

# PURPOSE AND EFFECT

Since last month the debate concerning mandatory sentencing has increased in extent and intensity. The issue is now a solid fixture on the Australian political landscape.

In all probability, history will state that the Groote Eylandt boy's suicide was the flash point or pivotal event that elevated this issue to national and permanent debate.

The resulting debate has been helpful. Mandatory sentencing has been exposed for what it is. Previously considered reasons and justifications are no longer maintained by the Government. For instance, it's not there for deterrence.

It has been discovered that there was no evidence other than "community perceptions" (one has a tendency to duck when a politician tells you that they are going to do something on that basis) that crime of any type, whether property offence or violence, had increased in any way prior to mandatory sentencing.

It has further been discovered that mandatory sentencing has had no effect on crime levels.

The obvious justification for introducing mandatory sentencing would, of course, be: "look burglaries are getting out of hand, to attack this we have to ensure penalties are increased and to do so we will bring in mandatory sentencing". Three years later the Government will report back and say: "Well, there it is, a marked decrease in the then increasing problem of burglary; a temporary interference with the separation of powers and judicial discretion was, in this instance, justified".

Not so here. Mandatory sentencing has been exposed by the debate to its sole justification. It goes like this. We don't care that it has had no effect on the levels of crime. We don't care that the costs are exorbitant. We don't care that, by necessity, it leads to large numbers of unjust and arguably illegal sentences. We say, now, that we brought it in and brought it in on the will of the people (the majority) to ensure that people are punished. Vengeance was His (i.e. the Lord's), it's now the NT majority's province. Further "refinement" to the Government's explanations for why we have mandatory sentencing have been discovered in the debate. Nine times out of ten when a Government spokesman answers questions on why it has been maintained they look outraged, talk about the unfortunate

victims. They being those who have had their "houses trashed". They who have lost countless amounts through theft and damage, who have suffered financially and emotionally only to have it compounded by the offenders receiving bonds, suspended sentences and general confectionary from the judges and magistrates of the Northern Territory.

Firstly, any criminal lawyer knows that such offenders, before we had mandatory sentencing, if found guilty of the unlawful entry, stealing and damage scenario so often described would, in all likelihood, "go in". Juveniles might, on first offence, avoid detention but adult offenders would be struggling to avoid actual imprisonment.

That aside, the *raison d'être* from this debate is exposed. House trashing, burglaries and to punish offenders.

The NT criminal justice system lists consist predominantly of Aboriginal people. We know that over 70% of our prison and detention population is Aboriginal. The large proportion of those figures (criminal lists and prison population) come from Aboriginal communities: from Yuendumu to Port Keats to Umbakumba, Groote Eylandt.

In those communities crime is and has been rife for decades. The usual causes abound: alcohol and substance abuse, social and economic disadvantage. Crime of all sorts is prevalent, both against person and property.

Groote Eylandt is typical. The boy who killed himself in Don Dale was from Groote Eylandt. He was sentenced for unlawful entry and stealing from Angurugu Council office and later the Angurugu Primary School. The complainants in this matter were Aboriginal people, namely the Council and the school. His type of offence was typical.

The large amount of crime on Groote Eylandt doesn't involve the "house trashing". Most of the burglaries are committed by unlawful entry, stealing and then leaving. A large number of unlawful entries and stealings apply to the Alyangula Recreation Club, sometimes in spectacular fashion. But again with the same intent and MO: in, steal the grog and out.

Most of the young men of Groote Eylandt have criminal records. That kind of offending is part of their lifestyle. This has been going on for decades. Many have priors for property offences which lurch them towards 12 months for a third offence. The elders in the



*President of the Criminal Lawyers Association, Mr John Lawrence.*

community and the Council don't like such conduct and want it stopped. They were, prior to mandatory sentencing, happy to use our criminal justice system to address it. The clean up rate on Groote Eylandt is incredibly high. Reports are made. Offenders are located. Confessions are invariably forthcoming, followed by arrests and charges. Most plead guilty at the Alyangula CSJ followed, prior to mandatory sentencing, by the application of discretion in sentencing to punish, deter and satisfy and protect the community.

The Aboriginal community were often included in the sentencing process, which involved their views and actions, for example, banishing offenders to out-stations.

The point I make is the *raison d'être* for mandatory sentencing as exposed as punishment for the "grubs" who trash our homes just doesn't apply to a significant (Aboriginal) part of the criminal lists. Its effect will undoubtedly increase the present and grossly disproportionate number of Aboriginal people behind bars.

Once again whatever did happen to the Death in Custody Recommendations.

The Angurugu community, as complainants in the deceased boy charges, feel in Aboriginal way, responsible for causing his death.

Previously, Aboriginal people on Groote Eylandt and other communities have been willing and able to participate in our criminal justice system. The full effects of mandatory sentencing are going to pose questions as to whether that will continue. Only time will tell. It presents another compelling argument for why it should not have been brought in the first place and why it should now be repealed.

*JB Lawrence is briefed to represent the Angurugu community and family of the deceased juvenile in the forthcoming coronial inquest into his death.*