

ALRC calls for federal sentencing reform

Laws dealing with the sentencing of federal offenders are internally inconsistent, convoluted and confusing, according to Australian Law Reform Commission (ALRC) President Professor David Weisbrot.

"Federal offences have long been associated with a limited range of crimes - such as drug importation, corporate crime, tax evasion and social security fraud," Prof Weisbrot said.

"But that's changing rapidly with new federal regulations covering criminal activity in such areas as terrorism, transnational crime, cyber crime, computer hacking and international sex offences."

According to Professor Weisbrot the growth in the number and range of federal offences means that it is critical that the sentencing regime is fair principle and operates smoothly.

The ALRC has released a community consultation paper, *Sentencing of Federal Offenders* (Issues Paper 29), which forms the first stage of a major review of the federal sentencing laws set out in the Commonwealth *Crimes Act*.

"There are two major strands to this Inquiry. First, there are the problems with the relevant sections of the *Crimes Act* itself - the judiciary has strongly criticised specific provisions of the Act for their poor drafting, inflexibility, and lack of sufficient scope, and because they appear to lead to undesirable outcomes in practice," he said.

"Second[ly], the Inquiry will consider to what extent federal offenders should be treated equally, no matter where in Australia they are sentenced. Currently, federal offenders are almost always dealt with by state and territory courts and their sentences are administered by state and territory correctional authorities—and so significant disparities can and do arise."

Prof Weisbrot said that one of the difficulties faced by the ALRC in developing sound policy in this area is the lack of adequate statistics.

"In effect, federal prisoners are

swallowed up in the much larger state and territory systems, and it's hard to get a clear picture of their treatment. However, the ALRC's initial research highlights that:

- federal crimes account for approximately ten percent of all criminal activity in Australia;
- there are 664 federal prisoners in jails across Australia (down from 800 in 2002);
- 55 percent of federal prisoners are in NSW, 15 percent in WA, 13 percent in Qld and 10 percent in Victoria; and
- most federal offenders plead guilty - up to 97 percent of offenders charged with summary offences and 86 percent charged with indictable offences.

Brian Openskin is the Commissioner-in-charge of the Sentencing Inquiry.

Mr Openskin said a major issue was whether equality in sentencing of federal offenders should be maintained between federal offenders serving sentences in different states and territories, or between offenders within the same state or territory, regardless of which particular laws they have breached.

"Differences in approaches to various sentencing issues - such as the options for sentencing, probation orders and remissions - mean federal offenders in one state or territory may serve a sentence in a very different way to a person convicted of the identical crime in another jurisdiction," he said.

"Is it fair for example, that a federal offender in NSW or the ACT may have the option of weekend detention, when that's not available as an option for an offender who has committed the same crime in Victoria?"

Mr Openskin said if 'same crime, same time' was an important policy objective in sentencing federal

offenders, one option would be to harmonise state and territory laws to iron out the disparities between jurisdictions.

However, Mr Openskin added that in the field of sentencing, with its political sensitivity in the ongoing 'law and order debate', there would be little prospect of success.

He said the Inquiry would also canvass the range of non-custodial sentencing options for federal offenders.

Mr Openskin noted that "all state prisoners can apply for parole to an established Parole Board, usually chaired by a judge or retired judge, which hears their case and whose decisions are subject to judicial review. However, similar decisions about federal prisoners are made by a Commonwealth bureaucrat solely on the basis of written documentation, without a right of appearance, and with no review process".

The Issues Paper contains questions for comment and discussion. The ALRC has begun an intense round of consultation with interested parties - including the judiciary, legal profession, relevant state and commonwealth departments, prison officials, federal offenders and others.

The ALRC expects to release a Discussion Paper later this year setting out draft proposals for reform, before delivering its final report to the federal Attorney-General in early 2006.

Representatives from the ALRC will be visiting the Northern Territory on 27-29 April 2005.

The Law Society's criminal law sub-committee is considering issues relating to this review and will meet with ALRC representatives when they visit in April.^①