



19 April 2005

Chief Justice's Chambers
Hobart

Professor K Warner
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Dear Professor Warner

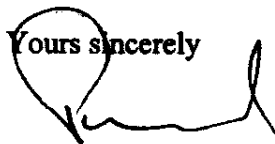
Thank you for sending me a copy of Issues Paper No 7, "Intoxication and Criminal Responsibility". I congratulate you on its depth.

I have always thought that this Court served the State rather badly by its decision in *Attorney-General's Reference No 1 of 1996* (1998) 7 Tas R 293. The different views expressed by the five members of the Court did little to solve the problems associated with intoxication and knowledge. As you know, these problems arise on a daily basis in the Court, particularly in the case of crimes such as wounding and causing grievous bodily harm. So, your review of this area of the law and your recommendations are timely.

I am in no doubt that the option to be preferred is an amendment to the Code that would bring the law in this State into line with the common law of Australia as expounded in *R v O'Connor* (1980) 146 CLR 64. Whilst I do not resile from the argument I advanced in *Attorney-General's Reference No 1 of 1996*, that the task of the Court is to construe the intention of Parliament, the world has moved on a long way since 1920 (*Director of Public Prosecutions v Beard* [1920] AC 479) and Parliament should reflect reasoned and settled societal views.

The common law position is consistent with current principles of criminal responsibility and there is no longer any suggestion abroad that adoption of the "*O'Connor* approach" will result in unjustified acquittals or give licence to drunken criminal behaviour. As the Issues Paper observes at 88, "a drunken intent is still an intent". I think that today's juror understands that very well; that has been my experience.

Thank you for inviting my comment.

Yours sincerely


Peter G Underwood
Chief Justice

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