Serious Sex Offenders Act 2013 (NT)

CLANT is seriously concerned at the potential politicisation of what are in effect sentencing decisions. Such decisions should be kept at arm's length from government: that's what the Office of the Director of Public Prosecutions is for. Although this legislation is not, strictly speaking, concerned with sentencing or criminal procedure, the effect on an inmate made subject to a custodial supervision order will be indistinguishable from having a further sentence of imprisonment imposed.

Under this scheme, an elected politician could, in the final days of an offender's lengthy sentence, institute proceedings to prevent the offender being released to the community. This could give rise to a reasonable apprehension that such proceedings had been commenced at least in part for political or electoral reasons.

Furthermore, it is unfair on prisoners, and inimical to their rehabilitation, for them to serve their entire sentence without knowing whether or not, just as the sentence is about to expire, the government of the day will seek to have them further detained, and for an indefinite period.

A further concern is cost. We do not know whether the government proposes to provide additional funding to the Solicitor for the Northern Territory and legal aid agencies to meet the cost of conducting the complex and lengthy litigation which this legislation will inevitably engender (as indeed has occurred in other jurisdictions where legislative schemes of this type have been enacted); and to the Department of Correctional Services to meet the cost of administering, implementing and enforcing orders for detention, supervision and review which would be made under the proposed Act.

The establishment and administration of this scheme will be a very significant impost on the taxpayer.

CLANT considers that this legislation is not only expensive, but also unnecessary. Subdivision 4 ("Indefinite detention of violent offenders") of Part 3 the *Sentencing Act* NT already empowers the Supreme Court to impose a sentence of preventive detention on dangerous offenders (including serious sex offenders). Although such orders are rarely made, this scheme has been tried and tested, and appears to be working satisfactorily. In some respects (such as the standard of proof required to make an indefinite detention order, and the provisions for regular reviews of such orders by a judge), the existing scheme is very similar to the proposed scheme. Importantly, however, an application to the court for an indefinite detention order is made not by the Attorney-General but either by the DPP or on the initiative of the court.

Furthermore, such applications are made at or shortly after the offender has been convicted.

The primary purpose of the Bill appears to be to protect the community from dangerous sex offenders who have failed to engage in rehabilitation during their term of imprisonment. In our view this purpose is adequately served by the combined effect of the current provisions referred to above, and the NT parole system, which ensures that prisoners who unreasonably fail or refuse to engage in rehabilitation are not released until they have completed their full sentence. Any such offenders whose offending places them in the category of 'dangerous offenders' can be made subject to indefinite detention orders at the time they are sentenced.

A particular concern in the Northern Territory is that access to effective sex offender programs for prisoners is very limited. We understand that interpreters are not used in the delivery of such programs, which has the effect

of depriving a significant proportion of potential participants in such programs of access to them. Rather than establish a scheme which may well in effect punish these people by placing them in indefinite detention, government should dedicate additional resources to the delivery of sex offender programs to ensure that they are in fact available to all prisoners who would benefit from them, and delivered having regard to the linguistic and cultural characteristics of the prisoner.

As an alternative to this radical, costly and unnecessary Bill, there should have been amendments to the *Sentencing Act* to broaden the scope of the existing indefinite sentencing provisions to cover a broader range of sexual offences than is currently the case.

This could have been achieved by amending section 65(1) of the *Sentencing Act* by adding the offences set out in Schedule 1 ('Class 1 offences') of the *Child Protection (Offender Reporting and Registration) Act* 2004 (NT) to the existing list of offences which define 'violent offence' for the purpose of the Subdivision. It may also have been appropriate to replace the term 'violent offence' in the Subdivision with the term 'serious violent or sexual offence', and to re-name the Subdivision 'Indefinite sentences for serious violent and sexual offenders'.

When Mr Elferink first tabled an earlier version of this Bill in the Legislative Assembly, during the term of the former government, then Attorney-General Lawrie announced that she would refer the matter to the Northern Territory Law Reform Committee for consideration. This was an entirely appropriate response, having regard to the seriousness, the complexity, the cost and the contentiousness of the matter. And that is what the current government should have done.

27 March 2013