

Independent assessment body needed: mandatory sentencing submission

The Law Society has called for an independent assessment body to measure the economic and social effects of mandatory sentencing with results to be made available to the people of the Northern Territory.

In a submission to the Senate Legal and Constitutional References Committee on matters arising from the introduction of the *Human Rights (Mandatory Sentencing of Juvenile Offenders Bill)* 1999, the Law Society argues that the community's ability to evaluate the impact and cost of mandatory sentencing is severely hampered by the Northern Territory government's failure to provide information to the public.

In contrast to other jurisdictions in Australia the Territory government will not, nor is it legally required to, reveal crime statistics. The Law Society's submission calls for the introduction of Freedom of Information legislation in the Territory to enable the impact of mandatory sentencing to be properly measured. There is anecdotal material identifying increased costs in crime enforcement, courts administrations and prisons. The Law Society argues information about this cost must be made available to taxpayers.

The Law Society rejects any move by the Commonwealth to single out the Northern Territory from the rest of the nation and exercise its constitutional powers to overturn legislation passed by its democratically elected Legislative Assembly. The Society, however, supports the Commonwealth legislating Australia wide to prevent the abuse of the basic human rights of Australian citizens.

The submission argues that mandatory sentencing is an unwarranted attack on the independence of the judiciary and this loss of judicial discretion has rendered the justice system incapable of adequately dealing

with a vast range of crimes. The Law Society rejects the shifting of discretion away from trained judicial officers to police and prosecutors and calls for the discretionary powers of the judiciary to be fully restored.

The Law Society is extremely concerned about the community's loss of confidence in the justice system as a result of "unfair" and "arbitrary" sentences being experienced under mandatory sentencing.

In relation to juveniles in the Northern Territory mandatory sentencing applies to youths, aged 15, 16 and 17 years of age, committing their second property offence. Initially the sentence was a mandatory 28 days detention. In the decision of Kearney J in *Fergusson v Setter & Gokel* 7 NTLR 118, the Northern Territory Supreme Court Judge states the legislation introduced on 8 March 1997 is contrary to Article 37 (b) of the

Convention of the Rights of the Child and that the proposition that detention of a juvenile should be "a last resort" no longer applied in the Northern Territory.

Although the law was amended on 4 July 1999 to give juveniles facing a second property offence the option to enter a diversionary program, few are understood to have completed the program.

While the Bill that sparked this inquiry restricts its ambit to juveniles, the Law Society submission seeks to assist the Committee by outlining the legal profession's experience of mandatory sentencing in the Northern Territory.

The submission asks the Committee to consider this: Under mandatory sentencing every adult in the Northern Territory is walking around with a 14-day suspended jail sentence hanging over their head.

Darwin Community Legal Service Inc. is again hosting

"Rights On Show"

A community Art Award and Exhibition about Human Rights.
This year's show focuses on human rights and older people in celebration of International Year of the Older Person.

"Rights On Show" opens with an awards presentation night including speeches, a poetry reading and music at the Supreme Court Foyer, on National Human Rights Day, 5.30pm Friday 10 December and continues until 17 December.
All welcome.

Supreme Court Foyer: 8am - 6.30pm Monday-Friday.
For details phone: 89821199

Thanks to all our sponsors. Main sponsors are: Northern Territory Department of Arts and Museums, Office of Senior Territorians and NT Legal Aid Commission phone: 8999 3000.