

## By Greg Barns

Nowhere is the imperative that fairness and equity should trump expediency and conservatism more evident than in the issues tackled in this edition of *Precedent*.

Tom Percy QC's contribution deals with the most shamefully neglected area of criminal law practice in Australia, that of wrongful convictions. He calls for the establishment of a criminal cases review commission, to sift through applications made by those convicted of serious crimes that they claim they never committed.

Karen Wheelwright's survey of the law relating to workplace deaths and the liability that attaches to company officers as a consequence is compelling reading. This is an area of the law where the need for sound advice and development of preventive strategies by employers working with lawyers is vital.

A still emerging area, massive in terms of the opportunity for lawyers to develop expertise in, is cybercrime. Paul Folino-Gallo provides a very handy analysis of peer-to-peer networks and the transmission of illegal or illicit material through those networks. He addresses an important question for lawyers and their clients: how the law of search and seizure relates to computers, and where the right to privacy fits in that context.

Speaking of computers, Julian Assange and Wikileaks have of course been much in the limelight lately. The heavy-handed and some might say dimwitted response of the Australian government included the suggestion that it cancel Mr Assange's passport, a power that the Commonwealth has

under the *Australian Passports Act 2005*. Marion Wheatley provides some insights into how and when this power might be used.

Another transborder crime is that of slavery, an issue dealt with by the High Court in *The Queen v Tang* [2008] HCA 39. Jennifer Burn of the Anti-Slavery Project at Sydney University illustrates just what a major human rights issue trafficking and slavery is for Australia and the world.

This edition also addresses developments in two other areas that are now very much on the criminal law's radar – counter-terrorism laws and hate speech. Jude McCulloch and Sharon Pickering outline just how corrosive of the presumption of innocence the doctrine of pre-emption is to the criminal law. Anti-terror laws have been framed by the motivation, they argue, of political opportunism and the vested interests of police and security agencies.

The post-9/11 climate has also witnessed the rise of hate speech: a difficult area for the criminal law, which must seek to weigh up freedom of speech against vilification. Gail Mason takes us through ways of dealing with hate speech and various models available to jurisdictions.

Dean Churilov rounds things off with a very helpful PI article on economic loss in 'serious injury' applications under Victorian accident compensation law. ■

**Greg Barns** of Michael Kirby Chambers Hobart is a member of the Tasmanian Independent Bar and practises in that State and in Melbourne. He can be contacted on [republicone@ozemail.com.au](mailto:republicone@ozemail.com.au).

**NATIONAL COUNCIL** **National President** Brian Hilliard **President-Elect** Greg Barns  
**DIRECTORS ACT** Bill Andrews **NSW** Anthony Scarcella **NT** Nicole Dunn **QLD** Justin Harper  
**SA** Anthony Kerin **TAS** Greg Barns **VIC** Geraldine Collins **WA** Tom Percy QC

**BRANCH PRESIDENTS ACT** Mark Blumer **NSW** Jnana Gumbert **NT** Nicole Dunn  
**QLD** Adam Tayler **SA** Anthony Kerin **TAS** John Green **VIC** Geraldine Collins **WA** Tom Percy QC

**STAFF General Manager** Michel Geurts [michel@lawyersalliance.com.au](mailto:michel@lawyersalliance.com.au)

**Conference Manager** Maja Reid [maja@lawyersalliance.com.au](mailto:maja@lawyersalliance.com.au)

**Public Affairs Manager** Mandy Wyer [mandy@lawyersalliance.com.au](mailto:mandy@lawyersalliance.com.au)

**Member Services Officer** Nancy Hanna [nancy@lawyersalliance.com.au](mailto:nancy@lawyersalliance.com.au)

**Publications Officer** Renée Harris [renee@lawyersalliance.com.au](mailto:renee@lawyersalliance.com.au)

**Legal and Policy Officer** Patrick Coetsee [patrick@lawyersalliance.com.au](mailto:patrick@lawyersalliance.com.au)

**Event Co-ordinator** Holly Lawrence [holly@lawyersalliance.com.au](mailto:holly@lawyersalliance.com.au)

**PRECEDENT Editorial Committee** Tracey Carver, Toni Emanuele, Jnana Gumbert, Michal Horvath, Jennifer Newman, Paul Ohm, Richard Royle, Tim Tobin SC, Ngaire Watson, Emma White, Ben Zipser

**Editor and Production Manager** Renée Harris [renee@lawyersalliance.com.au](mailto:renee@lawyersalliance.com.au) Phone: (02) 9258 7721

**Design** Tianli Zu [tianli@artstudiozz.com.au](mailto:tianli@artstudiozz.com.au)

This issue of *Precedent* is cited as (2011) 102 PRECEDENT. ISSN 1449-7719 © 2011 Australian Lawyers Alliance, 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](mailto: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](mailto:enquiries@lawyersalliance.com.au).

*Precedent* is now being produced in a more ecologically sustainable manner. For details, see <http://www.lawyersalliance.com.au/precedent.php>

