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10-12 February 2006

**Sentencing Conference:
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[www.law.anu.edu.au/nissl/
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Recklessly endangering the Criminal Code? cont...

The Code and its associated law must have permeated the community's consciousness. Over 20 years of so many Territorians being directly subject to its provisions or participating in trials conducted in accordance with it or watching with tremendous interest from the sidelines as alleged offenders and victims hang on the outcomes it governs, have learnt about it. The Code's lexicon is understood or is at least familiar. The media has been awash with stories concerning its operation throughout its history. It is my contention that the criminal law should not be subject to radical change unless it is absolutely necessary. We have a Code in a bid to make the criminal law accessible to the average person in the hope that knowledge of the law might enhance adherence to it. Attainment of that goal is difficult but can only be made a lot more difficult if the rules are being altered in substance and / or being comprehensively re-labelled. The goal of keeping a steady criminal law in the NT seems particularly appropriate given that the former and concurrent criminal law of this land is thousands of years old.

The proposed changes will create a code within a code. I had a client recently in the Supreme Court facing a two - count indictment, the first an aggravated assault, the second an act of sexual intercourse without consent. It proceeded as a plea. I wonder how such an indictment would proceed as a trial

under this new code within a code scenario. The judge would have to go to section 31 and the available defences (if available) in regard to count 1. On count 2 the new world of "physical" and "fault" "elements" would be tackled. I envisage much, unnecessary, difficulty.

Finally, I note that the feedback from those jurisdictions that have gone down this proposed path of reform is not encouraging. A former NT Crown Prosecutor now working as a Crown Prosecutor in the ACT, the one jurisdiction that has thus far employed the Model Code in a mutated fashion as we propose to do here, reports that the criminal law practitioners and the bench are having serious difficulty interpreting and applying laws of the type proposed to be introduced into our Code.

Senior members of the NSW Criminal Bar speaking at the Bali conference, told the group that the NSW courts were having the same problems dealing with these type of provisions in the Commonwealth cases they were dealing with under the Commonwealth Crimes Act.

At the very least our Government should take time to fully examine what is going on in the ACT in this regard before finally committing to these reforms. Surely the chance to take advantage of using the Australian Capital Territorians as our guinea pigs is too good a chance to miss.①

Legal resources

Consumer and Business Affairs

The following information booklets are available from the NT Department of Consumer and Business Affairs:

- * 'A Guide to Renting in the Northern Territory' - for Tenants and Landlords;
- * Business Tenancies - 'A Guide for Professionals';
- * Business Tenancies - 'A Guide for

Landlords';

- * Business Tenancies - 'A Guide for Tenants'; and
- * 'A Guide to the Northern Territory Associations Act 2003'.

Find Law Australia

Find Law Australia is a web resource found at www.findlaw.com.au/.

The website features a range of legal

information for the legal profession, students and the community.

The site has a search facility to find a law firm and links to recent cases, including those from the NT Supreme Court.

Find Law Australia provides links to a diverse range of other Australian legal resources on the internet.①