

The Litigant in Person cont...

raised causes of action or defences that may be available and which the opposing counsel would rather not meet or about which counsel may not have sufficient information. In such circumstances, counsel will be in danger of making submissions contrary to the best interests of the client he or she represents. In a criminal matter the prosecutor may be effectively (and possibly most reluctantly) providing advice to the self-represented accused in the process of discussing with the Judge what options may or may not be available to the accused. The same may be the case in civil proceedings. For example, in trying to make sense of a discursive statement of claim drawn by a self represented plaintiff, counsel for the defence may identify courses of action of which the draftsman was not aware. In discussions with the court care is required to avoid being seen to provide advice to the litigant in person. What happens if the advice is wrong or if the prosecutor or other counsel is not aware of important matters known only to the accused or other party? What happens if the self represented litigant changes approach in reliance upon something said by counsel and disaster follows?

The dangers in dealing with a litigant who is not bound by the same rules of conduct and who, through ignorance or lack of experience, may be misled or, alternatively, may cynically take unfair advantage of your actions which were designed to assist, is a problem for the advocate. Caution is required at every step.^①

(Endnotes)

- ¹ Dietrich v R (1992) 177 CLR 292 at 344-345
- ² Cachia v Hanes (1993-1994) 179 CLR 403 at 415
- ³ Dietrich v R (supra) at 335

Incarceration rates

Earlier this year, the Australian Bureau of Statistics (ABS) released figures that reveal that Indigenous Territorians are 11 times more likely to go to jail than their non-indigenous counterparts.

Shadow Indigenous Affairs Minister John Elferink pointed out that the ratio of Indigenous to non-indigenous people incarcerated had increased markedly since the CLP left office in 2001. See the graph below.

"Labor continually claimed the CLP's law and order policies were racists with a main intent of jailing large numbers of Aboriginies," Mr Elferink said.

"Territorians and in particular Aboriginal Territorians deserve an explanation why the high jump in Aboriginal imprisonments. The Martin Labor Government has failed to reduce the over representation of Aboriginal Territorians in our jails and it needs to explain why," he said.

In a similar vein, the recently released 2003 report for the Productivity Commission painted an alarming picture. Per capita of population, the Northern Territory has double the national average for victims of assault and five times the national average for victims of murder. Imprisonment rates are three and a half times that national average per capita.

Russell Goldflam from NT Legal Aid Commission in Alice Springs addressed these statistics in a speech he made at the recent ceremonial sittings for Chief Justice Brian Martin.

"Imprisonment rates here are on the

increase and sentences imposed by this court [the Supreme Court] for serious crimes also appear to be on the rise," Mr Goldflam said.

"Mandatory sentencing for property crimes has been tried and abandoned in our jurisdiction, which is a rather curious thing given that the single offence category in which the Northern Territory lags behind the rest of the country is victims of crimes against property.

"But we stand out head and shoulders as the most policed, the most prosecuted, the most convicted and the most imprisoned population in the nation. And of course as the most criminally offensive population in the nation.

"The causes of this appalling state of affairs are of course by and large ones which cannot be directly remedied by Your Honour [Chief Justice Brian Martin] or by Your Honour's brethren in the courts.

"Nevertheless the legal profession and the community look to our courts not just to apply the law, not just to dispense justice, although we hope that occurs on a regular indeed continuous basis, but also to provide legal and dare I say moral leadership at a time when there is a genuine and general sense that law and order is not just a political football to be kicked around at election time, but as an issue symptomatic of a profound crisis in Northern Territory society."^①

