

CHAPTER 1

INTRODUCTORY

1.1 The *Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999* was introduced into the Senate on the motion of Senators Brown, Bolkus and Greig, and read for the first and second times on 25 August 1999.¹ On the motion of Senator Brown, acting at the request of Senators Crossin and Greig, the Senate referred the following related matters to the Senate Legal and Constitutional References Committee, for inquiry and report by the first sitting day in the year 2000:

- (a) the legal, social and other aspects of mandatory sentencing;
- (b) Australia's international human rights obligations in regard to mandatory sentencing laws in Australia;
- (c) the implications of mandatory sentencing for particular groups, including Australia's indigenous people and people with disabilities; and
- (d) the constitutional power of the Commonwealth Parliament to legislate with respect to existing laws affecting mandatory sentencing.²

1.2 On 15 February 2000, the Senate agreed that the time for presentation of the report be extended to 9 March 2000.³

Conduct of the inquiry

1.3 The Committee invited a range of individuals and organisations to make submissions, and advertised the terms of reference in newspapers in all capital cities on 18 September 1999. The Committee received 136 submissions (including supplementary submissions), all of which have been made public, and are listed at Appendix A. Authors of correspondence expressing views on the Bill or the terms of reference, are listed at Appendix B.

1.4 The Committee held four public hearings: in Alice Springs on 1 February, in Darwin on 2 February, in Perth on 3 February and in Canberra on 17 February 2000. Witnesses are listed at Appendix C. In addition, members of the Committee were shown town camps and drop-in centres and had informal discussions with members of, or people involved with, Aboriginal communities and other organisations in Alice Springs on 31 January and 1 February 2000.

1 *Senate Hansard*, 25 August 1999, p. 7735.

2 *Senate Hansard*, 1 September 1999, p. 8140.

3 *Senate Proof Hansard*, 15 February 2000, p. 11751.

Supervening events

1.5 During the course of the Committee's inquiry, a number of events occurred which heightened public interest in, and concern about, the issue of mandatory sentencing. On Wednesday 9 February 2000, a 15 year-old Aboriginal boy was found in his room at the Northern Territory's Don Dale Juvenile Detention Centre in Darwin following what is believed to have been a suicide attempt. He died in Royal Darwin Hospital early on the morning of Thursday 10 February. The boy, from Groote Eylandt, was serving his second detention term under mandatory sentencing and was due to be released on the following Monday.

1.6 Publicity surrounding mandatory sentencing was also heightened by the conviction on Wednesday 16 February 2000, of a 21 year-old Aboriginal man for the theft of \$23 worth of cordial and biscuits from the storeroom of a mine. The man, also from Groote Eylandt, was sentenced to a year in prison for the 1998 theft.

1.7 Media interest in these issues continued throughout February, with suggestions that the issues be considered further. The Commonwealth Attorney-General, the Hon Daryl Williams, wrote to both the Premier of Western Australia and the Chief Minister of the Northern Territory, asking that they reconsider their legislation. On 22 February, in response to queries about the possible involvement of the United Nations, the Secretary General, Kofi Annan, indicated that he would ask the UN Commissioner for Human Rights, Mary Robinson, to consider the mandatory sentencing legislation.⁴

1.8 On 15 February 2000, the Northern Territory Minister for Correctional Services, the Hon Daryl Manzie, announced the approval of 'an additional 11 diversionary programs for juvenile offenders' and advised that 'at least 10 other new programs [were] being further developed in consultation with community groups.'⁵

1.9 In response to criticism of the Northern Territory's mandatory sentencing legislation, Chief Minister Denis Burke announced a national advertising campaign to take place in early March. An advertisement was placed in the *Northern Territory News* and other media on Saturday, 26 February 2000. It set out the legislation as it works for juveniles and adults, and listed existing and newly-announced diversionary programs. As the advertisements appeared in the context of a by-election, the Leader of the Opposition in the Northern Territory Parliament indicated that she would lodge a formal complaint with the Northern Territory Electoral Commission, as taxpayers' money had been used to fund the advertising campaign.⁶

1.10 On 2 March 2000, a Member for Molonglo in the ACT Legislative Assembly advised the Chair of the Committee that she had put a motion for debate in the

4 *Sydney Morning Herald*, 23 February 2000.

5 *Submission No. 91A*, Northern Territory government, p. 1.

6 *Northern Territory News*, 26 February, 2000, p. 15; *The Australian*, 28 February 2000, p. 3.

Legislative Assembly on 1 March, by which the Assembly was asked to condemn and dissociate itself from the ACT Government's submission to the inquiry. This submission had expressed concern at the proposed exercise of the external affairs power to permit the Commonwealth to legislate in respect of a matter traditionally and appropriately the responsibility of the States and Territories. The motion was supported by a majority of members of the Assembly.

The Bill

1.11 The Bill provides that:

- a) Commonwealth, State and Territory laws must not require a court to sentence a person to imprisonment for an offence committed as a child, that is, a person under 18 years of age;
- b) Existing laws with such a requirement have no force or effect, except as regards the lawfulness or validity of anything done in accordance with the Bill before its commencement as an Act;
- c) Any child in prison or detention at the Commencement of the Bill as an Act pursuant to any such requirement must be brought back to the sentencing court within 28 days for reconsideration of the remainder of the sentence.

Background to the Bill

1.12 The Bill was developed to address a number of issues of concern over the introduction of mandatory sentencing for various property⁷ offences in both Western Australia and the Northern Territory. These concerns included:

- Whether children were being jailed, contrary to the Convention on the Rights of the Child, and whether other international obligations were being breached;
- The lack of relationship between the type of crime and the severity of the punishment;
- The limited options available to replace detention;
- The apparent discriminatory effect on indigenous people; and
- The broader social and legal effects of mandatory sentencing.⁸

7 In the Northern Territory, other offences were added in 1999.

8 See *Human Rights (Mandatory Sentencing of Juveniles) Bill 1999*, p. 1 and Second Reading speech, *Senate Hansard*, 25 August 1999, pp. 7516 – 7520.

Structure of the Report

1.13 The main issue with which the Committee was concerned, was the application of mandatory sentencing to juveniles in both the Northern Territory and Western Australia. Although it has discussed the laws relating to mandatory sentencing generally (see Chapter 2), the emphasis of the Bill is on ‘children’ in detention and in prison, the role of mandatory sentencing in increasing the likelihood of young persons being in these custodial situations, or being otherwise affected (Chapters 5, 6 and 7); and the extent to which international conventions would require that the Commonwealth meet specific obligations relating to ‘children’ (see especially Chapter 5).

1.14 The Committee notes that a major difficulty in assessing the evidence was the absence of detailed, accurate and previously published information on mandatory sentencing (see especially Chapter 3). This is particularly true of the Northern Territory, where available data are difficult to understand. Terminology such as ‘custody episodes’ or the use of language which may suggest that people not serving the minimum mandatory sentence of 28 days in the Northern Territory might in fact not have been affected in some way by the concept of mandatory sentencing,⁹ made it difficult to determine how many juveniles in the Northern Territory, convicted of mandatory sentencing property offences, had in fact been affected by mandatory sentencing in some way other than by serving a ‘mandatory’ sentence.

1.15 The Committee has spent some time on the issue of statistics, for two reasons. The first is the poor quality of data. The second is that, in the absence of objective information that could be relied upon, a number of submissions were made that have not been substantiated by objective data. The Committee has observed that data from the Northern Territory on detention of juveniles have been confusing. It contrasts with that from Western Australia which is considerably more detailed, and is of assistance in assessing the operation of mandatory sentencing in that state.

1.16 In Chapter 7 the Committee has attempted to outline some of the social and legal effects of mandatory sentencing, and also to see if these specifically affect juveniles. Again, the Committee notes that the limited availability of unambiguous data made it difficult to determine specific effects on juveniles. Many of the general effects, which appear to affect disadvantaged social groups, have been identified previously in specialist and detailed studies. The Committee was not in a position to undertake similar studies of this nature and its conclusions are therefore tentative.

1.17 Chapter 8 contains the Committee’s conclusions and recommendation.

9 See, for example, *Submission No. 91D*, Northern Territory government, p. 1.