

## John Menadue : Pearls and Irritations



### **True crime confessions – being rude to Centrelink**

By [IAN CUNLIFFE](#) | On [4 August 2020](#)

*Last year, a Senate inquiry into RoboDebt was told that more than 2000 people died after receiving their initial RoboDebt letter, many apparently by suicide. I act for numerous RoboDebt clients.*



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*To take one example, a refugee RoboDebt client was clearly seriously impacted mentally by getting a RoboDebt letter saying that she owed in excess of \$135,000 – to be repaid from the earnings of her taxi-driver husband while they support seven young children. She received the news that she owed \$95,000 while in bed having just delivered her last born – twins.*

*There has been no suggestion that those who designed and implemented RoboDebt will be criminally or even civilly punished. I don't mean to suggest that they should go to gaol. However, the Commonwealth has been extremely cruel and reckless at best with its RoboDebt scheme and deserves condemnation.*

*As light relief from such battles, I have been reading through the Commonwealth Criminal Code which was substantially amended two years ago and made much more authoritarian.*

*That Code makes it a very serious offence – carrying up to 13 years imprisonment – to cause harm to a Commonwealth public official. In a prosecution, absolute liability applies to many of the elements of the offence – greatly reducing an accused person’s chances of being found not guilty.*

*‘Harm’ is defined to include harm to a person’s mental health (whether temporary or permanent). The Code says that a person’s conduct is taken to cause harm if it substantially contributes to harm.*

*It is also an offence to threaten to cause serious harm to a Commonwealth public official if the accused person is reckless as to the threat causing serious harm. Even if no harm actually results, this offence would be made out. The maximum penalty is nine years.*

*The accused is regarded as having the intention to cause harm to an official’s mental health if s/he means to bring that result about or is aware that it will occur in the ordinary course of events.*

*The accused is reckless as to that result if s/he is aware of a substantial risk that serious harm will occur; and, it is unjustifiable to take the risk.*

*In the case of my client who was told that she owed in excess of \$135,000, I confess that I did give Centrelink’s lawyer a hard time when she seemed to be reneging on a hard-won agreement that the Commonwealth had made to write off a large part of the debt. I threatened to make a very big fuss and accused the lawyer of acting inappropriately and callously. Perhaps I put her into a depressive funk. That was not my aim, but I did want to make a passionately stinging point that she would long remember.*

*Even if my words did not make me liable for the 13-year penalty, it could certainly be argued that I was reckless, because my comments could have caused serious harm. The offence seems to be established even if no harm actually resulted – just that it could have. That is very unusual: You don’t get convicted for manslaughter just for being reckless – your recklessness has to actually cause death.*

*These provisions are pretty well silent about the accused person’s justification. The law in Australia, as in other comparable countries, has shied away from punishing people – even civilly – for saying things that inflict mental distress. Should public officials be a protected species in this regard?*

*I regard myself as quite justified in taking a robust line with officials in such an extreme case. But will that save me? Under the Criminal Code it is largely irrelevant whether the accused person was justified in what they did.*

*My conduct might also have exposed me to two years imprisonment for ‘Obstruction of Commonwealth public officials’. That would apply if I ‘obstructed, hindered or intimidated’ Centrelink’s in-house lawyer. Those expressions are not defined. They will be interpreted to mean what the Macquarie Dictionary says they mean – what they mean in ordinary parlance.*

*They are very broad terms and could well be interpreted to cover my attempt to shame the lawyer into what I saw as a more compassionate, fairer approach of not reinstating to my client's record of indebtedness a crushing, large whack of the money that had just been written off.*

*These are bad provisions. Like much of the Criminal Code they go much too far.*  
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