

New juvenile legislation was opposed by CLANT

Two bills relating to the liability of parents for acts committed by their children were debated in the Legislative Assembly late last month.

The Criminal Law Association (CLANT) made a number of concerns about the legislation known to the Attorney-General during the recent NT/Indonesian Criminal Lawyers conference.

Concerns were also expressed by lawyers attending the conference from other parts of Australia.

The bills concerned, The Law Reform (Miscellaneous Provisions) Amendment 1991 and the Juvenile Justice Amendment 1991, have been supported by the government on the basis of attempting to curb juvenile crime. The main objection CLANT has to the bills is the fact that people become responsible for acts or crimes they have not committed.

Since its inception the criminal justice system has been directed towards making the person who committed the crime responsible for it, not imposing the sins of the offender on the children, relations or, in this case, parents of the offender.

The Law Reform (Miscellaneous Provisions) Amendment Bill goes even further than suggested.

Liability for damage to property of up to \$5000 can be placed on a parent even where there has been no criminal act.

This bill makes a parent liable for intentional damage done to property by a child, whether the child is old enough to be criminally responsible or not, in any circumstances.

In the context of a separation of the parents and the child destroying some of their own property out of frustration or anger, the courts may have to deal with the situation of one parent suing the other for the damage.

By doing this the Legislature will create even more work for already crowded courts, and even more costs

to be borne by both parents and victims who will now have to take separate civil action to claim for their loss from the parents.

It is hard to see how this bill is going to assist the government's stated intention of cutting down "juvenile delinquency."

The Juvenile Justice Amendment Bill makes it compulsory to order a parent to pay a sum up to \$100 per week towards the cost of their child's detention unless such an order is unreasonable.

There is no guidance in the bill as to what is unreasonable.

If the circumstances of the parent change after 28 days from the taking of the order, it's bad luck for the parent. In this economic climate it is not hard to imagine a parent getting the sack and suddenly being unable to pay. The parent, after 28 days, will not be able to apply for a variation of the order.

A failure to pay will lead to the parent being given an option to do Community Service Work or going to gaol.

Many people are unable to carry out Community Service Work despite the wide range of options available in the Northern Territory.

So the parent could go to gaol as the result of getting the sack or a variety of other circumstances which could arise.

This Act appears to apply whether or not the child in question was living at home, and whether or not the child was working at the time.

The parents may be liable whether they had any control over the child, who may be 16 years old, or not.

For this order to be made the parents must be heard by the court.

Once again this increases court work and community costs.

Lawyers will represent the parents,

also increasing the parents' costs.

The Northern Territory Legal Aid Commission and the Northern Australian Aboriginal Legal Aid Service face a large increase in their running costs.

It is unlikely that they can represent both the child and the parents.

Therefore, when parents qualify for legal aid those bodies will have to pay private lawyers to do the work.

The vast majority of juveniles appearing in our courts are represented by Legal Aid bodies.

The problems are larger in the context of the extended Aboriginal family.

Children may go from guardian to guardian in accordance with tradition, but it is the "parent" who is responsible.

Foster parents and the people running homes for youths will be unsure of their position under the new acts until the courts define the word "parent."

It is interesting to note that NT Government liability for damage done by children in its care and control is limited to children who are detainees — that is, in a juvenile "gaol" — and does not apply to children under care and control orders or in the hands of government agencies for other reasons.

In all, this legislation will result in injustice, extra costs to the public, extra costs and pressures on parents and an increase in workload for the courts.

There will be minor benefits to victims, once costs are deducted from any award, major benefit to the NT Government in revenue raising and major benefits for lawyers who will have more work.

CLANT opposed both pieces of legislation because they do not benefit the community and almost certainly will not achieve their stated objectives.

-- Geoff Barbaro