

Insanity Reform

The NT Parliament has passed amendments to legislation to get around the legal loopholes highlighted in the *Ebatarinja* case.

Amendments to six key Acts have been introduced by NT Attorney-General Peter Toyne and address the issues of the defence of insanity and the want of understanding in an accused person.

Central to the changes is the reform of the "fitness to be tried" issue. Currently a person can't be tried if they are deemed "unfit" and are unable to understand the nature of the trial or the substantial effect of the evidence presented.

The *Ebatarinja* case involves a deaf mute man accused of violent crimes who has been deemed unfit to be tried by the courts.

Dr Toyne told parliament: "The bill..alters the court procedures for dealing with questions of mental competence of persons who are alleged to have committed crimes and procedures for their disposition."

isolated

The Attorney said in general terms the issues of mental impairment and unfitness to be tried will be isolated from the other issues of the trial and require separate consideration.

"Then both the defence of mental impairment and the issue of fitness to be tried will be matters for a jury," he said. "Where an accused person has been found unfit to be tried, the court will be required to determine whether the person will become fit within 12 months."

If the court decides they will not become fit within a year, the court must hold a special hearing.

"The purpose of the special hearing is to allow the evidence of the prosecution to be tested to determine whether, in the absence of any input from the accused, the accused is or isn't guilty of the offence charged," Dr Toyne said.

Questions of detention and release are to be made by the court. ①

Freedom of Information?

The Northern Territory Government's proposed legislation on Freedom of Information, Privacy and Records Management has been questioned in some respects by the Law Society of the NT and the Ombudsman.

While both have praised the government's intent and the unique aspect of integrated provisions to protect privacy, questions have been raised on the FOI components.

The Society's submission said: "the major problem with the Bill is that it is based on a model that makes detailed provision for a wide range of exemptions (some of them unreviewable) that may be utilised by government officials not predisposed to openness."

"The democratic and accountability purposes of the legislation needs to be made clearer and hold greater significance in the interpretation of the proposed legislation. The Bill also needs to be more concise in the interpretation of what needs protecting and why.

"The Bill is to be commended for requiring agencies to publish their information policies but there is concern that no provision is made for non-compliance."

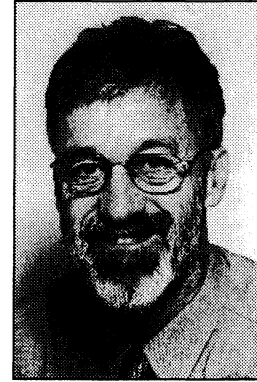
public education

The Society also urges a commitment of resources for public education as well as departmental officers on the new legislation.

The Ombudsman Peter Boyce also expresses concern about the FOI components and is critical of what he says is the lack of consultation before the legislation was drafted.

"In other jurisdictions there has been a much more consultative process utilised in considering the issue," Mr Boyce said in his submission.

"If government ultimately chooses restrictive and limited FOI legislation (such as the current Bill proposes) then at the very least it needs to be up front as to why and to be able to acknowledge the issues and divergent views that flow from it."



Above: Attorney-General Dr Peter Toyne, spearheading legislative reform.

Mr Boyce recommends a Parliamentary Committee be set-up to facilitate the process and the Attorney give a reference to the Law Reform Committee to consider key issues.

Mr Boyce said the area of access to government information is where, regrettably, "the Bill falls far short of providing broad based and real access of public sector information to the public such that it would meet the stated objectives set out in the proposed Bill".

At an Australian Institute of Administrative Law Seminar, the Attorney-General Peter Toyne said more than 50 submissions on the draft legislation had been received after 500 copies of it and a discussion paper were circulated.

"With respect to FOI what we attempted to do was to put together a draft that captured a middle view of FOI legislation in Australia. The draft took into account FOI legislation in Australia, the UK, Ireland and the Canadian provinces," Dr Toyne said.

"The exemptions in the Bill are expressed in conceptual groups, which cover the same ground as exemptions provided elsewhere, but are more clearly articulated."

The Information Bill is expected to be introduced in the August sittings of parliament. ①