CONCLUDING COMMENT BY SENATOR HELEN COONAN

Commonwealth Intervention

The critical issue in this inquiry is whether the Commonwealth should intervene now to override the mandatory sentencing regimes incorporated in the Northern Territory and Western Australian legislation.

Clearly the effect of mandatory sentencing of juvenile offenders has been tempered in both jurisdictions. In Western Australia the Courts have been able to interpret the legislation so as to permit the exercise of discretion in an appropriate case. In the Northern Territory the recent amendments have had the effect of ameliorating the impact of mandatory sentencing on juveniles.

The Western Australia and Northern Territory governments should therefore be encouraged to build on these more appropriate approaches to sentencing and to consider other models of rehabilitative justice for juveniles that will also meet community need and expectations of deterrence.

It is clear that many people in Western Australia and the Northern Territory strongly favour the intention that underwrites the legislation sought to be overturned. The coercive powers of the Commonwealth to override the legislation should only be used as a last resort after all available processes of consultation and attempts at a consensual resolution have been explored. That time has not yet come.

That is not to say that more determined efforts should not now be mounted in both these areas. It is trite to say that good government dictates that citizens should both understand and support those legislative measures that result in others, especially juveniles, losing their liberty. It would be entirely wrong to conclude that the Australian public, including those in Western Australia and the Northern Territory who presently support mandatory sentencing, will not yield to persuasion rather than coercion. It would be an insult to the honestly held belief of those persons to conclude that a path to reform can be achieved only by coercive action.

Nothing I have said should be read as advocating abdication of the Parliament's function, where necessary, to lead public opinion in the appropriate direction. However, the legislative supremacy of the Commonwealth should stand as the last resort in cases where there is a genuine difference of opinion. In such cases, the Parliament's initial task is to educate, to persuade and to consult.

Whilst I acknowledge that the immediate repeal of all legislation imposing mandatory sentencing on juveniles and young adults may be desirable, I have come to the conclusion that constructive and sustainable outcomes are more likely to be achieved by co-operation between the Commonwealth, West Australian and Northern Territory governments in dealing with recidivist juvenile offenders than would result from passing the Bill.

I am fortified in this view by the fact that a process of review and consultation is required even if the Commonwealth government were to conclude that the Western Australian mandatory sentencing legislation breaches Australia's international obligations. Consultation is an integral part of ensuring Australia's international obligations are met. Although the Commonwealth's plenary power in respect of the Northern Territory permits the passage of a law overriding the operation of mandatory sentencing without any consultation, there are compelling reasons that consultation should occur.

In other words, intervention and override at this stage by the Commonwealth is premature and would not be warranted, if at all, unless and until there has been a further opportunity for meaningful consultations and discussions about further options with both Governments.

For the reasons detailed in the Government Senators Report I do not support the passage of the *Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999*.

Helen Coonan

Member