The Parliament of the Commonwealth of Australia	
Senate Legal and Constitutional References Committee	
Inquiry into the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999	
March 2000	

© Commonwealth of Australia 2000
ISBN 0 642 71066 X
This document was produced from camera-ready copy prepared by the Senate Legal and Constitutional References Committee, and printed by the Senate Printing Unit,
Department of the Senate, Parliament House, Canberra.

# REFERENCES COMMITTEE MEMBERSHIP

### **Members**

Senator J McKiernan (Chair) ALP Senator M Payne (Deputy Chair) LP Senator H Coonan LP Senator B Cooney ALP Senator J Ludwig ALP

Senator B Greig AD

# **Participating Members**

Senator the Hon. E Abetz	Senator A Bartlett	Senator the Hon. N Bolkus
Senator B Brown	Senator the Hon. D Brownhill	Senator P Calvert
Senator G Chapman	Senator W Crane	Senator P Crossin
Senator A Eggleston	Senator A Ferguson	Senator J Ferris
Senator B Gibson	Senator B Harradine	Senator S Knowles
Senator R Lightfoot	Senator B Mason	Senator J McGauran
Senator Hon. W Parer	Senator J Quirke	Senator N Stott Despoja
Senator T Tchen	Senator J Tierney	Senator J Watson

### **Secretariat**

Dr Pauline Moore (Secretary to the Committee) Mr Noel Gregory (Principal Research Officer) Ms Yvonne Marsh (Principal Research Officer) Mr Paul Harris (Research Officer)

Mr Derek Drinkwater Ms Saxon Patience

The Committee acknowledges assistance from the Parliamentary Library

The Senate
Parliament House
CANBERRA ACT 2600

Tel: (02) 6277 3560; Fax: (02) 6277 5794

InteNet: <a href="mailto:legcon.sen@aph.gov.au">legcon.sen@aph.gov.au</a>

# TABLE OF CONTENTS

MEMBERSHIP	III
ABBREVIATIONS	IX
CHAPTER 1	1
INTRODUCTORY	1
Conduct of the inquiry	1
Supervening events	2
The Bill	3
Background to the Bill	3
Structure of the Report	4
CHAPTER 2	5
MANDATORY SENTENCING LEGISLATION IN THE TERRITORY AND WESTERN AUSTRALIA	
Introduction	5
Terminology	5
The definition of a child in the Convention on the Rights of the Child	6
Development of mandatory sentencing	8
Objectives of the legislation	9
Western Australia	
Northern Territory	
Western Australia	
Young persons	
Summary	
Alternatives	13
Northern Territory	14
Crimes exempt from mandatory sentencing	
Adults	
Juveniles	
QUICK REFERENCE	19
Western Australia's Mandatory Sentencing Regime for Property Offences	19
Northern Territory's Mandatory Sentencing Regime for Property Offences	. 10

CHAPTER 3	21
STATISTICAL INFORMATION	21
Statistical Information	21
Criminal justice statistics before mandatory sentencing came into operation	21
Comparison with the rest of Australia	
Criminal Justice Statistics after Mandatory Sentencing came into operation	
Comparative Indigenous/Non-Indigenous Detention Rates for Juveniles	
Conclusions from statistical information	35
CHAPTER 4	37
CONSTITUTIONAL CONSIDERATIONS	37
Introduction	37
The Commonwealth and the States/Territories	37
States' rights issue	38
The Commonwealth's Territories power	
References to the territories in the Bill	
The Territories Power in the Constitution	
Overriding territory laws—the Euthanasia Laws Act 1997 (Cth)	
The High Court and the territories power	
Nature and scope of the power	
Characterising general Commonwealth laws which apply to the territories  Commonwealth laws and self-governing territories	
Summary	
•	
The external affairs power	
The External Affairs Power  The external affairs power is a broad one	
'Federal Balance'	
Limits on the Power	
Summary	49
Conclusion	49
CHAPTER 5	51
ALICHDALIASC INTERDALATIONAL MUMAN DICHTE ONLICATIONS	ANID
AUSTRALIA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS MANDATORY SENTENCING	
Introduction	51
The International Covenant on Civil and Political Rights	52
Claims that mandatory sentencing breaches the ICCPR	52
The United Nations Convention on the Rights of the Child	
Other instruments	

Summary of claims that Mandatory sentencing breaches CROC (and Beijin	_
CHAPTER 6	79
RELATED INTERNATIONAL OBLIGATIONS	79
Women	79
The discriminatory impact on women	80
Racial discrimination: Indigenous people	83
People with intellectual and other disabilities	89
The impact of mandatory sentencing on intellectually disabled people with other disabilities	89
Future directions	
CHAPTER 7	95
THE SOCIAL AND LEGAL IMPACTS OF MANDATORY SENTENCING	G 95
Social effects	95
Strengthening stereotypes	95
The effect on indigenous people	
Mandatory sentencing in the context of recommendations of RCADC	
Stolen Generation	
Disability	
People with an intellectual disability  People with a psychiatric disability	
People with acquired brain damage	
Women	
Effect on the law	
Judges and magistrates	
Community distrust of the legal system	
Access to the legal system	109
Appeal to international bodies	112
CHAPTER 8	113
SUMMARY AND CONCLUSIONS	113
Recommendation	117
ADDITIONAL COMMENTS BY SENATOR COONEY	119
PREVENTING THE JAILED GENERATION	123
ALICTRALIAN CREENC CENIATOR ROD DROWN	100

COMMITTEE REPORT ON THE INQUIRY INTO THE HUMAN RIGHTS (MANDATORY SENTENCING OF JUVENILE OFFENDERS) BILL 1999
HUMAN RIGHTS (MANDATORY SENTENCING OF JUVENILE OFFENDERS) BILL 1999127
GOVERNMENT SENATORS REPORT 127
1. BACKGROUND127
2. MANDATORY SENTENCING 128
4. STATE AND TERRITORY RIGHTS 132
5. SEPARATION OF POWERS
6. COMMONWEALTH POWERS 133
7. VALIDITY OF THE BILL
8. MANDATORY SENTENCING – INTERNATIONAL OBLIGATIONS 136
9. SOCIAL AND LEGAL IMPACTS OF MANDATORY SENTENCING 137
10. REFORMS AND OPTIONS 138
11. COMMONWEALTH GOVERNMENT PROGRAMS 142
12. CONCLUSIONS AND RECOMMENDATIONS 143
COMMONWEALTH PROGRAMS147
FURTHER COMMENTS BY SENATOR MARISE PAYNE, DEPUTY CHAIR157
CONCLUDING COMMENT BY SENATOR HELEN COONAN 159
APPENDIX A 161
ORGANISATIONS THAT PROVIDED THE COMMITTEE WITH SUBMISSIONS161
APPENDIX B 167
ORGANISATIONS AND PERSONS THAT EXPRESSED VIEWS FOR OR AGAINST THE BILL167

APPENDIX C	171
WITNESSES WHO APPEARED REFORE THE COMMITTEE	171

## MANDATORY SENTENCING

## NOTE ON REFERENCES AND ABBREVIATIONS

### **Submissions**

The Committee received 136 submissions, including supplementary submissions. Four volumes of printed submissions were compiled, and in footnotes reference is made to the volume number and the volume page for those submissions, as opposed to the page number of the original submission. Submissions after Submission No. 93, were not printed, and many of the supplementary submissions were also not included in the printed documents. References to these submissions therefore do not include reference to a volume number, and the page number will be the number of the submission.

### **Abbreviations**

Where possible, reference is made to the full name of an organisation, with the exception of the Aboriginal and Torres Strait Islander Commission (ATSIC) which is well known. For the benefit of readers, the following abbreviations of organisation names are occasionally used. Full names of Conventions are given in the text, but abbreviations of these are also used:

ASYASS – Alice Springs Youth Accommodation and Support Services

CAALAS - Central Australian Aboriginal Legal Aid Service

CAWLS – Central Australian Women's Legal Service

CERD - Convention on the Elimination of Racial Discrimination

CROC – Convention on the Rights of the Child

DEAC – Disability Employment Action Centre

NAALAS – North Australian Aboriginal Legal Aid Service

NCYLS – National Children's and Youth Law Centre

NTAJAC – Northern Territory Aboriginal Justice