

Locking up the children

By Sally Gearin

I was in Alice Springs in November last year when there was 3 days of protest against the Northern Territory mandatory sentencing laws on the lawns of the Uniting Church.

Like a lot of people, I had taken only a peripheral interest in mandatory sentencing, disagreeing in principle, but not getting too excited as I remembered the three break-ins to my home in three weeks last year.

I was horrified to realise that one of the sinister consequences of the mandatory sentencing regime was that children could be locked up for the non payment of fines without ever appearing before a Court or being found guilty of any offence.

In Alice Springs in November 1997, there was no juvenile detention centre, so that 26 children, one of whom was aged 12 had been held in the maximum security division of the adult jail. In Katherine and Darwin there are equal horror stories.

To get this issue into perspective, we are talking about non payment of fines by children for offences such as jaywalking or non wearing of a bicycle helmet.

The statutory regime for infringement notice fines is contained in Division 2A of the *Justices Act*, Territory Infringement Notices Enforcement Scheme, colloquially known as "tinnies fines".

Prior to the commencement of the *Sentencing Act* on 1 July 1996, both adults and juveniles were able to convert their infringement fines to community service orders. Under the new regime, you have to pay the fine or do the time.

The usual process when a person commits an infringement is that an on the spot fine is issued. A person can then by letter to the Court, decline to be dealt with on the papers and have a hearing on the merits, or an application can be made pursuant to sec 60G of the *Justices Act* to pay by instalments.

Otherwise the process is done on the papers, and a warrant issues. The person is then incarcerated until the time equals the fine. Most children in my experience when they get a letter telling them to pay money, do not say, "better get the lawyers in and find out the options". To assume that children have the worldliness to be aware of the consequences of their actions in the same way as adults is simply preposterous.

All adults have a capacity to pay a small amount by instalment. All children do not. Most do not have income, and are completely dependent on their parents or other adults to provide for them.

There is a presumption that with children their parents will pay the fine. This is simply not the case in all situations. Many will have to steal to pay the fine.

The *N.T. Community Welfare Act*, charges the relevant Minister with a statutory duty in respect of children (which is defined to mean a person who has not attained the age of 18 years) to ensure the adequate care of all Territory children.

This legislation defines a child in need of care as one who has suffered maltreatment, which includes "...where there is a substantial risk that the surroundings, deprivation or environment will cause emotional or intellectual impairment".

It does not require expert evidence to know that incarcerating a child in any prison for something that they do not have the financial capacity to avoid, will cause emotional or intellectual impairment. To incarcerate them in an adult maximum security prison with murderers and rapists guarantees it.

The great irony is that if a parent treated their child in this way, the Minister for Community Welfare would be obliged to consider that child in need of care, and take the appropriate action pursuant to the legislation.

What remains unexplained by Mr Stone Q.C. is why this consequence is necessary. It puts the Government at risk of litigation, which is paid for by the taxpayer, it is bad business to spend thousands of dollars to recover hundreds, and at best children will stop riding bicycles.

Mandatory Sentencing

Report from Merran Short

On 17 November, NT Women Lawyers' Association (NTWL) held a meeting to discuss their position on mandatory sentencing. The Association is grateful to Jenny Hardy who presented a paper and spoke to that paper at the meeting.

Summary

Mandatory sentencing legislation commenced in the Northern Territory in March 1997, which provides for automatic prison sentence for property offences.

The full impact of the legislation has

not yet been felt but of the four known cases where women have been sentenced to periods of imprisonment in the Northern Territory, none of them would have been imprisoned, had mandatory sentencing legislation not applied.

In 1994/1995 approximately 25 women were imprisoned for property offences. However, during that same period 206 women were convicted of offences to which mandatory sentencing now applies. If similar offending rates continue, the rate at which women are imprisoned will increase by at least six

times the past rate.

Aboriginal women were ten times more likely to be imprisoned than non-Aboriginal women in the Northern Territory prior to mandatory sentencing legislation. There is no doubt that the legislation will affect Aboriginal women most severely.

A recent New South Wales study on recidivism rates of juveniles has shown an increased risk of re-offending when juveniles are sentenced to harsh penalties on their first and second appearance be-

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