

Political ends leads to bad law

On the tenth of February 2000 a 15 year old Groote Island minor hung himself in Don Dale Juvenile Detention Centre. He was serving time on a mandatory sentence under the Juvenile Justices Act.

Two months later on the 10th of April 2000 the Prime Minister of Australia and the CM of the NT issued a joint statement detailing changes as regards mandatory sentencing for juveniles in the NT.

The great debate over the NT's mandatory sentencing laws has provided a good example of political ends being achieved by unjustifiable means. What the community has discovered is that politicians are prepared to interfere in the basic principles of the separation of powers solely on the grounds of political expediency. Mandatory sentencing laws, and now the deal regards amendments, reveal politicians at work.

The debate over the past two months has exposed the NT Government, if nothing else, to a genuinely effective opposition. Some might say for the first time in recent memory. Its ineptitude in dealing with it has probably increased the opposition to the laws.

Two months after exposing the laws for what they always were, a political measure for gaining political support from the electorate, the joint statement of the Prime Minister and the Chief Minister is likewise exposed as a political fix.

As stated in this column in January, mandatory sentencing was brought in by the CLP government based on "public perceptions" vis a vis crime and sentencing. The "totally corrupt system" was not producing the goods. The judges and magistrates had failed the community by dealing with offenders too leniently. There was no scientific evidence, for example crime statistics, suggesting "property offences were increasing prior to the introduction of mandatory sentencing." Further the government concedes that mandatory sentencing has had no effect on the crime rate. But then

they say that's not why it was brought in. It was brought in to punish the offenders. The costs have never been itemised by the government but nevertheless the debate has informed the public that it costs the community \$145.26 a day and about \$55 000 per year to keep one adult prisoner in jail. Imprisoning a juvenile costs \$343.73 a day and about \$9600 for 28 days.

As the national debate raged the national media unearthed interesting features relevant to the issue. An article by Tony Harris in the Financial Review on 3 March provided information on the cost of the NT to the rest of Australia. In it he stated that the NT spends well over three times the national average on its correctional services bill. What's more it has recently been growing 50% faster than elsewhere, an increase not explicable by any increase in reported crime.

The large number of unjustly severe sentences for relatively minor offences has always been the main critique. The inevitable increase in the number of Aboriginal numbers in custody likewise. As the debate continues so does the opposition, at least in the southern states. This is partly due to the ineptitude of the Chief Minister in answering questions by reporters re the laws. "Butt out!" "So what!" etc remain the order of the day.

The Chief Minister stated on Four Corners that if he believed these laws breached the UN Convention on the Rights of the Child he would still not change them.

The opposition in the rest of the country led to a revolt in the Liberal Party and threats of crossing the floor to support Senator Brown's Bill to abolish mandatory sentencing for juveniles. That the Australian PM believes mandatory sentencing is "silly" and shouldn't exist was brought into the debate.

To prevent the revolt he summonsed our Chief Minister from China and a deal was struck at Kirribilli House. The age of majority in the NT is now 18 and the mandatory provisions are retained. The



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

Commonwealth Government gives the NT government \$5 million for funding diversionary programs and the NT police force standing orders in relation to juveniles are changed:

"a: to require police to divert at the precharge stage in the case of *minor offences*;

b: in more *serious cases*, to provide discretion for police to direct offenders and on successful completion of a program not to pursue charges." (*emphasis added by author*)

Neither the "minor cases", nor "more serious cases" are defined. Like the introduction of mandatory sentencing itself no interest groups, including the NT police, were consulted by the political leaders.

Increasing the age of juveniles is merely correcting an anomaly that should have been done years ago. The proposed changes to the police standing orders and arguably their new role in dealing with juveniles will have varying repercussions, both legal and practical. It appears to put the police in the position presently held by Supreme Court judges and magistrates under Section 53AE(2c) i.e., ordering diversionary programs on sentence for repeat property offenders. At the time of writing one has an instinctive sense that it will cause more problems than it

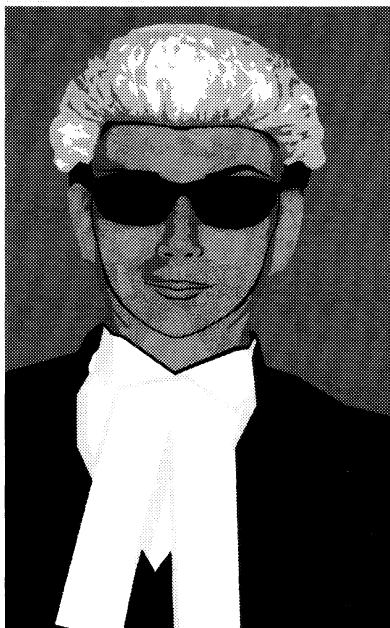
will solve and it will ultimately be seen as unworkable. The point is, like mandatory sentencing, it is a purely political creation, in this instance a fix: the PM quells his revolt, the Chief Minister retains mandatory sentencing.

The Prime Minister is right about one

thing. Mandatory sentencing is silly. That's no better evidenced than by its supporters and proponents attempts to answer the criticisms against it. The CM has looked and sounded stupid for the last two months trying to defend it. On the tenth of April the PM himself looked and sounded stupid on the 7.30 Report in answering Kerry O'Brien's relatively benign questions on how in fact the police would practice this new direction. The Australian Prime Minister has laid down with the dog of mandatory sentencing and come up for all to see and hear, with fleas.

Following a hat trick of articles on mandatory sentencing its now down to business. The new Supreme Court Trial Rules and the Application for Leave to Appeal Rules will come into force on 1 July 2000. Also note the Criminal Code Amendment No3 of 2000 (on *Nolle Prosequi* and written submissions re leave applications) come into force on 12 April 2000.

LAW WEEK 2000



This year's Law Week has been generously supported by the NT Legal Aid Commission, Marsh Ltd, the Law Society Public Purposes Trust, Qantas, NT Criminal Lawyers Association and the NT Red Cross.

A number of legal organisations have given input into developing a program, which can be viewed in full on page #24.

Don't forget to join in on our launch on Monday 15 May in Raintree Park. 105.7ABC Darwin morning presenter Mr Michael McKenzie will be MC for the annual lawyers tug-o'war competition to be held at 12 o'clock. Team nomination forms will be distributed via fax.

NT YOUNG LAWYERS

On 17 March 2000 the Northern Territory Young Lawyers Inc held their annual general meeting at the Petty Sessions side room which was well attended.

A new Committee was elected and they are as follows:

President: Reinis Dancis: 8941 2544

Vice President: Pryce Dale: 8946 2943

Public Officer: Gina Wilson: 8943 2555

Secretary: Michelle Fadelli and Sophie Silvester: 8981 2971

Treasurer: Jason Schoolmeester: 8948 1155

Social Coordinator: James Docherty: 8943 2555

This year promises to be an exciting one for all members and we encourage those who are not members to join. We remind you that it is only \$20 per year and for that you get free attendance to CLEs and discounts for the advocacy course and most social activities.

First on our list this year is the harbour cruise which will be held on Saturday 3 June 2000 where everyone will have an opportunity to meet their fellow members and enjoy a trip around Darwin Harbour with refreshments. For further information

contact any committee member.

The next item on the year's agenda is the annual advocacy course to be held later in the year at Mount Bundy Station. Justice Riley, Rex Wild QC and Lex Silvester have indicated their interest in conducting the course and we thank them in advance for their support in giving their time again. The course will deal with making objections, examination, cross examination and addresses. The course will more than likely book out early so we request that everyone who wishes to attend contact the Committee and reserve their spots now.

Sarah Hills, our former president, is currently arranging a CLE program and a timetable will be sent out to all members very shortly. Sarah has informed us that some of the proposed topics are the GST, mandatory sentencing, commercial agreements, federal court procedure and family court procedure. For details in the meantime please contact Sarah Hills.

The NTYL will be contributing to the Law Week and will again be holding a seminar on Saturday 20 May 2000 on "how to run a small claim". The aim is to assist the public to come to grips with



Reinis Dancis, NTYL President

the procedure and be better prepared to conduct their own small claims. They will be given guidance on drafting their claim and how to present it in Court.

We are pleased to inform members that the Committee has decided that the NTYL Ball — the social highlight of the year — be moved to the Dry season to take advantage of the beautiful dry season weather and we will inform you of the date when it comes to hand.

We also invite everyone to participate in the annual cricket match which will also be held later this year. An event you must make sure you don't miss out on.

Watch this column for more details.