THAT'S LIFE by Russell Goldflam

Much spleen has been vented in this column and beyond over the continuing embarrassment of mandatory sentencing in the Northern Territory. From a strictly arithmetical perspective, however, a thousand times more severe than the fourteen days handed out to first time property offenders is the mandatory sentence of life imprisonment imposed on a young person convicted of murder in the Territory. In August 1999 at Alice Springs, Sean Hudson, a 19 year old Hermannsburg petrol sniffer, became one such statistic.

In reluctantly sentencing Hudson to a sentence which, in 'the circumstances of this case, I consider... to be less than satisfactory', Bailey J called for 'the reintroduction of discretionary sentencing for murder, coupled with the abolition of the partial defence of diminished responsibility'.

The approach of the NT to punishment for murder is doubly unique. Firstly, we are the only jurisdiction in the Commonwealth which purports to effectively exclude the judiciary altogether from the sentencing process for murder. Even in those States (WA, SA and Queensland) where the mandatory sentence of life remains on the books for this most serious of crimes, the courts are either permitted to fix a non-parole period or, in the case of indeterminate sentences, review cases after a specified period. And secondly, the actual period served by life-sentenced murderers in the NT far exceeds the time served elsewhere in Australia, where it generally averages 10 to 16 years.

Here, the only path to release is by the prerogative of mercy, the exercise of which, according to current Government policy, will only be considered after 20 years of the sentence has elapsed. That policy was adopted by Cabinet in 1991, but not announced in the Legislative Assembly until August of the following year. Previously, the policy had been to consider applications for release on license after ten years.

So what? Isn't it appropriate that we take a particularly tough line on punishment for murder, given that the incidence of violent crime in the Territory is far higher than anywhere else in the country? Shouldn't we be proud of the fact that we're ahead of the herd? That, at any rate, is the straightforward view put by our elected leaders on the issue.

But there's something deeply disturbing about all this. Cabinet meets in secret. Its proceedings are unpublished. Its decisions (in all but the very rarest of cases) are unreviewable. Its reasons (presuming there are any) are inscrutable. All we know is that sometime in 1991 Cabinet, at a stroke, effectively stretched a select group of inmates' terms by ten years. And they did so, secure in the knowledge that there would be no public outcry. And how did they know? Firstly, because the public wasn't even told. And secondly, because no-one cries out for murderers.

Contrast this with what happens elsewhere. On 7 October 1999, the High Court delivered its decision in *Inge v The Queen* [1999] HCA 55, a case which corrected a subtle error which had crept into the principles applied by the South Australian courts in fixing non-parole periods for murderers mandatorily sentenced to life in that jurisdiction. The appeal turned on the fine and prickly point of whether the youth of an offender sentenced to an indeterminate sentence should count against him or for him, and the judgment is commended to readers. But the striking importance of this case to Northern Territory practitioners is its contrast with the way we do things here.

Chrisopher Inge's case raised important issues for sentencing. Quite properly, he was afforded the opportunity to have those issues agitated, ventilated and judicially determined. Sean Hudson's case raised similar issues. The sentencing process was a mere formality, and lasted but a few moments. And what's worse, at any time Cabinet may meet again and raise the bar for him (and similarly circumstanced others) by another ten years. There are only two possible explanations for this extraordinary state of affairs. Either the Northern Territory Government does not understand the doctrine of the separation of powers, or it does, and chooses to dispense with it. Either way, we're in serious trouble.

One potential way out for Northern Territory lifers is to apply for transfer under the *Prisoners (Interstate Transfer) Act*, although the Government has made it clear that it expects receiving States not to release any such prisoners any earlier than they would have been released had they stayed in the Northern Territory. The interstate transfer scheme, established by complementary legislation in each State and Territory, highlights the anomalies in the treatment of prisoners convicted of murder in different parts of Australia.

Tommy Neal has been in prison for 19 years since his conviction for murder at the age of 21 in Mt Isa. If he had stayed in Queensland, he would almost certainly have been released several years ago. However, in the interest of his welfare he was transferred to the Northern Territory in 1987, and was caught by the application of the 20 year policy when it was introduced a few years later. Ironically, had he been dealt with in the Northern Territory in the first place, under the law as it then stood here he would not have been subject to a mandatory life term, even assuming he would have been found guilty of murder under Northern Territory law, which is doubtful. The Government refused to exercise the prerogative of mercy in 1996, and in September 1999 refused to consent to his transfer back to Queensland.

There are of course some murderers who, by the application of orthodox judicially developed sentencing principles, should and will be locked up by the courts for the full term of their natural life. And by the same token there are others convicted of murder who should not. It is an affront to common sense, common decency and the common law that the Commonwealth tolerates the co-existence of anomalously disparate sentencing regimes for these serious offenders. Now, more than ever, we need uniform national sentencing legislation. And at the very least, we need to bring the Northern Territory into line with the rest of the country and restore to the judiciary a meaningful role in the sentencing process for persons found guilty of murder. The recent decision by the Executive of the Criminal Law Association of the Northern Territory to campaign for the abolition of the mandatory penalty of life imprisonment for murder is both apt and timely. I urge all members of the Law Society to support this campaign.

Russell Goldflam works for Legal Aid in Alice Springs.