



MINISTER FOR HOME AFFAIRS
THE HON BOB DEBUS MP

SENTENCING ISSUES AND THE LAUNCH OF THE COMMONWEALTH
SENTENCING DATABASE

The Hon BOB DEBUS MP, Minister for Home Affairs (Cth)

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National Judicial College of Australia/ ANU College of Law*

[Acknowledgements]

- Firstly, may I acknowledge the traditional owners of the land we meet on – the Ngunnawal people – and pay my respects to their elders, both past and present.
- In 1826 a thousand congregated to protest the incursion of local graziers. They dispersed peacefully. Of course if they had protested during APEC they'd have been arrested.

[Introduction]

1. It is a great pleasure to join you this morning – and to see so many esteemed colleagues with whom I have had close and cordial relations in my former role as NSW State Attorney General: and its an honour now to be addressing you as Minister for Home Affairs.

2. When it was first announced that I had been given this portfolio, baffled family members were under the impression that it was something to do with ordering furniture for the public service and overseeing the purchase of mobile phones and computers for ministerial offices. Those familiar with my computer literacy and my capacity to destroy mobile phones were rightly alarmed.
3. I was nevertheless able to inform them in a rather stately manner that the Ministry of Home Affairs has an old and illustrious history, one of the first 7 portfolios, created in 1901. An early Minister for Home Affairs was the legendary eccentric King O'Malley, famous first for tormenting and then for championing Walter Burley Griffin.
4. He was also famous for the prohibition of alcohol in the ACT from 1910 until 1928 and in this regard I hope to have some exciting announcements later today. Some of you who went to the dinner last night may be wishing that the ACT was still dry.
5. It's challenging to be in a portfolio with a vital role in border protection, the oversight of our customs and the

Australian Federal Police and in the administration of the Attorney-Generals Department, not least in the fields of criminal law and crime prevention. It is a role in which I can draw on my past experience in dealing with issues of justice – and now I hope to help bring about positive change at a national level.

6. It's also exciting to be part of a new Government that deliberately sets out to uphold an idea of the rule of law. The Prime Minister speaks of the restoration of Westminster system, and we mean it.
7. Much has been said – by many – about the rule of law. Call us old fashioned but we mean it.

[Law Supreme]

8. It is essential and self evident that the rule of law is applied in a way that meets the needs of the 21st century.
9. Dicey's enunciation of the rule of law had three principles that allow it.
10. The first was that the rule of law meant that regular law must be supreme over arbitrary and discretionary

power.

Everyone is equal before the law.

11. That principle still resonates today.

That is why any proposals for enhanced law enforcement powers will only be put before Parliament by this government where there are compelling arguments for them, and strong accountabilities and safeguards.

12. These safeguards will include, where appropriate, external oversight by the judiciary or the Ombudsman. It is a trap to assuming that ‘tougher’ laws are the only dimension to effective criminal justice. Fair laws that protect and preserve our security while respecting fundamental liberties are to the benefit of law enforcement agencies as well as the health of our democracy.

[All are Subject to Ordinary Law]

13. Dicey’s second principle of the rule of law was that all classes of persons must be equally subject to the ordinary law as administered by the ordinary courts. No one can be punished unless they are in clear breach of the law.

14. As Minister for Home Affairs, I will work to ensure that all Australians – as well as those who come within the ambit of the Australian justice system – are subject to the ordinary law administered by the ordinary courts.

[Common Law Basis]

15. Dicey's third principle of the rule of law is that the rights it protects are the products of the traditions and customs of the common law, not a written constitutional document.

16. There are important parts of our constitutional framework in Australia that are based on long established precedent and practice rather than written law – for example our Cabinet system and plenty of the traditions surrounding the relationship between the judiciary and the executive government.

17. Like Dicey, I think it is a blessing that we have a society in which we can have values that endure without us needing to codify them.

[A Broader Reform Agenda]

18. It's fair to say that this set of ideas has withstood the test of time. They help make our society successful.
19. I'd now like to share with you some of the key reforms I will be pursuing – and I have every intention they too will withstand the test of time.
20. For too long, important areas of federal criminal justice have been left unattended.
21. The new Government will change that.

[Victims Policy]

22. A key area is the policy concerning people who have been the victims of crime
23. In recent decades, Commonwealth criminal law has increasingly extended to areas that involve human victims of some very serious crimes.
24. This includes child sex tourism, sexual servitude and people trafficking offences.
25. Yet the Commonwealth has lacked a proper framework for taking into account the needs and perspectives of people who become victims.

26. Under our adversarial system of criminal law, it has been too easy for victims of crime to be marginalised and revictimised by the court process.
27. In my former life I have seen the benefits that can be gained by informing and including victims of crime. And I have in the past enjoyed close and cordial relations with some of the peak victims advocacy groups, compassionate and thoughtful advocates who have moved well beyond the black and white vigilantism seen in some overseas jurisdictions.
28. During this year, I will bring forward a significant initiative with a central focus on providing much needed assistance to victims of federal offences.
29. It will include:
- provision for victim impact statements in federal criminal proceedings
 - protections for vulnerable witnesses giving testimony, and
 - a federal charter of victims rights.
30. I will also work with my State and Territory colleagues to ensure that practice benchmarks for victims policy

and programs are identified and implemented across Australia. This government will work assiduously to promote cooperative federal arrangements in this area.

[Sentencing and Offender Management]

31. Another area that has been left unattended for too long is sentencing and offender management.
32. I know this is an area of policy and practice that is of interest to many of you.
33. Drawing on the Australian Law Reform Commission's 2006 report *Same Crime, Same Time*, I am keen to see federal sentencing law made clearer and easier to apply.
The existing law has been criticised for being unnecessarily complex and confusing.
34. I am keen to see a more coherent and comprehensive set of principles applied in sentencing federal offenders.
35. I'm also keen to explore whether improvements might be made to mechanisms for imposing sentences and managing released federal offenders.

36. Many officers from agencies the which I have responsibility, as well as the Attorney Generals Department generally, have gathered in force at this conference, no doubt picking up many useful ideas that can be factored into the development of these reforms.
37. I look forward to many of you contributing to both the development and implementation of federal criminal justice reforms.

[Consultation]

38. I want to assure you that the new Government will be adopting an inclusive and consultative approach to developing reforms to federal criminal justice.
39. For too long, many individuals and organisations with great insight, have been left out in the cold.
40. I want to ensure that the acumen of judges, lawyers, academics and interested members of the broader community are drawn into the development of new proposals.
41. As well as consulting widely on particular initiatives, we will also be looking to have a major forum in the

second half of this year, to generate new ideas and informed debate about criminal justice reform.

42. I hope that many of you will participate and contribute to that forum.
43. I will also work with my State and Territory counterparts – not against them – to develop agreed priorities for coordinated criminal justice reform and to implement those priorities.

[The Sentencing Database]

44. One practical important addition to the system is the new Commonwealth Sentencing Database. You will allow me a brief moment of state chauvinism when I say that I believe that the NSW judicial commission database is of world class standard and has been invaluable in assisting judicial officers.
45. The National database builds on that experience and is designed to provide judicial officers with reliable, accessible and up-to-date information on penalties imposed for breaches of Commonwealth laws.

46. This will promote consistency of sentencing across the nation – which is fundamental to maintaining a just and equitable criminal justice system.
47. Inconsistency has the potential to erode public confidence.
48. People expect that a court dealing with a Commonwealth offence in one State or Territory will be consistent in approach with courts in other States and Territories.
The same offence should get a similar sentence – whether committed in Broome or Bundaberg.
49. And it's not just the general public who have this view. It is shared by judicial officers.
50. The National Judicial College of Australia has reported that officers who have participated in its professional development program have commented adversely about this lack of consistency.
51. The *Same Crime, Same Time* report called for an information system to ensure that penalties imposed for Commonwealth offences be proportionate and that sentences be consistent.
52. In response – the new database has been developed.

53. It is online and includes

- sentencing statistics
- guidance on the principles and practice followed by the Courts in sentencing for Commonwealth offences, and
- reference material such as legislation, case law and articles.

54. The statistics component will be particularly useful in encouraging consistency.

It provides users with access to information in the form of graphs and tables on the range and frequency of penalties imposed by courts.

55. Through a search function, it also enables users to obtain comparative sentencing information.

56. Likewise, the principles and practice component will also be useful.

It contains commentary on sentencing principles, including key passages from judgements that distil the essence of leading cases.

It's also linked to relevant court reports and legislation.

[Launch of the Database]

57. I must say – this is impressive work.

58. And congratulations must go to the organisations that have jointly developed the database:

- The National Judicial College of Australia
- The Judicial Commission of New South Wales
- The Office of the Commonwealth Director of Public Prosecutions, and
- The Australian National University College of Law.

59. It's good to see that the Chair of the National Judicial College – Chief Justice Underwood of Tasmania – and the Chair of the Judicial Commission – Chief Justice Spigelman of NSW – could be here today.

I take this opportunity to congratulate you on the success of this project.

60. Many people have contributed to developing the database and I am pleased to say that they are all acknowledged in a flyer that has been distributed at this conference.

61. A project of this scope and significance requires the skills and expertise of many – and I am sure that the judiciary will make good use of it

62. It is now my great pleasure to officially launch the Commonwealth Sentencing Database.
- May it promote consistency in sentencing and public confidence in the criminal justice system.

[Conclusion]

63. As I have said – we are stepping into a new era of criminal justice.
- And each of us plays a part in making that happen.
64. I certainly look forward to hearing about the outcomes of this conference.
- A forum such as this is integral to bringing about positive change.
65. I don't want to provoke an early morning rush to the bar, but I can indicate that I will look kindly upon the development of any proposals to reinstitute prohibition in keeping with the policies of my illustrious predecessor, King O'Malley. Canberra has for too long suffered in comparison with the big gangland crime capitals of the country. Prohibition, with the attendant promotion of gangsters in spats with violin cases in Fishwyck and speakeasies in Civic, would finally

enable Canberra to throw off the derisory claims that it is dull and step up to the great cities of the world.

66. Good luck and good drinking. While you can.

ENDS (approx 1,800 words)