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**From:** Jim Downing

**Sent:** Monday, July 30, 2001 1:14 PM

**To:** legcon.sen@aph.gov.au

**Subject:** Mandatory Sentencing Enquiry

From Rev. Jim Downing A.M.

To the Senate Committee on Mandatory Sentencing.

Dear Senators,

I am opposed to mandatory sentencing for the following reasons.

- 1 It strikes at the very heart of our legal system by removing any discretion from judges and magistrates to decide cases and their outcome on the basis of thorough examination of the evidence and all the factors that are presented in a case.
- 2 It strikes also at the separation of powers and allows interference by governments in the processes of law and justice.
- 3 The Northern Territory (NT) experience has produced no evidence that mandatory sentencing reduces crime.
- 4 It tends to target the weak and disadvantaged in our society and is therefore discriminatory.
- 5 It goes against the Convention on the Rights of the Child to which Australia is a signatory.
- 6 It goes against recommendations of the Royal Commission into Aboriginal Deaths in custody.
- 7 In the NT it gives to police officers in the field the responsibility of deciding which children should be directed to alternative programs, rather than sentencing, and to running these. This is a role that properly belongs to the judiciary and then to trained youth officers and counsellors.
- 8 It puts some children into custody where they can be taught new ways of anti-social behaviour and skills by more hardened offenders, as I have seen in past experience. There is also a danger that they can be abused in some custodial facilities.

I attach 2 short papers which go into some more detail about this subject.

Paper A is an article which I wrote much earlier when much controversy was generated in the NT by the suicide of a young lad from a remote Aboriginal community sentenced under this law. It highlights the danger of suicide under such a regime.

Paper B contains comments from the uniting Church and the NT Council of Churches and others.

**Attachment A**  
**Mandatory Sentencing. (Media letter.)**

The suicide of a 15 year old Aboriginal lad from a remote community in the Darwin Youth Detention Centre caused outrage and a renewed attack on the Northern Territory Mandatory Sentencing Law.

The Chief Minister and the Attorney General have vigorously defended the law. They have made statements like, <sup>3</sup>The suicide has nothing to do with Mandatory sentencing.<sup>2</sup> <sup>3</sup>It is simply youth suicide. It happens all over in Aboriginal communities.<sup>2</sup> <sup>3</sup>Deaths in custody will always be with us.<sup>2</sup>

Do they ever ask why the suicide rate is so high in Aboriginal society? You cannot say the lad's death has nothing to do with mandatory sentencing. I have worked intensively since 1959 with Aboriginal people, first in Redfern, NSW, and since 1965 in the Northern Territory. Those of us who know the people well will tell you that Aboriginal society has cause to feel helpless and of low self-worth because of the constant spotlight and attacks on their integrity by people with a vested interest, both within government and outside government.

Years ago my children would come home from Alice Springs High School upset by the degrading remarks made by White children in Aboriginal Studies. They said, <sup>3</sup>There are Aboriginal kids in the class, The teacher doesn't know how to stop it. Those kids are ignorant. They are only parroting their parents and others. How do they think those Aboriginal kids feel?<sup>2</sup> A friend told me how her younger sister felt. She came home and said, <sup>3</sup>The White kids said (such and such) in Aboriginal studies today. I'm never going back to that school. I feel real dirty inside.<sup>2</sup> How would you feel in such circumstances?

We know that we are dealing with people who have far worse health, a much shorter life expectancy, much higher unemployment, and much higher youth suicide than the rest of society. They have a much more reason to feel depressed than most of us. We know that depression tends to lead to suicide. We know that incarceration in gaol increases the risk of suicide in depressed people.

Why then in God's name do we have a law that removes all responsibility and discretion from magistrates, and forces them to impose a 28 day gaol sentence on youth who offend a second time against property, mostly for trivial offenses? It impacts most severely on Aboriginal people, especially those from remote communities. We are setting people up for greater depression and greater risk of suicide.

I am ashamed of a government that so devalues people against property. I am ashamed of a government that consistently refuses to sign a national agreement as to how the States respond to recommendations of the Royal Commission on Deaths in Custody. I had my house burgled and trashed by youth to the tune of several thousand dollars; but I am totally opposed to such an inhuman law.

#### Attachment B

"We are opposed to the mandatory imprisonment of children on moral and democratic grounds and urge all Senators to support the [Human Rights (Mandatory Sentencing of Juvenile Offenders)] Bill. The sentencing regime in the Northern Territory has led to the imprisonment of juveniles for often very trivial crimes. It has also resulted in the imprisonment of large numbers of homeless children, Aboriginal children and mentally ill and intellectually disabled children."

- Rev Gale Hall, Northern Territory Council of Churches and Secretary of the Northern Synod, Uniting Church in Australia.

Both the Northern Territory and Western Australia have introduced legislation in 1997 and 1996, respectively, that requires mandatory sentencing of children to prison for minor offences. In the Northern Territory, if a child is found guilty of more than one property offence he or she receives mandatory imprisonment. One of the most serious aspects of these provisions is that they apply regardless of how minor the second property offence may be. The Australian Bureau of Statistics noted in late 1997 that the NT prisoner population had increased by 42% since mandatory detention was introduced.

In Western Australia, legislation provides that when convicted for a third time, children must be sentenced to a minimum of 12 months' imprisonment or detention. The 'three strikes and you're in' legislation has attracted adverse comment from the President of the Western Australian Children's Court.

These laws have been introduced despite the finding of the Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission that there has been no significant increase in juvenile crime rates in the last 15 years.

It is estimated that more than 120 children have been imprisoned in WA and the NT under mandatory sentencing laws since 1996. The laws unfairly target Aboriginal children, who are disproportionately more likely to be convicted of property crimes. Examples of those

imprisoned include:

- \* two 17 year old girls with no previous criminal convictions being sentenced to 14 days in prison for theft of clothes from other girls who were staying in the same room;
- \* a 15 year old girl detained for 28 days for being a passenger in a stolen vehicle; and
- \* a 15 year old Aboriginal boy placed in mandatory detention for breaking a window after he heard about the suicide of a close friend. While in detention he attempted suicide. He had been referred to the Department of Family, Youth and Children's Services when he was 12 due to lack of parental support. Since age 14 he has largely looked after himself.

In the words of the parliamentary Joint Standing Committee on Treaties, "Mandatory sentencing does not take into account the child's age, the facts of the current offence, the individual circumstances of the person, consideration of an appropriate period of time or the application of judicial discretion. Mandatory detention restricts the court's capacity to ensure that the punishment is proportional to the seriousness of the offence and in relation to the rehabilitative options."

Legislative Action to Uphold Human Rights. In response to State legislation for mandatory sentencing, in late August 1999 the "Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999" was introduced into the Federal Parliament. The Bill, if passed, would prevent the mandatory sentencing of children (anyone below 18) anywhere in Australia. The Bill simply states:

"A law of the Commonwealth, or of a State or of a Territory must not require a court to sentence a person to imprisonment or detention for an offence committed as a child."

The Bill has the support of the Northern Territory Council of Churches, the Law Council of Australia, the National Children's and Youth Law Centre, Defence of Children International, Human Rights Commissioner Chris Sidoti, the Greens, the Australian Democrats and the ALP.

The Bill sets out to implement Australia's obligations to children under Articles 37(b) and 40(4) of the Convention on the Rights of the Child, to which Australia is a State Party. Article 37(b) states:

"No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time." while Article 40(4) states:

"A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programs and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

Recommendation 92 of the Royal Commission into Aboriginal Deaths in Custody Report of 1991 called on States and Territories to ensure that imprisonment was a sanction of "last resort".