NEW SOUTH WALES SOCIETY OF
LABOR LAWYERS

NSW Labor Lawyers 2019 Annual Dinner
Transcript of Proceedings

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Introduction and Welcome
Lewis Hamilton, NSW Labor Lawyers President

I would like to acknowledge the traditional owners of the lands on which we meet this evening, the Gadigal People of the Eora Nation, and pay my respects to their elders past, present and emerging. I would also like to acknowledge the following current and former parliamentarians in the audience tonight: Hugh McDermott MP, a former President of this Society, Rose Jackson MLC, and Terry Sheahan, the former Attorney-General of New South Wales. And of course, I acknowledge our keynote speakers this evening, Dr Anne Aly MP and Paul Lynch MP who I will introduce in just a few moments.

Friends and guests, the past year has been a difficult one for the labour movement in New South Wales and across Australia. The movement began the year facing two elections at a state and federal level, in the hope that either of our State and Federal Labor Caucus colleagues would be able to form a progressive Labor Government. This was not to be, with the Australian Labor Party defeated at the NSW and Federal elections. With those losses came a missed opportunity for substantial policy change, including substantial law reform, and the ensuing impact on morale amongst our colleagues.

Our Society has not escaped the impact of this difficult year. However, despite the disappointing election results, the Society has been able to continue its broad agenda, which has involved providing a quality service to our many members in the legal profession and value for membership. Opportunities to meet other like-minded professionals, opportunities for our members to learn and develop, opportunities to build law reform ideas and support the labour movement in its quest for a fairer and more decent Australia – these are our ongoing commitments to our members and what has driven us over the past year in these difficult times.

We know that NSW Labor Lawyers – whatever their background or profession – whether they are in corporate firms, in plaintiff firms, or industrial officers in our great union movement – they all have a role to play in building a stronger labour movement. And even more so after this year. Looking forward we know that the *Ensuring Integrity Bill*, defeated yesterday, is likely just the start of a much graver challenge to all of us as progressive lawyers – the challenge being to protect the great law reform achievements of the labour movement from constant attack.

Facing that challenge on behalf of all of us is our first speaker tonight, NSW Shadow Attorney-General Paul Lynch MP. Paul has been a long-time friend of the Society since its reestablishment in 2011. As Shadow Attorney-General since 2011, he has played an important role in holding the NSW Government to account on law reform issues – a topic he has chosen to address tonight. Please join me in welcoming Paul Lynch.

State Parliamentary Labor Party Address
Paul Lynch MP, NSW Shadow Attorney-General

Can I thank the Society for inviting me tonight to address you.

The re-establishment of Labor Lawyers in 2011 came at an important time. My enthusiasm for its re-establishment sprang from a pretty obvious source: the electoral devastation of 2011 and the need to build and rebuild the institutions in the Labor movement. Recent events in this state indicate that our rebuilding and renovation is far from complete – but we have made progress. Electorally this year's result wasn't as good as some may have hoped, but it was a far better result than in 2011. I remember when there were only 20 of us in the Lower House. Our rebuilding has also been institutional – ranging from no binding factional caucus votes on leadership to the reinvigoration of Labor Lawyers.

The Society fulfils a useful intellectual and advocacy role. The Frank Walker Lecture each year has been, I think, a pretty successful initiative with an impressive range of speakers. Legal Tweaks of course, is quite a helpful contribution to debate. Indeed, James Mack's proposal about the Suitors Fund Act seemed such a good idea that it resulted in a private member's bill and found its way into state election policy.

Having ideas, talking about them, debating them, is Labor at its best. It is our side of politics traditionally that has the vision and the ideas: to use the language of Manning Clark, as adopted by Keating, we're the Party, and the movement, of the enlargers – our opponents are the straighteners and punishers. It's always been thus – from 1891 to 1972 to issues such as our place in Asia, and the Republic, and Reconciliation, and the list goes on. We're the enlargers – and that means thinkers, writers and advocates.

And there's a concrete example of this in state politics. If I can turn from the sublime to the ridiculous – from Manning Clark and Keating on one hand to the Berejiklian Government on the other. The portfolio with the greatest legislative load in our Westminster system is usually the Attorney-General's. That's historically in New South Wales the largest number of pieces of legislation come from. That's where you see the legislative agenda of the Government.

The melancholy reality is that since this year's state election there have only been four bills introduced by the current state government in the Attorney-General's portfolio area.

Two of those have been statute law "miscellaneous provision" bills – No 1 and 2 of 2019. The other two have both been justice legislation amendment bills – also No 1 and 2 of 2019.

For those not entirely on top of parliamentary arcana the titles of all four of these bills show they are full of minor bits and pieces, none of which are deemed significant enough to justify a bill in their own right. They do nothing but tinker. There is a comprehensive absence of any law reform agenda or indeed any legislative agenda at all in the Attorney-General's area. Remarkably, this indolence of a re-elected Government causes one to almost by comparison think the otherwise unthinkable – that by comparison Christian Porter is impressive (or at least competent).

One senior judicial officer, who shall remain nameless, once said to me that the current Government doesn't care about anything that's not concrete or asphalt.

He was right. The Parliament now sits for significantly fewer hours than it used to – dramatically fewer than when I was first elected at the beginning of the Carr Government. It sits for less time because it has less to do. Those obscure but important documents, the Annual Reports of the Office of

Parliamentary Counsel (the people who prepare the bills for the Government), show it clearly. Those reports reveal that in the last year of the last Labor Government – despite all the challenges, difficulties and some might say, chaos of that time, the Labor Government had about 100 bills. And I know that we actually had more bills that we had parliamentary time to debate, because they included some of mine. By 2014-15, under the Coalition this 100 had fallen to 59. In 2016-17 it was 61. In 2017-18, the latest year for which I could find figures, it was 77 – still 25% less than under Labor in its last year. If there's a proper subject for a study by the Productivity Commission it's the legislative work rate of this State Government.

And in this desert of legislative ideas that is the State Government, there's a contrast with the State Opposition. We've introduced four substantive bills and given notice of a fifth in the Attorney-General's portfolio area since the election. They include one to outlaw gag clauses in funding agreements between Government and NGOs, and another requiring every agency subject to GIPA applications to receive them electronically if the applicant so elects. The Government voted against both of these. On GIPAs (FOI to non-lawyers), they said it was too hard for every agency to accept GIPA applications electronically. I asked them in response which government agencies weren't connected to the internet – they struggled for an answer. The other three bills all dealt with aspects of privacy, something that has fallen off the agenda of politics for several decades.

It's worth noting that this state's privacy law was introduced and proclaimed before the invention of the iPhone. Labor's three bills this year included one for mandatory notification of serious breaches of privacy by state agencies and one for the extension of privacy regimes to all state-owned corporations. The third gives the Privacy Commissioner greater powers, including to make take-down and cease and desist orders and to also institute a statutory tort for damages for serious invasions of privacy in line with the recommendation of the Australian Law Reform Commission.

There is of course much more to be done in this privacy space than just these particular legislative items but you can't do it all by way of private member's bills in Opposition. But in the era of Shoshana Zuboff's 'The Age of Surveillance Capitalism', and her expose on data-intensive business models, in the era of Edward Snowdon's revelations, and in the era of the Australian Competition and Consumer Commission's actions against Google, you would expect much more parliamentary focus on making the internet safer and much more secure, and individual privacy more sacrosanct. There is zero interest in this by the Berejiklian Government.

If we are to be enlargers in the digital age, then perhaps we need to think about what some authors have called digital constitutionalism – the idea for example of a digital bill of rights. There have been proposals from British and New Zealand Labour and from a range of other countries. I even noticed some from Republicans in the USA and Pirate Party members in the European Parliament. There are a plethora of potential problems, not least constitutional ones in doing any of this. But it must be an area in which modern parliamentarians should be engaged. And if someone like me, who still uses a fountain pen, gets it, there's no reason others in the State Parliament cannot.

The cynical among you might say in response to my complaints about Government legislative apathy that I should be careful what I wish for. That is, the more the current State Government does the more bad things they are likely to do – so lack of legislation by this Government might be a good thing for those of us at this event.

And true there are certainly some pretty unedifying examples of appalling legislation introduced by this Government.

The ones I'm thinking of probably do merit the warning of being careful what you wish for. They've not been introduced by the Attorney-General nor does he have the carriage of them – which, granted their subject matter, may be noteworthy in itself.

One of these was the *Environmental Planning and Assessment Amendment (Territorial Limits) Bill* which was originally see as a craven kowtowing by the Government to the Minerals Council. It seems the bill is not actually what the Minerals Council wanted and the bill has now been referred to an Upper House committee amidst rumours that the Minerals Council is demanding more changes.

Then there was the *Right to Farm Bill*. This New South Wales version was a more extensive version of the federal legislation introduced by the Morrison Government. The New South Wales version is a direct result of the existential terror created in the ranks of the Nationals by the Shooters, Fishers and Farmers Party. It's the same fear, by the way, that has generated the thought bubble of the National's leader Barilaro to increase the number of Lower House state politicians in NSW from 93 to 109. If he can't do that the Nationals Party room is afraid it will be reduced to three or four MLAs.

The *Right to Farm Bill* dramatically increased the penalties for protest. It would as likely criminalise anti-CSG farmers as it would vegan activists. Labor unsuccessfully moved amendments to ameliorate the bill and then voted against it on the third reading. This is a continuation of the Government's extreme anti-protest laws in 2016 that Labor also voted against.

The myopic approach is also seen in the Premier's obdurate refusal to even consider a limited pilot of pill-testing. And there's her trenchant support of police handling of strip searching.

That's in a context where the evidence revealed at the Law Enforcement Conduct Commission shows the police who are strip-searching people including children, pretty much admit they don't actually know what the law is.

I'm not so much interested in taking powers away from the police as getting them to use their existing powers lawfully. And getting them to know what the law is might be a good place to start.

The anti-protest laws I mentioned are almost an echo of what's called law and order politics – the hang 'em high and whip 'em hard attitude starting in the 1990s.

I note in passing that law and order politics featured exactly nowhere in this year' state election. It really hasn't had an outing since the demise of O'Farrell and when the Upper House supported Labor amendments preventing their swathe of mandatory sentences. The Greens voted with Labor against mandatory sentencing – as did the Shooters, Fishers and Farmers. The Tories haven't gone there since – the Victorian state election showed they were probably right not to. The State Opposition hasn't gone there either – I don't think it works politically. And crime rates are significantly less than in the 1990s, which changes the politics.

So, if you had a parliamentary majority, what sort of legislative agenda would you pursue? Tonight is not the night for a detailed election policy for this state.

Regrettably, I've got another three years to work on that.

As I've already said though, we need to say more about privacy, and about individual autonomy and protection in the age of the internet. And there are a couple of other things to quickly mention.

There needs to be a proper approach to modern slavery. The state is one of the largest procurers in New South Wales – Government supply lines need to be slavery proof. There needs to be a proper

slavery commissioner in New South Wales with a proper investigative role reporting to Parliament. There is New South Wales legislation passed in 2018. It was a bill from the Christian Democrats' Paul Green which was effectively gutted by the Government.

The Government never wanted the bill – even a gutted one. So they have simply failed to proclaim the bill – a bill is democratically passed through the parliament and the Government simply ignores it and refuses to accept democratic principle. Some people hear the word slavery and think of Wilberforce and 18th century evangelicals who treated their own labour force appallingly. Make no mistake, modern slavery is a central labour movement issue dealing with wages and conditions and the atrocities of exploitative economic systems.

And enabling State Government would also expand the Drug Court. The Court was every inch a Labor initiative and commenced in Parramatta. It now also operates in Toronto in the Hunter. There's also one at the Downing Centre but it only sits one day a week and has a laughably small program. At the moment it's restricted to participants who reside within the boundary of the City of Sydney. The success of the model is undoubted. It should be expanded.

The final legislative agenda I'd mention is one about the scandalous and outrageous issue of Aboriginal incarceration rates. 28% of the inmates of our prisons in this state identify as Aboriginal. Only 2.8% of the general population identify as Aboriginal. The over-representation has worsened under this Government. A rational Government would support the principles of justice re-investment and fund pilot schemes. It would support the Walama Court – an Aboriginal-specific division of the District Court. This proposal was originally made by the Court itself and is supported by the Bar Association, the Law Society and the Police Association. The Government would expand the children's Koori Court outside of Parramatta and Sydney CBD.

That's a smattering of some of the things the State Parliament should be doing. They're the ideas that progressive Labor law reformers pursue. They're examples of what enablers might do in power. They're the sorts of ideas and politics that emerge from a movement that includes this Society, from a movement that values ideas, debate and advocacy. So can I conclude by acknowledging the role the Society has in being an enabler.

Introduction to Dr Anne Aly MP
Lewis Hamilton, NSW Labor Lawyers President

Our keynote speaker this evening is Dr Anne Aly MP. Most know Dr Aly as the outspoken, enthusiastic and energetic Member for Cowan – but many others know her as a nationally respected expert on counter-terrorism. After graduating from the American University in Cairo and later Edith Cowan University, Dr Aly became a policy officer, in 2001, for the Government of Western Australia in the areas of multiculturalism and education. Following the 9/11 Twin Towers terrorist attack, Dr Aly worked on the WA Government's response to the Federal Government's counter-terrorism action plan. From 2009 to 2011 Dr Aly lectured in counter-terrorism at Edith Cowan and Curtin Universities that was followed by a later appointment as a Professor at Edith Cowan. In 2013 she founded a youth not-for-profit, People Against Violent Extremism which aimed to mentor youth in Australia. For this, and for her extensive work in the field of counter-terrorism, Dr Aly was nominated in 2016 for Australian of the Year.

We are honoured tonight to have Dr Aly address our members – something which the Society hoped to do in the early parts of this year before all members of parliament were told to be "all hands on deck". Tonight Dr Aly speaks on the topic *'Legislative Challenges in Countering Terrorism and Violent Extremism: The Internet and Returning Foreign Fighters'.*

Address by Dr Anne Aly MP
Contemporary Challenges to Counter-Terrorism: The Internet and Returning Foreign Fighters

Thank you to NSW Labor Lawyers for inviting me to speak this evening. I'd like to begin by acknowledging the Traditional Owners of the land and to pay my respects to their elders past, present and emerging.

Tonight I'd like to talk about some of the contemporary challenges for countering terrorism, with specific reference to returning foreign fighters and the internet. I will draw on some of the research that I was doing prior to becoming a Member of Parliament and some of the findings of that research.

Of course, the study of terrorism and its responses is not new. It dates back to the 1970s, when airline hijacking, kidnappings and hostage takings emerged as the primary modes of terrorist activities.

The 1970s is also the decade when terrorism hit the international stage. Prior to that, terrorist attacks were predominantly domestic, but the realisation that hijackings and high profile kidnappings attracted international media attention heralded a new era in terrorism.

The phrase 'propaganda by the deed' was coined long before international terrorism hit our television screens and made front-page headlines. It was in fact borne out of the anarchist movement in late 19th century Europe as a strategy for individual and collective violence.

Today's terrorist landscape throws up some new challenges - but it also doesn't differ too much significantly from past waves of terrorism. Terrorists, as I often say, are opportunists - not innovators Today, Australia boasts one of the broadest reaching and most comprehensive suites of terrorism and terrorism related laws of any other Western nation.

Provisions in Australia's criminal code alone covers terrorist acts as well as activities that may be associated with those acts and as such cover a broad range of activities including:

- the commission of a terrorist act, planning or financing an act, providing or receiving training, possessing things connected with terrorist acts, collecting or making documents likely to facilitate terrorist acts;
- membership, recruitment, financing, providing support or training with a listed terrorist organisation;
- urging violence or advocating terrorism;

- entering, preparing to enter or recruiting persons to enter a foreign country with the intention of engaging in hostile activity;
- the provisions also cover intention to commit an offence or reckless actions that would amount to an offence.

All of this is designed and implemented in response to the contemporary threat of terrorism.

But the questions I want to ask tonight are - what does that contemporary threat look like, and is our response the right response?

So today's terrorism landscape is characterised by lone actors with loose or no affiliations to organised groups, radicalisation to an ideology or cause, returned foreign fighters, low tech attacks with little or no coordination and planning and the use of information and communication technologies.

Much of the contemporary nature of terrorism is described in terms of the spike in lone actors, often referred to as lone wolves. Let me start by dispelling some myths around the lone wolf phenomenon that has yielded a number of theoretical and research based studies offering a typology of lone violent actors.

Firstly I want to emphasise that there is no single profile of a violent extremist actor. Attempts to create typologies of terrorist actors based on demographic characteristics - age, gender, race and ethnicity - are not only of limited use; they can also be counterproductive.

In 1972, while Israeli airport security were focused on the possibility of a Palestinian attack, three members of the Japanese Red Army attacked Lod airport, killing 26 and injuring 80.

This case demonstrated the futility of developing terrorist profiles or typologies of would be terrorist actors based on broad demographic traits.

Throughout various iterations of terrorist waves - anarchist, new left, post-colonial, religious - the demographic characteristics of actors remains generally unchanged. They tend to be male, aged 20 - 40, and with no extraordinary history.

Yet there have been persistent attempts to identify individuals vulnerable to radicalisation by profiling, resulting in the securitisation of entire communities and having a counterproductive impact on prevention and countering violent extremism.

And this brings me to radicalisation - a kind of umbrella term used to describe a process by which an individual or group progress from radical or extremist thought to violent action.

Radicalisation is often presumed to be a predictor of violence and indeed has been used as such in models that have informed countering violent extremism policy and programs.

Other definitions conflate radicalisation with a tendency towards or support for violence as a legitimate avenue for collective action.

Such a confliction fails to distinguish between cognitive and behavioural characteristics of radicalisation and assumes that radicalisation can predict violent behaviour.

Another important distinction should be made between this kind of de-radicalisation and disengagement, which targets the behavioural component of radicalisation.

Many Jemaah Islamiyah (JI) members who have undergone de-radicalisation remained dedicated to the objectives of JI even after they have abandoned violence in pursuit of these objectives.
While some scholars argue that radicalisation cannot be appropriately deconstructed in terms of a fixed series of stages, others contend that radicalisation is a fairly ordered path, with terrorism as the ultimate manifestation of radicalisation.

Attempts to understand radicalisation as a process therefore deconstruct radicalisation as a series of stages or phases through which the individual passes towards a worldview that legitimises violence as a justifiable and effective means of achieving group objectives.

In the policy response to terrorism, the lack of conceptual distinction between what are considered radical values and violent behaviour has yielded an approach that defines certain sections of Muslim communities (most notably young Muslim men) as vulnerable to radicalisation and attempts to address

this vulnerability through targeted programs Individual de-radicalisation programs target individual cognitive radicalisation.

As a result, checklists of radicalisation and vulnerability to radicalisation, often consisting of some rather arbitrary characteristics or behaviours have been used to target individuals – most notably the Silber and Bhatt (or NYPD) model - a four phase radicalisation process.

According to Silber and Bhatt's model, radicalisation can be segmented along four phases; the pre-radicalisation phase; the self-identification phase; the indoctrination phase and finally, the jihadisation phase.

The pre-radicalisation phase, otherwise referred to as the point of origin, is the period of time at the start of the radicalisation process that describes individuals prior to being exposed to Salafi-Islam. The self-identification phase is when an individual is exposed to internal and external triggers', which may include trauma, social alienation, economic marginalisation or discrimination.

These triggers could potentially cause the individual to commence a search for ontological security. This may include making drastic changes in their lives; where they re-interpret their faith, find new meaning in their lives and associate with different yet like-minded people; adopting new religious ideologies as their own.

The indoctrination phase occurs when the individual will increasingly intensify their belief system to the point that they wholeheartedly adopt jihadi-salafill ideologies and will adopt a worldview in which conditions and circumstances exist whereby action - militant jihad - is justified to support and further the cause.

Finally, the jihadisation phase occurs when members of a select group usually appoint themselves as warriors in a holy war and thus see it as a religious duty to begin planning, preparing, and undertaking a terrorist attack.

Perhaps the most problematic part of the model is that the pre-radicalisation phase is described as the point of origin 'of individuals who are unremarkable', with ordinary jobs, ordinary lives, and with minor, if any, criminal history.

In essence then, the pre-radicalisation phase can describe any average person prior to the adoption of radical Islamic views.

There is a distinction between two kinds of radicalisation - cognitive and behavioural.

Cognitive radicalisation is the personalisation and internalisation of a set of beliefs associated with a radical or extremist ideology.

Behavioural radicalisation is the acceptance of and willingness to use violence as a necessary means in relation to beliefs and ideology.

Cognitive radicalisation does not necessarily lead to behavioural radicalisation. That is an individual may be radical or extreme in their thinking but may never adopt violence as a result.

A third consideration is that an individual who is both cognitively and behaviourally radicalised must also be presented with or seek out an opportunity to use violence for the intention of carrying out beliefs and ideology.

When we look at radicalisation through this framework of cognitive, behavioural and opportunity we can begin to develop a more useful typology of lone actors.

There are several examples which I won't go through tonight, but I do want to draw attention to a couple.

Jessica Stern (in 2004) describes lone avengers as individuals who are only loosely affiliated to any ideology and commit acts of violence as expressions of personal vendettas mixed with religious or political grievances.

Feldman (in 2013) distinguishes between terrorists "seeking an ex post facto justification of their violent actions" and those who progress through the terrorist cycle.

One of the most useful typologies of Right Wing/ Neo Nazi actors is Wilhelm's (2007) typology that distinguishes between Right Wing activists who are ideologically driven, ethnocentric youth who are driven by perceived grievances and criminal youth who have not marked right wing ideological leanings.

Importantly right wing activists typically have prior records for political crime, ethnocentric youth for juvenile crime and criminal youth have a propensity for violent crime.

Criminal youth: "in terms of the propensity to violence, this is a markedly action- oriented, aggressive, and violently disposed type. Here violence is seen not as a means of political conflict, but as a normal element of daily life and conflict resolution which needs no specific legitimation".

It is safe to say that much of our efforts in countering and preventing violent extremism and terrorism have focussed exclusively on cognitive radicalisation.

In the aftermath of the 11 September 2001 attacks, programs focused on social cohesion, integration, moderating ideology and civic values while legislation and security focussed on reducing or removing opportunity for carrying out attacks either through law enforcement or target hardening

But what about behavioural radicalisation and the propensity to violence? Have we missed a critical component of the equation that could potentially offer a more useful way of profiling behavioural characteristics and identifying individuals?

We know that the Sydney siege perpetrator had a history of violence; the Bourke street attacker had a criminal history; the Christchurch terrorist actor posted his manifesto which justifies the use of violence before he carried out his attack.

The attacker who ploughed a van into pedestrians in Toronto in 2018, killing 10 people, was revealed to be part of an alarming 'incel' sub culture. He openly declared his will to carry out an attack as a salute to Elliot Rodger, the perpetrator of the Isla Vista shooting and driving attack in 2014. And the list goes on.

These are the questions I asked when I embarked on a research project that looked at 100 case studies of Western-born self-activators-known individuals who either carried out an attack, were arrested in connection with planning an attack, or travelled overseas as a foreign fighter.

That research sought to identify patterns and characteristics of pathways to violence with the presumption that individual propensity to violence is a key personal trait that influences individual trajectories to violence.

The findings distinguished between three different types of actors.

Type one were both cognitively and behaviourally radicalised - they became violent within the context of their radicalisation.

Type two were less cognitively radicalised though were likely to inhabit motifs or symbols of ideology. They were attracted to the violent elements of ideology and that attraction drove their actions as well as their adoption of ideology- they sought ideology to justify violence.

Type three were subject to rapid escalation to violence; they exhibited high trait aggression, applied ideology to their act of violence and not their entire world view and often had an ex post facto declaration of ideology.

The question of propensity to violence - behavioural radicalisation - extends to the issue of returning foreign fighters.

When comparing foreign fighters to domestic actors, my research found that domestic actors were more likely to be type one or type three. That is, either they were more cognitively radicalised and came to violence through ideology or they had a high propensity to violence that escalated into an attack. Foreign fighters were more likely to be type two - less cognitively radicalised, and primarily mobilised by an attraction to violence.

I believe there are some important insights here that should inform our response to the contemporary challenges of domestic terrorism, rising white supremacist violent extremism and returning foreign fighters.

In one of the first sittings of the 46th Parliament, convened in August this year, the government parliament passed a bill that would effectively prevent Australian foreign jihadists from re-entering Australia for two years.

The bill attempts to deal with the assumption that those returning from theatres of conflict in Iraq and Syria would be both cognitively and behaviourally radicalised and would therefore pose a risk to Australia.

The first successful attack by a returnee in Europe occurred in 2014, with the shooting at Brussel's Jewish museum.
There have since been several other attacks by returnees in Europe, culminating in the coordinated attacks in Paris in 2015 and Brussels in 2016.

Studies of past waves of returned foreign fighters demonstrate that veteran fighters can play a critical role in inspiring, influencing and advocating for the perpetuation of violent movements- often from within their prison cells.

But a study of returnees in Belgium, Germany and Netherlands published by Egmont last year highlights some interesting findings.

In these countries, returnees are generally detained until trial upon their return. In prison they are subjected to varying regimes to monitor and manage their conditions.

Once released they are then subjected to various programs - some more intrusive than others.
Among the key findings of the study, some are worth mentioning here.

Firstly, the study found that the most seasoned fighters will no longer return to their countries of origin *en masse* - most recent returnees are women and children.

Prior to the 2014 attack in Brussels, returnees were not systematically prosecuted. Legislative regime changes in the criminal codes of all three countries have been broadened and returnees across Europe, including women, started being systematically prosecuted.

Most interestingly, beyond the judicial response, all three countries developed a range of measures and mechanisms to deal with returnees leading to a comprehensive multi-agency approach involving a broad range of actors and services.

There are lessons for us to learn here - if we are open to learning them.

The first is that the judicial response is not enough - it is not enough to prevent would be foreign fighters from leaving Australia for Syria without any programs to redirect them to positive, non-violent resolutions to conflict.

It is not enough to legislate for the temporary exclusion of foreign fighters without a comprehensive, long term strategy for their return or indeed for the right to restitution and justice for their victims.

If we have learned anything from almost two decades of the so called War on Terror, it's that we cannot defeat terrorism with military action alone; we cannot arrest our way out of this and we certainly cannot ignore new forms and developing iterations of the terrorist threat because they come from those who look like us.

Whether or not we learn these lessons is yet to be seen. But right now, we do not have the kind of comprehensive approach to dealing with terrorism and violent extremism that countries in Europe have developed.

The contemporary nature of the threat in the domestic arena is also characterised by low tech attacks carried out by single individuals and using guns, knives and vehicle ramming or a combination of all three. These kinds of attacks are relatively easy and cheap to carry out, require no planning and hence are able to circumvent security measures. They are also by no means new or innovative.

Terrorists, criminals and those who wish to do us harm will continuously find ways around our capabilities - either by exploiting vulnerabilities, or by circumventing current security measures.

So, in response to an increasing awareness of terrorists' use of the internet and measures to mitigate any continued threat, terrorists and criminal groups are now migrating to the dark web and using encryption services. The Dark Web allows criminals and terrorists to operate in a haven of anonymity.

What we are also seeing is a more coordinated integration of cybercrime and terrorism. In January 2015, evidence emerged of a terror cell using bitcoin to fundraise operations. In another example an Indonesian based group collected bitcoin donations on the dark web and using a stolen identity from the Dark Web hacked a trading website. The group managed to collect around us $600,000 using a series of cybercrimes.

In the past, cyber terrorism has been a contested concept with no agreed upon definition and several theories abounding about what a cyber terrorism attack would entail. It is generally accepted that cyber terrorism would involve the use of computers or technology to create a severe disruption to critical infrastructure causing death or the spreading of fear; that is, terrorism carried out by technology.

The interface of cybercrime and terrorism - the use of cyber capabilities not as weapons of attack but as enablers of terrorism through cybercriminal activities - presents a more tangible way of conceptualising what cyberterrorism looks like and a concrete target for focussing our efforts and indeed any legislative responses to this threat.

Finally, I would like to make the point that while our law enforcement agencies do a great job of keeping Australians safe, their task is made more difficult as terrorist actors find novel ways of circumventing security measures.

Our success in combatting the risk of terrorism and violent extremism doesn't just rely on the capabilities, capacity and scope of our law enforcement regime - it also relies on our willingness and ability to comprehend that military action and legislation alone is not enough.

Legal Tweaks **Editor Address**

Kieran Fitzgerald

Earlier in the year when I sat down to plan out this year's edition of *Legal Tweaks*, I had a feeling of excitement that it would be full of ideas for the new Labor government and a new era of progressive law reform. Unfortunately, as we all know, it wasn't to be. But I am proud of the contribution that all of the authors have made nonetheless, and the strength and quality of the publication speaks for itself, regardless of which party is in government.

At times like this I think not of whatever Labor issue is in the headlines at the moment, but I look to the heart and soul of our party – its members. I think of proudly marching with Rainbow Labor at Mardi Gras, alongside rank and file members and MPs who have fought the good fight (including one who told me she hoped someone would have a drink for her). I think of a recent Labor Lawyers event I attended where Neal Blewett's former chief of staff spoke about the universally applauded response to the HIV/AIDS epidemic from the Hawke Government – it's World AIDS Day on Sunday, be sure to buy a red ribbon. I think about the time I met Gough Whitlam, and the rapturous applause from the faithful to everything he said at that event. I think about endless door knocking as a Young Labor volunteer – not exactly a fun way to spend a weekend, but at least you were around other idealists. We really did think we were going to change the world. I think about long, long branch meetings where people who have been members for decades would bring raffle prizes to help the branch raise money for the next election campaign. I think about the excitement of election night in 2007 and the joy of seeing Howard lose his seat. And I think about the friends I have made in the Labor Party and the experiences that I have had, including the thrill of seeing candidates I have volunteered for, and even been friends with for years, being elected. It is these memories and people that make up the Labor Party for me.

The Labor Party needs good people to thrive. It needs people who are willing to put forward ideas and put in the hard yards to achieve the vision we have for Australia. *Legal Tweaks* plays a small role in this, but it shows that – far from the boring commentary and hand-wringing of some people – the culture of enthusiasm for ideas is far from dead inside the Labor Party.

I thank all of the authors for their contributions to this year's publication, and I have no doubt that many of them will go on to achieve much as lawyers and as Labor members. I also especially highlight the contribution of the President of Labor Lawyers, Lewis Hamilton, who gave me the opportunity of being editor this year, helped chase up contributions, and laid out the publication. Lewis works tirelessly for the Labor Party, and I am sure he will do so for many years.

Although it is easy to lose heart as a Labor member, you can be disappointed, and you can be frustrated, but now is not the time to walk away. So I did renew my membership. History shows us that the Labor Party is the only truly viable option to achieve lasting progressive change in Australia. It is in

that spirit that *Legal Tweaks* plays a small but important role, and I hope you all enjoy this year's edition.

29 November 2019