

# Halfway through 2003: lies, damned lies and law

Many of the recent developments in criminal law, nationally and in the Territory, have flowed from the political repercussions of September 11 and the Bali bombings. This is also reflected internationally.

The war on terrorism declared by the prime mover of the western world, George W. Bush, has led to significant amendments to our criminal jurisprudence.

Law is, and always will be, the product of politics and its constituent elements. Therefore any assessment regarding the merits of legal change involves the political motives by which that law has emerged.

Since that "Declaration of War" of which Australia has been very much complicit, the Commonwealth, states and territories have passed severe anti-terrorism legislation which dismantles many previously enjoyed fundamental rights.

Much of criminal law these days is window dressing created by politicians in order to attract votes, as opposed to considered changes brought in to rectify proven problems. Sentencing legislation is very much created by the former approach. The criminal lawyers, the citizens affected and the courts are often left to deal with, as best they can, hastily drafted unworkable legislation which more often than not delivers unjust results rather than what we are trained to expect and deliver; just results.

Enough has been said by this Association in that regard as to the large number of inadequacies discovered in the mandatory sentencing regime. In the end, that regime was found guilty by the fact that it had no effect on the crime rate and more often than not led to palpably unjust results. Sounding tough and acting tough may win votes but with any legislative changes that flow on needs to be carefully considered.

One of the major problems is the fact that the blahhaha, or "debate" to use

a totally inappropriate term, in regards law and order continues. The media pedal it big time. Make no mistake, the *NT News*' and the Channel Nines of this world are motivated by money as much as anything. *NT News* stories about crime per se and of grossly lenient sentences are partly there because the newspaper editor perceives this as a means to achieve "bums on seats". They know there is an appetite for such news out there.

The perceptions are fed by the media as opposed to created by informed knowledge. Our Association, aware of the politics of reality, has consistently attempted to put some balance into this very much one sided picture which has been created and continually fed by the media.

The news stories, the shock jocks and the letters to the editor columns cry out for an end to pussy footing around by our judges and magistrates in regards to sentencing. When will the lollipops end and real sentences begin, they wail.

As it happens, the objective facts are quite different to this picture. Territory criminal lawyers all know that in fact over the last five to ten years sentences have increased across the board. Sentences for specific crimes have clearly increased, namely violence, unlawful entries and drug offences.

This is highlighted by the fact that in June 2003 the Northern Territory has its highest prison population ever.

Historically, the Northern Territory has always jailed more of its convicted citizens per head of population than any other state or territory in Australia and we are increasing our strike rate in that regard.

As it happens, the latest figures on crimes committed do not confirm the



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general belief that crime is going through the roof. If anything, it seems to be levelling off or decreasing. Some areas show an increase, while others show a decrease.

As judges across the common law world have said, without any real serious contradiction, the sentences passed (we call it general deterrence) have little effect on the crime rate. The penultimate station on the line of crime (the sentence) has little effect as opposed to the earlier ones, which lead to the crimes commission. There is little weight in the apparently logical proposition; tougher sentences equals less crime. It just isn't that simple but its vulgar tucker for politicians seeking populism in these angst ridden times.

The great peril is that bad laws are thereby created by politicians who are not only willing to appeal to unfounded populism but actually deliberately mislead we members of the public.

In his Boyer lectures in 2000, the Chief Justice of the High Court made the observation that the public has a very cynical and negative opinion of the politicians who lead us. One would deduce that events since then have confirmed, if anything, such a view.

It's not a good look for a society that considers itself to be open and democratic that deliberate and fundamental dishonesty from leaders to the people constitutes the norm. The means to the ends are falsehoods. This means the ends, our area, criminal law reform can be a very flawed product.