An unexpected career in criminal law in the North

I acknowledge and pay respect to the Traditional Owners

nrm.nqdrytropics.com.au/people-connections/traditional-owners/

https://www.visitnsw.com/destinations/north-coast/forster-and-taree-area/forster/attractions/tuncurry-rock-pool

LAW &
ORDER

BOSTON LEGAL

THE UNIVERSITY OF
NEWCASTLE
AUSTRALIA

COURTS OF LAW

Magistrates Court

Childrens Court

Annual Reports 2021-2021

- Magistrates Courts had 170,965 defendants (adults and children) – new lodgements
- District Courts had 7349 defendants – new lodgements
- Supreme Courts had 2201 defendants – new lodgements

- https://www.publications.qld.gov.au/dataset/annual-report-magistrates-court/resource/54979563-0a65-41bc-ad60-888ed4c7ecc9
- https://www.courts.qld.gov.au/__data/assets/pdf_file/0005/714461/dc-ar-2020-2021.pdf
- https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/9189044f-9592-4c1e-a753-4c26fc7f2c23/sc-ar-2021-2022.pdf?ETag=3c234364434ce320354b0f3f846b2aa5

What does a police prosecutor do?

- Arrest Court/Court One/Callovers
- Long pleas (more complex sentences)
- Summary Trials
- Committals
- Case conferencing
- Civil Domestic Violence Protection Applications

Legislation

- Criminal Code 1889
- Police Powers and Responsibilities Act 2000
- Penalties and Sentences Act 1992
- Summary Offences Act 2005
- Transport Operations (Road Use Management) Act 1995
- Criminal Code (Cth)
- Bail Act 1980
- Justices Act 1886

- Drugs Misuse Act 1986
- Weapons Act 1990
- Domestic and Family Violence Protection Act (now 2012)
- Evidence Act 1977
- Casino Control Act 1982
- Juvenile Justice Act (now Youth Justice Act 1992)
- Criminal Proceeds and Confiscation Act 2002
- Criminal Law (Sexual Offences Act) 1978

Dangerous Prisoners (Sexual Offenders) Act 2003

Education (General Provisions) Act 2006

Explosives Act 1999

Liquor Act 1992

Hospital and Health Boards Act 2011

Regulatory Offences Act 1985

Regulations

- Drugs Misuse Regulation 1987
- Criminal Practice Rules 1999
- Penalties and Sentences Regulation 2005
- Police Powers and Responsibilities Regulation 2000
- Drugs Misuse Regulation 1987
- Transport Operations (Road Use Management – Road Rules) Regulation 2009

Headlines

- Man who pleasured himself of Mount Isa – Townsville flight faces court (Townsville Bulletin, 2011)
- Joyrider jailed – year in prison for brazen kicks (Townsville Bulletin)
- Fire-starter in bid to go home (Townsville Bulletin)
- Predator – Teenage bag snatcher stalked elderly (Townsville Bulletin, 2013)
- Assault mission – spurned soldier stalks and attacks women (Townsville Bulletin).
- Kick to copper a jailing offence. My quote “to kick a police officer in the groin area is a particularly contemptuous act” (Townsville Bulletin).

Elementising: A wounding charge

- Time
- Date
- Place
- Identity – what admissible evidence proves identity of defendant
- Wound (break true skin) = medical/expert or other evidence
- Defences (ie what evidence negates defences) = self defence, consent (provocation does not apply as assault is not an element of the charge)
- PPRA considerations

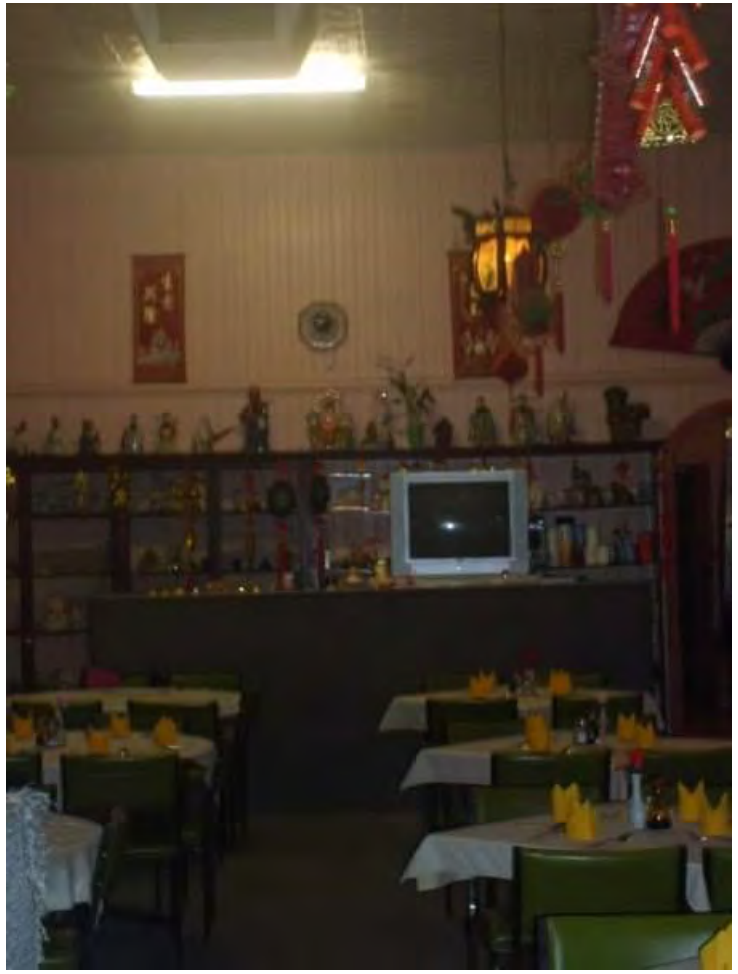
Circuit Courts

Palm Island
Ingham
Ayr
Charters Towers
Bowen
The Western Circuit (Hughenden and Richmond)

VH-SKW

SKYHAVIK

GEORGE REID BUILDING



O T E L GRAND

F.J. Holden CAFE

I THINK THEYSAURUS

CLONCURRY
COURT HOUSE

MOUNT ISA
COURTHOUSE

Changing sides

We give legal help to financially disadvantaged people about criminal, family and civil law matters.

Legal Aid QUEENSLAND

Our Values

- Social Justice
- Respect
- Quality
- Cost Effectiveness
- Accountability

We are the largest criminal law practice in Queensland

Excellent conditions

Flexible work arrangement options

Focus on employee wellbeing and development

5 weeks paid recreational leave per year

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Additional salary sacrificing options

What does a criminal lawyer at LAQ do?

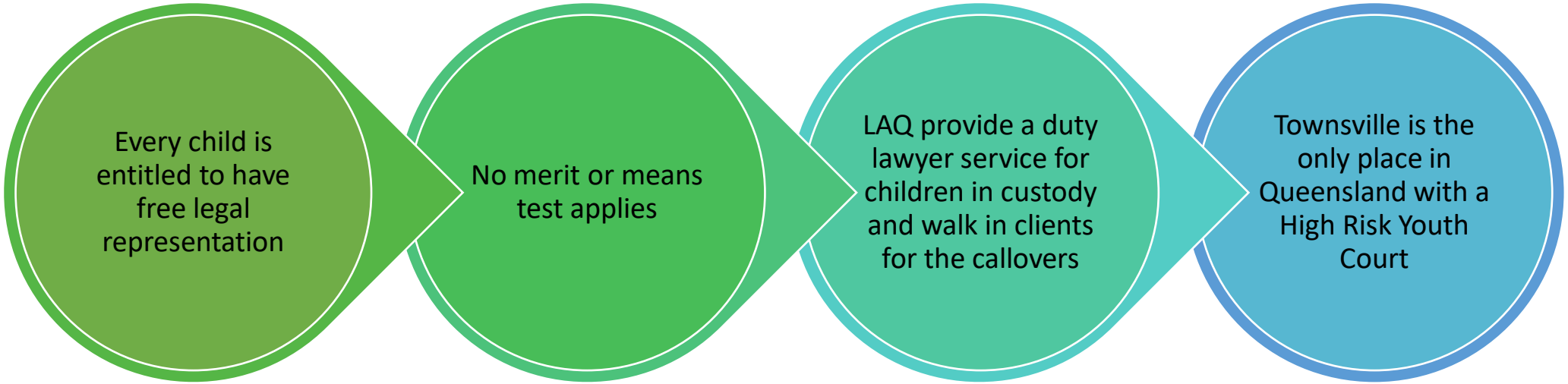
- Duty Lawyer service
- Advice clinics
- File work

Jurisdictions

- Magistrates Court
- Childrens Court
- District Court
- Childrens Court of Queensland
- Supreme Court

gettyimages
Fairfax Media

Youth crime


Every child is entitled to have free legal representation
No merit or means test applies
LAQ provide a duty lawyer service for children in custody and walk in clients for the callovers
Townsville is the only place in Queensland with a High Risk Youth Court

Human Rights considerations

Human Rights Act 2019 and Children

- Section 32 (3)- A child charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting a child's rehabilitation.
- Section 33 (1) – an accused child who is detained, or a child detained without charge must be segregated from all detained adults
- Section 33 (2) – An accused child must be brought to trial as quickly as possible
- Section 33 (3)A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.
- Section 36 (1) Every child has the right to have access to primary and secondary education appropriate to the child's needs.

FUTURE TOWNSVILLE | OPERATION SUPER HUB

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TOWARDS 2040 EDITION
CAMPAIGNING FOR A TOWNSVILLE MEDICAL SUPER-HUB

SATURDAY FEBRUARY 11 - SUNDAY FEBRUARY 12, 2023 // $3.50 INCL GST FREIGHT EXTRA

Weekend Bulletin

We're for you

Outrage as magistrate throws open cell doors for youth detainees

BUSTED OUT

Townsville magistrate Viviana Keegan

SHAYLA BULLOCH, MADURA MCCORMACK

DEPUTY Premier Steven Miles slammed the release of 13 alleged youth offenders from a Townsville watch-house as a "media stunt", claiming the magistrate's decision could jeopardise the safety of the community.

Police have stepped up patrols across Townsville after a magistrate released the alleged young perpetrators on a single day.

FULL STORY, PAGE 6

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Crim free-for-all

13 young alleged offenders released in one day

Deputy Premier Steven Miles (bottom left) has lashed the release of 13 alleged youth offenders from a Townsville watchhouse in one day

Harry Bruce cartoon: Page 26

SHAYLA BULLOCH, MADURA MCCORMACK, CAITLAN CHARLES, JAMES HALL

DEPUTY Premier Steven Miles slammed the release of 13 alleged youth offenders from a Townsville watch-house as a "media stunt", claiming the magistrate's decision could jeopardise the safety of the community.

Police say they have stepped up patrols across Townsville after a magistrate released the alleged young perpetrators on a single day, including one detained for domestic violence offences.

It has been confirmed one of the children released has allegedly breached their bail conditions, though is not yet back in custody.

Mr Miles said the state government had repeatedly called on the Queensland courts to be harsher on young offenders amid a supposed youth crime wave.

"We've given them the tools and the resources now they need to act," the Deputy Premier said of the courts.

"We cannot stand for a media stunt like this one from someone who clearly does not agree with our laws (that are) designed to keep dangerous offenders out of the community."

The Office of the Chief Magistrate confirmed 13 young people who appeared in Townsville Children's Court on Thursday were released on bail.

Police sources said Townsville magistrate Viviana Keegan "cracked the s****" and brought the children's matters forward.

Nine of the children were released from the Townsville watch-house and four were released from Cleveland Youth Detention Centre.

The children were predominantly charged with allegedly committing property crimes, with one behind bars for domestic violence matters.

Acting Deputy Police Commissioner Mark Wheeler confirmed one of the children released on bail had breached their conditions, with police now seeking to take them back into custody.

Police Minister Mark Ryan and Townsville-based MP Aaron Harper have slammed the judiciary for the decision, both saying they were frustrated the court had released 13 young offenders.

The Magistrates Court Bail Benchbook states "the charter of youth justice requires that a child should be detained in custody whether on arrest, remand or sentence only as a last resort".

The state government's youth crime crackdown in 2021 included additions to law which direct a court or police to keep a child in custody if they pose an "unacceptable risk" to the safety of the community or welfare of a person.

A review into the reforms by former Police Commissioner Bob Atkinson found the changes had "the intended impact" of keeping young people behind bars.

It is not yet certain how much time the children had been in the watch-house or in Cleveland Youth Detention Centre before being released on bail.

"We are appealing at least a number of those matters because we think there's grounds for those appeals," Mr Ryan said.

"If it's purported that the exclusive reason that bail was granted is capacity, I would suggest that's an unlawful reason."

A police spokeswoman said they were exploring their legal options to appeal the decisions while officers undertook extra patrols, bail compliance action and "engagement strategies" as part of an action plan.

"The Queensland Police Service is exploring its legal options following the decision of the Magistrate in releasing several young people being held in custody in Townsville," the statement said.

"Townsville police have initiated an action plan to manage the situation from a community safety perspective.

Mr Ryan said he was "personally frustrated" by the magistrate's decision.

"Let's wait and see what happens with the appeals but certainly there's an expectation that the courts make decisions that reflect the law," Mr Ryan said.

Mr Harper said he had to question if the magistrate had the "pulse of the community".

"I am beyond frustrated, it is like smashing your head against a brick wall," he said.

The Townsville-based MP said he had contacted the Premier, Attorney-General Shannon Fentiman and Police Minister Mark Ryan on Friday to register his frustration saying it felt as though the government — despite proposing new youth crime measures — were being thwarted by the courts.

Mr Miles described the courts' role in administering the youth justice reforms as critically important and accused the magistrate's decision of "putting the community of Townsville in danger". "It should not be happening," he said.

"We cannot allow the safety of Townsville residents to be held to ransom by rogue courts and rogue justices."

Queensland police also noted it was working with the department of youth justice to "minimise the time (children) spend in police watch houses before being transferred to a detention centre".

The Queensland police operations handbook notes children should be kept in a watch-house overnight only if it is "not reasonably practicable to immediately transport the child to a youth detention centre".

A Children's Court of Queensland annual report noted 471 kids had spent between 5 and 14 days in watch-houses across the state in 2021-22.

IVE ONLINE AUCTION WEDNESDAY 15 FEBRU

Push for offender register

HERBERT MP Thompson will push federal government plement a national offender register in tion with the states a ries.

Mr Thompson ha in the next day of he will move that ment create the applaud the work o Coalition gover passing minimum for child sex offend

The federal Bulletin he would to the "shocking child sex offende "living among u ville.

"I have met w child abuse and he said.

"The horror our most vul pain for entire li

"That's why see these dis who steal the our children be register."

Mr Thomp register would mation about sex offenders offences, phy and postcode

"We must can to keep he said.

Raspb Twisti

TWISTIES lo overwhelmi flavour to h later this ye

One of t favourite c last year as solve a nat "chipocrac either a ch raspberry flavour.

After 6000 vo unexpect and is se tingling and sher

Re Richard Jones (a pseudonym) [2023] QChCM 1 (Mount Isa CCM 5/23) E. Mac Giolla Ri 19 January 2023

- 15 year old Aboriginal boy with Foetal Alcohol Spectrum Disorder and an acquired brain injury
- 15 nights in the Mount Isa Watchhouse with no prospect of transfer to detention centre in the immediate future
- 1 x UUMV and 1 x unlawfully take child under 16
- Substantial criminal history but has gone extended periods without offending. On probation at the time of alleged offences.
- Bail granted

Commissioner of Police v David Taylor (a pseudonym)[2023] QChCM 2 (Mount Isa CCM 669/22) E. Mac Giolla Ri 24 January 2023

- 17 year old Aboriginal boy.
- 36 days of pre-sentence custody
- Sentenced to 51 days detention to serve 70% (ie 36 days)
- 10 days served in the Watchhouse and 26 days at CYDC
- David was locked in his cell on average for 21 hours and 23 minutes a day due to staffing shortage
- No evidence of a teacher visiting the unit (other than 1 visit for a music teacher).

R v TA [2023] QChC 2

- 13 year old child with Foetal Alcohol Syndrome and ADHD
- 1 x Robbery in company with personal violence
- Served 139 days in detention as pre-sentence custody
- 78 of 87 days confined to cell for 20 hours or more
- 10 of 87 days confined to cell for 24 hours – “effectively solitary confinement”.
- “…the circumstances that you have been detained have been cruel, inappropriate and have served no rehabilitative effect”
- Reprimanded with no conviction recorded.

FASD (from adf.org.au)

- *“For people living with FASD, the impacts are lifelong.*
- *Some of the characteristics associated with FASD are apparent in childhood, while others will be more obvious later in life.[3] The effects of FASD may not be seen at birth.*
- *Each person who has FASD may experience a range of different challenges and characteristics, including:*
- *structural and functional brain damage (sometimes a smaller head)*
- *other birth defects such as heart and eye problems*
- *distinctive facial features (but most do not)*
- *difficulty processing information*
- *lack of understanding and difficulty following social rules and expectations*
- *difficulty connecting cause and effect*
- *challenges remembering and learning from past experiences*
- *difficulty controlling and/or regulating emotions*
- *Some behaviours that children with FASD may display can be misjudged as typical to a particular phase of development, however when the behaviour continues as the child gets older it may be less tolerated.*
- *For example, a person with FASD may not understand cause and effect, so they might repeatedly do something despite experiencing negative consequences the first time. This is accepted behaviour for children because they are learning social skills, however adults are expected to understand the negative consequences and refrain from repeating the behaviour.”*

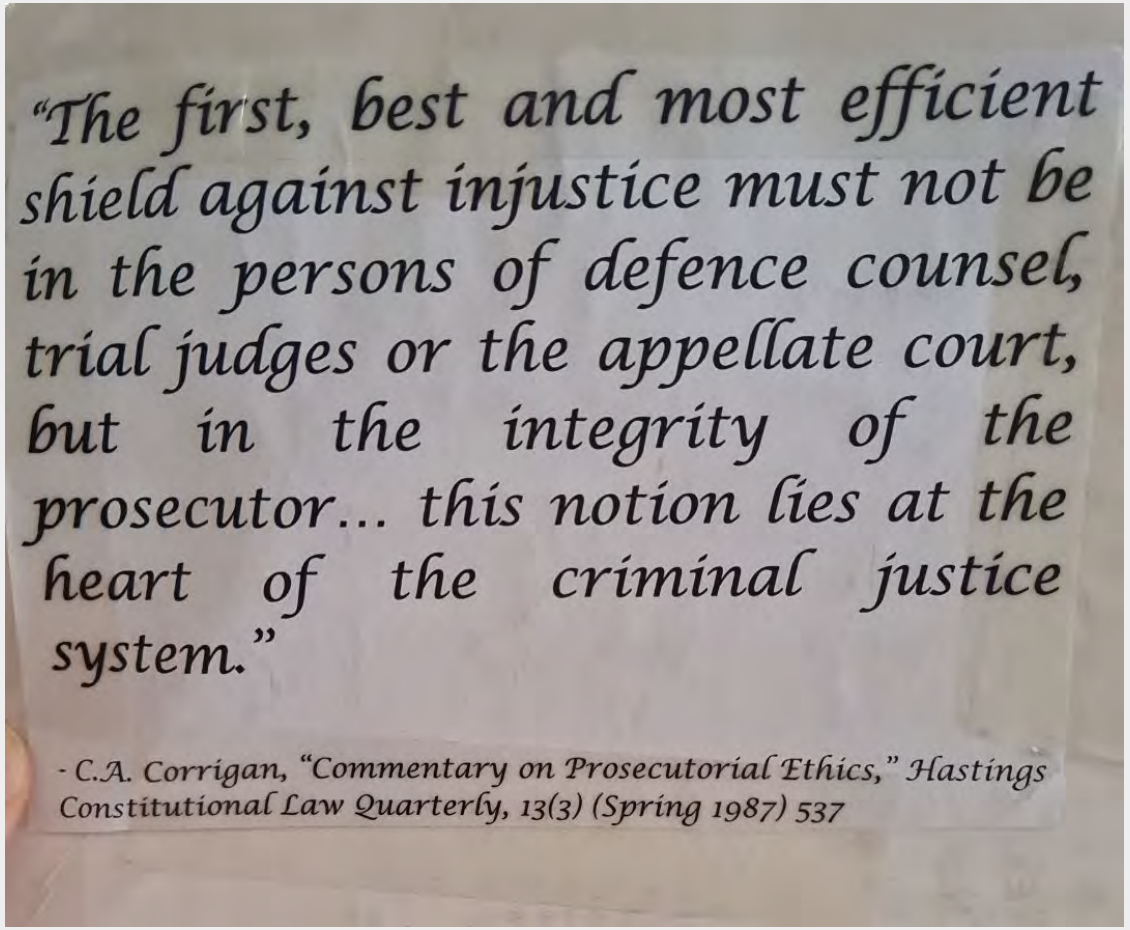
The Queensland government will override its own Human Rights Act to implement laws allowing children to be charged with criminal offences for breaching bail conditions, conceding its new laws are "incompatible" with human rights.

The police minister, Mark Ryan, said the Palaszczuk government's strengthening community safety bill will include an amendment to the Bail Act which allows children breaching bail to be charged with the same offence as an adult.

"The government accepts that these provisions are incompatible with human rights," Ryan wrote in a statement about exceptional circumstances tabled on Tuesday.

https://www.theguardian.com/australia-news/2023/feb/21/queensland-to-override-states-human-rights-act-in-bid-to-make-breach-of-bail-an-offence-for-children

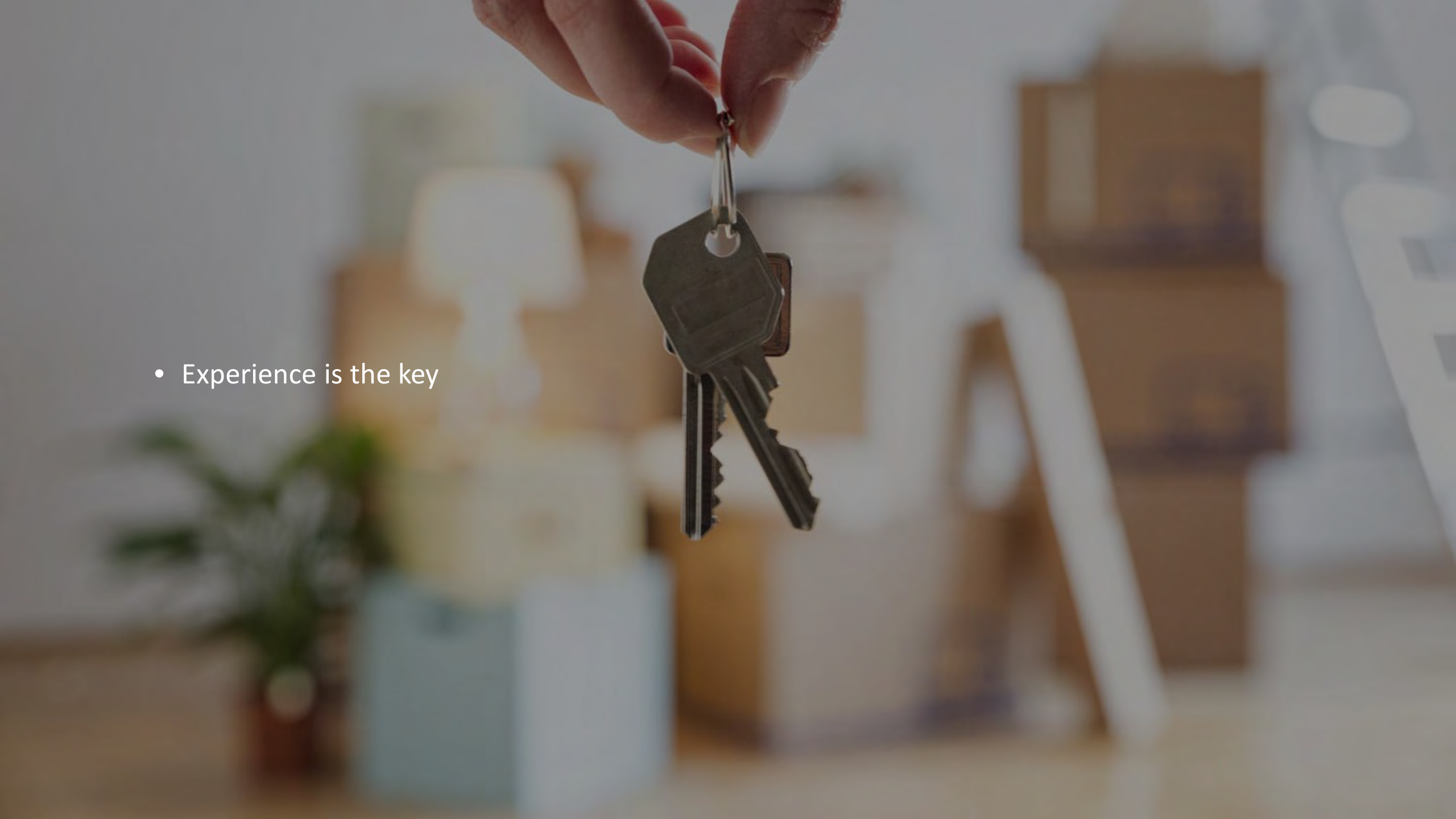
Criminal Lawyers are Human Rights Lawyers


"The first, best and most efficient shield against injustice must not be in the persons of defence counsel, trial judges or the appellate court, but in the integrity of the prosecutor... this notion lies at the heart of the criminal justice system."
- C.A. Corrigan, "Commentary on Prosecutorial Ethics," Hastings Constitutional Law Quarterly, 13(3) (Spring 1987) 537

Section 32 sets out rights in criminal proceedings, including:

- Innocent until proven guilty
- To be informed promptly and in detail the nature of the charge and reason for the charge in a language or type of communication the person speaks or understands
- Adequate time and facilities to prepare a defence and communicate with a lawyer
- Tried without unreasonable delay
- To have legal aid provided if the interests of justice require it
- To examine witnesses against the person
- Free assistance of an interpreter
- Not be compelled to testify against themselves or confess guilt

Tips for junior criminal lawyers

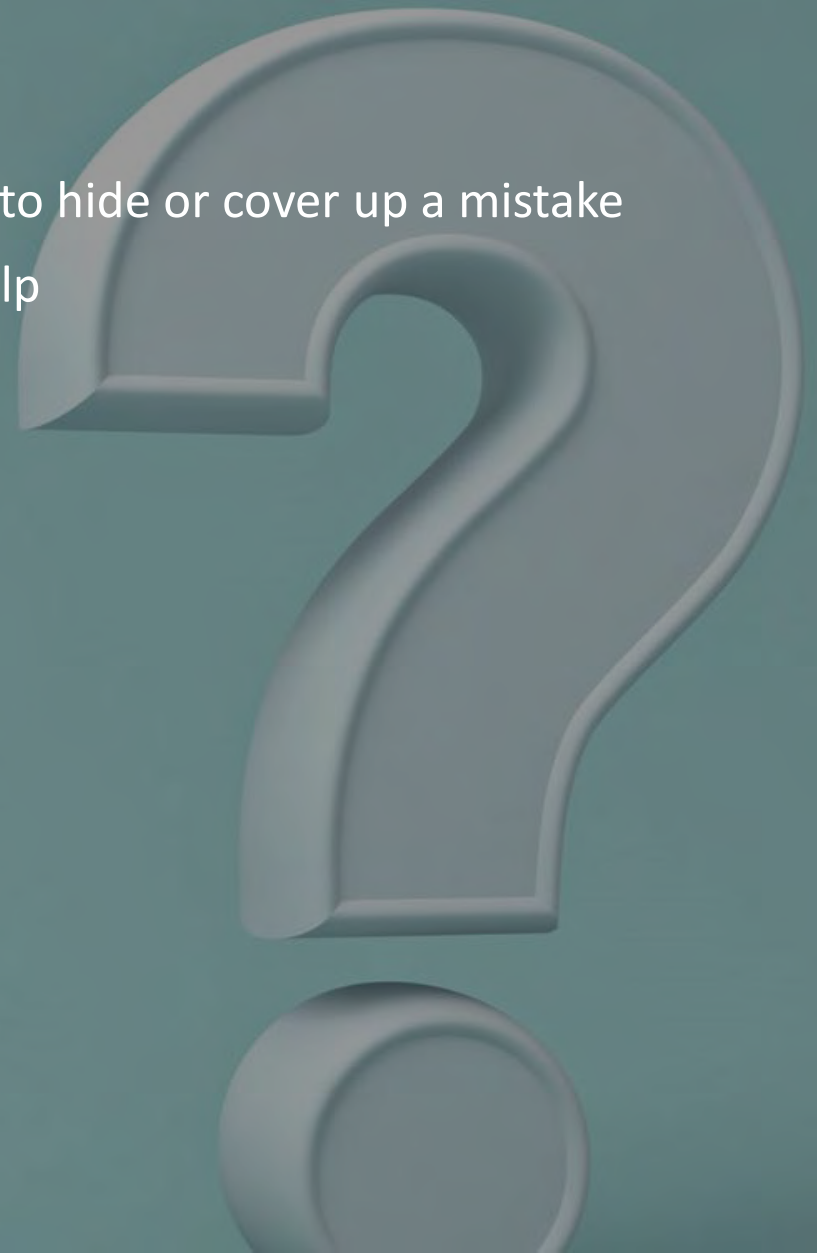


- Experience is the key

Actually read the legislation

And case law

- Never try to hide or cover up a mistake
- Ask for help



Always be alert to capacity issues

- Always consider your client's capacity and fitness for trial

- *R v Presser* [1958] VicRp 9 at 48
  - *"…the question, I consider is whether the accused, because of mental defect, fails to come up to certain minimum standards which he needs to equal before he can be tried without unfairness or injustice to him.*
  - *He needs to be able to understand what it is that he is charged with. He needs to be able to plead to the charge and to exercise his right of challenge. He needs to understand generally the nature of the proceeding, namely that it is an inquiry as to whether he did what he is charged with. He needs to be able to understand what is going on in court in a general sense, though he need not, of course understand the purpose of all the various court formalities. He needs to be able to understand, I think, the substantial effect of any evidence that may be given against him; and he needs to be able to make his defence or answer to the charge. Where he has counsel he needs to be able to do this through his counsel by giving any necessary instructions and by letting his counsel know what his version of the facts is, and if necessary, telling the court what it is. He need not, of course, be conversant with court procedure and he need not to have the mental capacity to make an able defence; but he must have sufficient capacity to be able to decide what defence he will rely upon and to make his defence and his version of facts known to the court and to his counsel, if any."*

- Queensland Handbook for Practitioners on Legal Capacity

When working in community

- Pay proper respect to Elders and respected members of the community
- Take the time to learn local culture and tradition
- Take the time to learn the history of a place and it’s people

LAWYERS HAVE FEELINGS, TOO

ALLEGEDLY.

Final tips

- Consider Mount Isa
- Consider Family Law