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# Travesty on Palm Island

by Noel Pearson

*The Weekend Australian*



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Queensland Director of Public Prosecutions Leanne Clare defiantly declared on Thursday that she would not refer the Palm Island death in custody of Mulrunji Doomadgee to an independent review, claiming that “instigating an external review...posed a fundamental issue about the independence of the Office of Public Prosecutions”.

Then Attorney-General Kerry Shine released a statement yesterday morning saying that Clare had made an “unexpected offer” to provide him with the file on the Palm Island matter, which he “will refer to the crown solicitor to commission an independent review”.

So, does this review impugn the independence of the DPP as Clare sees it? Clare had also stated that “no one in my office could prosecute this case, regardless of any position adopted by an external review”. If Clare is correct, then what is the purpose of the Attorney-General’s proposed independent review?

In my view this calls into question the confidence Queenslanders can have in this DPP. I maintain that Clare is incompetent in this matter, and I do so for the following reasons.

First, in explaining her original decision, she said she had reviewed the evidence, including (unknown and untested) new evidence not available to the coronial inquiry that earlier this year found that Senior Sergeant Chris Hurley was responsible for the death of Doomadgee.

However, Clare did not only say she had concluded that the evidence did not support a conviction, she declared that it was a “tragic, tragic accident”. She did not say that the evidence would likely or even highly likely result in a finding that the death was an accident; rather, she made an absolute determination that it was an accident.

She arrogated to herself the role of the jury to positively declare what had happened, when her role as DPP must surely be to offer her opinion as to whether any charge could succeed against Hurley.

It would have been more understandable if Clare had done the standard thing and said she would not proceed with a prosecution because she did not think the evidence would support a conviction. But she has declared what happened was an accident, and therefore raised the question of whether she misconceived her task.

Second, given the contradiction between her conclusion and that of the Deputy State Coroner – and the obvious questions that would immediately arise for the Doomadgee family, the Palm Island community and the rest of the Queensland and Australian public – she should have arranged for an independent second opinion or made provision for the possibility.

It is a huge call to not proceed with a prosecution when a coroner has made a positive finding that someone is responsible for a death, and Clare should have understood that hers could not be the last word on the matter.

Why did she not do what was open to her to do, especially given that there was already a precedent in the Scott Volkens case, when the opinion of the NSW DPP was sought? It is no answer for Clare to say, as she did in her Thursday statement, that the Volkens case was different because there were two police investigations. The point is that it was still within her power to refer the Doomadgee case to another jurisdiction for an independent opinion.

Third, when you look at Clare’s litany of blunders since her original appointment as DPP, there is a pattern. That pattern is the nervous anxiety that comes from trying to reconcile a sensitivity to the prevailing public winds with a concern that one must be doubly impartial and doubly dispassionate and doubly independent: because you know that you are under scrutiny precisely because you have not been appointed on the basis of your credentials for the job, but also to advance a social principle that the appointing politicians have sought to effect throughout public institutions.

Pauline Hanson and former chief magistrate Di Fingleton were victims of this psychology. Persons who hold such intense public positions as DPP must be confident in their ability to do what the job requires of them, and be confident of the public's confidence in them.

This is why seniority and records are so important in public appointments and should not be carelessly abandoned by politicians seeking to advance social equity. If one is unknown to the public, then one must be confident that the public's confidence will grow with one's performance. There is little doubt about Clare's basic social and moral sympathies: I reckon she would readily tick the "social justice for Aborigines" box in any survey. But when you do not possess the confidence to be dispassionate, impartial and independent, then having such social and moral inclinations makes you vulnerable to being too anxious to appear impartial. This works to the detriment of the party with whose sympathies you are – and are known to be – aligned.

When Clare said that she would act on the evidence and not emotion, she did not convince me that that was what she had done.

What has happened here is an unequivocal injustice. An Aboriginal man has died in the custody of a policeman, having sustained a liver cleaved in two. An extraordinary police and judicial full-court press is inflicted on the Palm Island community following the subsequent riot: Tactical Response Group police storm homes with guns, people are banned from their island, bail is refused, police investigations are relentless, charges are laid.

The police investigation of the death was utterly compromised, with all indications pointing to a flawed inquiry and no indication whatsoever of the police hierarchy acting to ensure confidence in the performance of the service's public duties.

Three Palm Islanders are charged with riot offences, plead guilty and are convicted and sentenced by a highly experienced judge, but the Attorney-General instructs the DPP to appeal to the Court of Appeal which, in a breathtaking judgment by the chief justice, Paul de Jersey, increases the sentences and sends a mother of four children to prison. Her children are made wards of the state.

The dead man's only child takes his own life in the period following his father's death. Remaining Palm Islanders charged with riot offences are awaiting trial. Hurley and his mates from the police service who exonerated him return to their jobs.

How can this be an acceptable outcome of this case? What brought about this travesty?

The actions of former attorney-general Matt Foley in making such egregious appointments as that of Clare to senior positions of public trust on the basis not of merit but of social equity must be seen as a failure. Social justice is never served when key institutions are not served by the most competent people available.

In an immediate sense, Police Commissioner Bob Atkinson must bear chief responsibility for the conduct of his officers. Rather than upholding the integrity of his service by ensuring that while an officer accused of causing death is not unfairly prejudiced in any investigative and judicial proceedings, nothing is done to raise questions about the impartiality of the police through the strictest observance of proper procedures, Atkinson's media utterances sounded as if he was counsel for the accused officer or an alternative spokesman for the Queensland Police Union instead of the person responsible for an important public institution. Atkinson's miserable failure could well be extended to his minister, but it is futile to do so in the case of Judy Spence. It is idle to think that she can be held responsible for anything.

Premier Peter Beattie's failure was to not intervene earlier. For example, Beattie's initial support for Atkinson's outrageous decision to place Hurley on desk duties after the coronial finding was wrong and contributed to the now collapsed confidence in Queensland's criminal justice system.

I have no doubt that Beattie holds in his heart a tender concern for the Doomadgee family and a genuine desire to make life better for the people of Palm Island, especially its children. I have said before that Beattie has taken action, through legislation implementing alcohol management plans in

communities, that has resulted in saving the lives of many Aboriginal Queenslanders. The decrease in homicides is evidence of Beattie's courage and achievement.

I met an impressive man called Lex Wotton on Palm Island last Wednesday. He is mentioned in the chief justice's judgment increasing the sentences on the three Palm Islanders found guilty of rioting: "One Wotton led the crowd from the meeting place over a distance of approximately 80 m to the police station."

This Wotton is a true leader and he told me he was a staunch supporter of the alcohol management plan in his community. I have no doubt that the salvation of Palm Island will depend on the leadership of Wotton and that group of young men whose passion for their people is a precious and indispensable starting point if the Beattie Government is serious about a future for this island of sorrow. An angry leadership and responsibility must be turned to constructive good.

The problem for Beattie is that he ends up carrying the crisis load of his ministers, who do not have solutions to the problems facing the state, not least its indigenous peoples.

Even as alcohol management plans represent the only thing that is working, his new minister responsible for indigenous affairs, Warren Pitt, recently announced that the alcohol management plan for the northern peninsula of Cape York would be relaxed to allow greater quantities of alcohol to be brought into the community.

Leaders and community members on the tip of Cape York have complained incessantly about the AMPs, even as their people suffer from social problems similar to other communities. This capitulation by Pitt is a disaster.

Even as Queensland's child protection officers in Cape York Peninsula are on strike this week, arguing insufficient resources in the face of a huge workload – 80 cases a month are notified to the new Department of Child Safety – the minister is undermining the only measure that has had any positive effect.

I am sure the drinkers are celebrating the availability of more grog, but what a tragic Christmas present for the kids.

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