

'Bailed' up by new amendment

All practitioners should be greatly concerned for the rights of their clients charged with criminal offences in light of the NT Government's Bail Amendment Bill (No 2).

The Bill, which is expected to be passed by Parliament in the current sittings, aims to restrict the operation of the current presumption, in favour of bail, in certain situations.

In its present form, the Bail Act provides a presumption for bail unless the applicant is charged with murder or treason. In his second reading speech, the Attorney-General said he felt this situation was "unacceptable", given the "high rate" of offending in the Territory. Chiefly, he is referring to offences involving violence, drugs, sexual assaults or domestic violence, which "threaten the very fabric of our society".

However, any moves to restrict the eligibility of gaining bail for those charged with an offence fundamentally affect one of the strongest threads of our society - the criminal justice system - and particularly, the essential presumption of innocence.

The Attorney-General is keen to follow the example of other jurisdictions in removing the presumption of bail for certain offences. But uniformity does not necessarily equate to a better system.

This Bill reverses the presumption in favour of bail where the accused is charged with murder or treason, and removes the presumption in cases of certain drug offences, certain assaults, sexual assaults and breaches of restraining orders made under the Domestic Violence Act. There is of course no objection to a denial of bail in cases where there is a proven pattern of

violent or sexual assaults. The existing Bail Act already prevents bail being granted if there is an unacceptable risk that the accused person would fail to appear in court, interfere with witnesses or commit other offences. There is simply no logical reason for singling out the offences mentioned in the Bill, when the presumption of bail will remain for other offences which carry the same or greater penalty. The Bill also limits the right to bail of most people charged with an offence when they are already subject to a suspended sentence. It is to be hoped that the government is prepared to commit funds to enlarge prisons as a result.

The Bill also provides that where a person is appealing against a conviction on indictment or a sentence passed, bail shall only be granted if special or exceptional circumstances are established. This section is in response to a recent case where a person convicted of rape was granted bail until an appeal could be heard. The Law Society appreciates that in such situations the denial of bail is appropriate unless special circumstances are shown.

Suggestions that the government reconsider its position and allow further consultation with the community have been rejected, which means that this Bill's passage is assured.

While - in the face of escalating crime rates - an emotional public may applaud it, the amendments are ill-considered, unsound as a matter of principle and at loggerheads with the basic tenets of our justice system.

The presumption of innocence is not lightly to be tampered with. Sadly, the effect of this legislation, if passed, will be to ensure the incarceration of innocent people.

Opening of the Legal Year 1994

Alice Springs

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"In the area of language, as is especially evident on television, verbal anarchy creates an ever-increasing Babel of non-communication in which words mean whatever we want them to - and, as a result, mean nothing.

"The deconstruction of art gives us blank black canvases and music that does nothing to take us beyond our limited selves - a poetry of despair and rage. It is no wonder that the music of nostalgia is so popular."

Father Williams concluded his homily in these terms:

"If we cannot appeal to an absolute idea of the good, if we cannot appeal to God, the law is likely more and more to become a means whereby people exact revenge on the muddle of their lives. That is what the witch-hunts were all about, and the Nazi death camps.

"If we cannot appeal to an absolute idea of good, then all values can be reduced to what is grubby and commercial, as the recent Michael Jackson case illustrates. People are catching on to the lie that we can sue our way out of sadness and disappointment. The tyranny of individualism has all the potential to bring us unstuck, and debased law is one of its weapons.

"In this place we worship God and proclaim that His absolute goodness requires a morally ordered society. But we must look to the law for a society in which goodness is promoted and the good is protected."