to convince a jury of his or her peers. To assist future juries in determining the guilt of an intoxicated defendant, we have recommended that evidence of prior conduct be allowed to be put to the jury. However this should only occur where a person bases his defence on self-induced intoxication and where there is evidence of prior conduct. Evidence of prior conduct sometimes involves complex legal issues. The judges of the County and Supreme Courts are well equipped to direct juries in the relevant law.

The Committee heard that evidence of intoxication was often used as a basis for unnecessary and technical appeals. A recent South Australian example involved a police officer who was charged with rape and who had consumed approximately five beers. Intoxication was not argued as an issue during the trial. The defendant was convicted but subsequently appealed on the basis that the Judge should have directed the jury on the issue of intoxication even though his defence had taken a different course. To overcome this problem the Committee has adopted a recent South Australian amendment, which precludes an appeal on this basis if the Defendant's Counsel failed to argue the issue at trial.

The Committee's recommendations represent a practical solution to a problem that the courts have been unable to deal with adequately. Instead of a knee-jerk reaction as occurred in New South Wales and the Commonwealth, the Committee decided to make recommendations which support the existing law as enunciated in O'Connor's case but to alter procedures to prevent a Nadruku-type decision from occurring in Victoria in the future.

Of greater concern to the community is the widespread reality that up to 90% of those involved in violent behaviour generally were effected to some degree by alcohol. In other words, most violent offenders who are imprisoned were intoxicated at the time of their offence. We need an increase in alcohol and drug rehabilitation programs and a greater use of anger management training. The Committee was particularly struck by the differences between the criminal law culture in Victoria, New South Wales, Queensland and the Northern Territory. Despite the strong 'law and order politics' in other States, Victoria still has the lowest rate of crime and incarceration in Australia.

The Committee's recommendations achieve a careful balance, on the one hand preserving fundamental legal principles which lie at the heart of the criminal justice system and on the other hand addressing community concern about the acquittal of intoxicated offenders. I hope that the Committee's bipartisan recommendations shall be warmly welcomed and take the criminal justice system into the 21st century.