

ADDITIONAL COMMENTS BY SENATOR COONEY

SUPPORT FOR THE MAIN REPORT

I am in support of the main report. I would like to make some additional remarks.

IMPRISONMENT A GRAVE MATTER

In Australia imprisonment is the most severe form of punishment for crime. To go to gaol is to undergo a terrible ordeal. It is likely to have a marked and lasting effect on the person incarcerated. It ought be imposed only as a last resort. It is a grave matter to lock up any person but especially so to lock up children.

COMMON DECENCY AND FAIRNESS

Common decency and a sense of fairness require that a person be gaoled only for serious offences, only where there is no appropriate alternative, and, only when his or her particular case is considered on its merits.

PRINCIPLES OF SENTENCING AND CONSTITUTIONAL PROPRIETY

For a case to be considered on its merits a judicial officer ought make a discrete decision in respect of the particular offender involved and in doing so should ask himself or herself these questions:

1. who is this person who has committed this crime?
2. what has he or she done?

3. what is the appropriate penalty to impose on him or her?

Under mandatory sentencing a judicial officer cannot carry out this exercise. Accordingly constitutional propriety is disturbed and society suffers as a result.

PARLIAMENT SHOULD NOT LEGISLATE A SENTENCE FOR AN INDIVIDUAL

For Parliament to impose a sentence on a person regardless of his or her individual situation, of the particular circumstances in which the offence was committed, and of the actual effect on the victim, is to invade the province of the Judiciary and accordingly to interfere with the proper balance between the two.

TREATIES AND CONVENTIONS

Common decency and a sense of fairness move people to oppose mandatory sentences. So do a number of treaties and conventions dealt with in the main report. In ratifying treaties and conventions Australia undertakes to have its domestic law reflect their contents. Presently it does not do this.

COMMONWEALTH POWER

As is demonstrated in the main report the Commonwealth has the power to make the bill law in the Northern Territory. It is probable that because of provision 51 (xxix) of the Constitution it can make the bill law binding the States including Western Australia.

IMPRISONING CHILDREN TO WIN GOVERNMENT

Political parties need votes both to gain and to retain power. They must go about the task of gathering them and they use a variety of means to do so: that is fundamental to

politics. But getting votes by gaoling juveniles who ought be let free goes beyond even the elastic boundaries of legitimate political practice. Yet that seems to have happened particularly in the case of the Northern Territory. Law and order campaigns which put their proponents into office but children into custody, when they ought not be, are despicable.

THE COMMONWEALTH SHOULD ACT

Children who are imprisoned suffer a horrible penalty. It is likely they will be marked for life. If Society incarcerates them when it ought not then it deals them a grave injustice. Winning or keeping office at the expense of children is beyond bounds. Morality and fairness requires that they be freed. Indeed the injustice is so grave that if States and Territories will not free them then the Commonwealth, where it has the power, ought do so.

A TRIBUTE

There has been an outcry in Australia against laws imposing mandatory sentences on children. Hopefully it will help towards having them repealed. Many people have played an honourable role in the movement against them. One is Louis Schetzer. He took up this issue some years ago and has pursued it vigorously and with effect since.

Senator B Cooney

Member

