

## Funds for a just new century

Informed community debate and not “an unseemly political auction”, was vital to meet the challenges facing criminal justice in the future, according to Justice Michael Kirby of the High Court of Australia.

Justice Kirby said in his prepared speech the prerequisite for changes to the criminal justice system was, “a serious community debate, informed by expert professional and academic opinion, drawing upon effective and up to date statistical and other criminal data.” “All too often these essential ingredients for debate are missing,” Justice Kirby told the 120 delegates at the Seventh Biennial Conference of the Criminal Lawyers Association of the Northern Territory. “Instead, solutions to community concerns about crime are offered in an unseemly political auction at election time in which candidates compete for a ‘virile image’, sometimes encouraged by identifiable sections of the media,” he said.

In his key-note address to the conference in Bali

last month, Justice Kirby said Australia had seen many unseemly illustrations of this phenomena.

He outlined the many challenges facing the criminal law, procedure and punishment in the future including, the internationalism of crime, the impact of human rights law, computer technology, DNA, genetic evidence and the effective use of legal aid.

Justice Kirby called on members of the judiciary and legal profession to explain the present system and to debate options for effective reform.

“In comparison to most other systems of criminal justice in the world, ours still has many strengths. But in times of great national and international change, technological challenges and political and popular pressures, this is not a time for reticence,”

he said.

Justice Kirby and Sir Anthony Mason, former Chief Justice of Australia, were two of the 22 speakers at the prestigious conference, hosted in association with the Criminal Law Section of the Law Institute of Victoria.

The theme of the most successful NT criminal law conference to date was: “A Just New Century - or Just a New Century?” It was attended by delegates from all of Australian states and territories, except Tasmania.

During the conference, resolutions were passed calling for

the immediate introduction of an interpreter service for Aboriginal people (see page 14) and for Australian governments to move to harm minimisation strategies in dealing with the nation’s drug problem (see page 5).

In an opening speech to the conference, read by Solicitor General Tom Pauling QC, the

Attorney General Denis Burke urged the legal profession to consider the community’s view of the justice system, to ensure “a just new century”. (Mr Burke sent his apologies due to the forthcoming by-elections).

“As a layman I must admit sometimes to thinking perhaps the trappings of the legal system have become more important than the delivery of justice: the wigs, the gowns, the traditions of the court systems, the finer points of argument, the technical grounds which can abort cases, delay them, or even see them dismissed,” Mr Burke’s speech said.

“Sometimes us ordinary folk cannot quite see the justice in it all,” it read.



*Justice Michael Kirby of the High Court of Australia and Chief Justice Brian Martin, Supreme Court of the NT*

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Chief Justice Brian Martin of the Northern Territory Supreme Court agreed that the judiciary has a role in "fairly and justly" explaining the workings of the justice system.

In his written speech to the criminal lawyers conference, Justice Martin said that Attorney generals around the country had abandoned the traditional role of defending the judiciary and therefore the judiciary must speak for itself.

"Intemperate and unjustified attacks founded on community perception which is misconceived, generated by misleading media reporting, is not fair or just to the judiciary," he said.

"But it is more serious than that, it has the potential to undermine the judiciary as one of the three arms of democratic government such that criticism of the courts can be used as an excuse for the introduction of unfair and unjust laws," he said.

Chief Justice Martin called on the Northern Territory government to provide the judiciary with the resources to appoint a media liaison officer to allow the judiciary "a fair and moderate response based on fact."

"The present Attorney, when asked about the comments I had made seeking to restrain members of the Legislative Assembly from making unfair and outrageous statements regarding the judiciary in the House, replied that the Members can say whatever they like in the House and the Chief Justice had the right to criticise," he said.

"Given that acknowledged right, it follows that the resources ought to be provided whereby it can be effectively exercised. That would provide the judiciary with a measure of justice," he said.

Justice Martin said he had also moved to make available to the Attorney General and the Shadow Attorney General a transcript of judges' sentencing remarks on request.

A spokesman from the Chief Minister's office said Mr Burke would consider Justice Martin's request and write to the Chief Justice with his response.

## The war on drugs is lost - let's win the peace

**Australian Governments should admit past drug policies have failed and have the courage to take a fundamental change in direction, according to a four part resolution endorsed at the Criminal Lawyers Conference in Bali.**

The call came after strong criticism of prohibition and the national drug policy by senior members of the legal profession.

Melbourne barrister, Tony Parsons, in his paper to the conference entitled "Different Methods of Managing Heroin", comprehensively dismissed current policies.

"It is important to recognise not only the failure of drug policy, but the magnitude of this failure. Failure to this extent in the corporate world would result in inevitable bankruptcy," he said.

"Governments are very often concerned to emphasise the importance of drug users accepting responsibility for their own individual actions. But governments seem less inclined to accept responsibility for the consequences of their own policies," he said.

The conference called for harm minimisation strategies, warning that unless these strategies are adopted, Australia risks a continuing escalation in the crime rate and heroin overdose statistics that surpass the horrific road toll.

Senior NSW criminal law barrister, Mr Stephen Odgers, argued decriminalisation will lead to a 50 per cent cut in the number of armed robberies and a similar cut in house break-ins. Mr Odgers delivered a paper entitled "Sentencing Drug Addicted Offenders".

"The war on drugs has failed - let's win the peace," Mr Odgers said.

His sentiments were endorsed by the Director of Public Prosecutions of the ACT, Mr Richard Refshauge, who said for the sake of the community new initiatives were required.

"The criminal justice system is not pre-

venting the growing number of drug deaths and is not stopping more of our community becoming addicted", Mr Refshauge said.

"We know of strategies that are working and need to be implemented alongside both supply and demand reduction. A failure to do so will only result in more home invasion, more lost videos and more public money being wasted," he said.

Delegates also heard from Melbourne barrister Rob Melasecca on "The Truly Reclaimable Drug Offender".

The following resolutions were passed, with no votes against:

1. The policy of prohibition of cannabis and heroin has been an expensive failure. Drug use is escalating, prices are falling whilst purity is rising, the black market continues to grow and deaths from heroin overdose will soon outnumber the road toll. It is time to try alternatives to more police, more punishment, more prisons.
2. In sentencing offenders whose drug addiction leads them to crime, priority should be given to treatment and rehabilitation rather than punishment. We call for legislation that gives sentencing judges the option of suspended or deferred sentences for drug addicted offenders who have a real prospect of rehabilitation.
3. The Prime Minister John Howard and State and Territory governments should agree to the immediate commencement of the cancelled ACT heroin trial with a view to adopting harm minimisation policies, similar to those successfully adopted in Switzerland and the Netherlands.
4. Drug addiction should be treated primarily as a health issue.