

# National uniform criminal code issues for thought

The Criminal Law Association of the Northern Territory (CLANT) in association with the Australian Criminal Law Association intends to organise seminars involving the new uniform Criminal Code, the first part of which relates to criminal responsibility.

The principles of criminal responsibility have been taken predominantly from the Gibbs Committee Report into Criminal Responsibility as part of the review of Commonwealth criminal law.

The Commonwealth intends to codify its criminal provisions and that process may well be completed within the next two years.

As a starting point for Northern Territory practitioners to work out any views on the topic, the present s31 of the Northern Territory Criminal Code may assist.

It should be noted that s31 is a radical departure from the Queensland and Western Australian codes on which the NT code is based.

The NT Criminal Code makes it quite clear that the code equivalent of the common law doctrine of *mens rea*, that is, intention or recklessness, apply in the Northern Territory.

Section 31 says: "Persons excused from criminal responsibility for an act, omission or offence unless it was intended or foreseen by him as a possible consequence of his conduct." This is markedly different from the equivalent section in the Queensland and WA codes.

The Queensland s23 reads: "...a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident." This provision appears to refer to the common law doctrine of voluntariness

and added an element that the event, that is the consequences of the act, must be foreseen as a natural and probable consequence of the act.

This is very different from the previously cited Northern Territory provision which specifically refers to the state of mind and intention and it can be seen that s31 does not impute a voluntariness aspect.

The differences between the two codes are highlighted by the equivalent sections 2 of the codes.

In Queensland s2 reads:

"An act or omission which renders the person doing the act or making the omission liable to punishment is called an offence."

In the Northern Territory the equivalent provision reads:

"...an offence is committed when a person who possesses any element that may be prescribed with respect to that offence does, makes or causes the act, omission or event...in circumstances where the act, omission or event or each of them if there is more than one is not authorised or justified."

The clear reference in the Northern Territory Criminal Code to mental elements as distinct from the lack of reference to any mental element required by the Queensland code points to the difficulty in trying to apply Queensland and WA code cases in the NT.

The question is which of the approaches, be it under common law, the Queensland code or the Territory code, should be applied to a uniform code or whether there is a further option which may be more beneficial. Comments from practitioners in this regard would be welcome and can be forwarded to the Criminal Law Association of the Northern Territory. Queries to Geoff Barbaro.

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