INTRODUCTION

The papers appearing in this special issue of *Current Issues in Criminal Justice* were prepared for the purpose of a Seminar conducted during 1991 under the auspices of the Institute of Criminology and the Judicial Commission of New South Wales. Together they constitute an interesting and valuable commentary upon what ought to be regarded as the early days of the operation of the *Sentencing Act* 1989.

The various aspects of the legislation, and its practical effects, that have been addressed in the papers are all matters worthy of close attention. There is, however, one subject which, perhaps because it was so obvious, has not been dealt with at any length in the papers. It would be inappropriate that it should be ignored altogether. I refer to the principal purpose, and central objective, of the *Sentencing Act* 1989, which has commonly been described as "truth in sentencing". No review of the operation of the legislation could be complete without reference to that subject.

The history of the problem with which the legislation was primarily intended to deal is addressed in the judgment in the Court of Criminal Appeal in *R v Maclay*.[1] The difference between appearance and reality in sentencing practice, which was regarded by many as undermining public confidence in the integrity of the judicial process, was the main problem with which the legislation was intended to deal. Over a period of years, the courts had drawn attention to the differences between the statutory powers which judicial officers were called upon to exercise when making sentencing orders, and the administrative consequences that flowed from the way in which the Executive Government gave effect to those orders. For example, under the previous legislation, the statute described a non-parole period as being the period which the sentencing judge was to specify as the period before the expiration of which the offender should not be released on parole. Yet the sentencing judge well knew that, in the ordinary case, the offender would almost certainly be released before the expiration of that period. The period was, therefore, referred to by Street C J[2] as "not a true period". The main object of the *Sentencing Act* 1989 was the restoration of "truth", in the form of a correspondence between the appearance and statutory basis of the judicial order being made and the reality of the sentence being served. Views may differ as to the importance of that statutory objective, and as to the appropriateness of the means employed to achieve it. However, no evaluation of the legislation can be complete without a recognition of that central feature of the legislative scheme.

One of the most important decisions of the Court of Criminal Appeal in relation to the *Sentencing Act* 1989, and one whose effect is only now beginning to become apparent, and is probably not reflected in the statistics mentioned in some of the papers, is *R v*

1 [1990] NSWLR 112.

2 In *R v O'Brien* [1984] 2 NSWLR 449 at 454.

Moffitt.[3] The flexibility of the judicial discretion, concerning the relationship between minimum terms and total sentences, acknowledged in that case will have an important bearing upon the practical operation of this new legislation.

It is difficult to know the extent to which some of the statistics referred to in the papers are an accurate guide to future operation of the legislation. It is also difficult to know exactly what conclusions can be drawn from some of them. For example, if it were completely correct to say that judges in the higher courts have not reacted to the abolition of remissions by shortening minimum custodial periods, then one would have expected that times spent in custody would have increased by the extent of the abolished remissions. However, whilst times spent in custody appear to have increased, the extent of the increase seems to be considerably less than that. During the course of discussion at the Seminar, a number of speakers expressed the view that it is too early to draw any firm conclusion as to the effect of the legislation upon times spent in custody, and I am inclined to agree with that.

One important subject, mentioned in passing in some of the papers, which is worthy of detailed attention, is the relationship between sentences imposed under the State law and sentences imposed under Commonwealth legislation. It is by no means uncommon for offenders to be sentenced under both laws. Drug offenders, for example, are frequently convicted of both Commonwealth and State crimes. The disparity between the provisions of the State and Commonwealth legislation, especially in relation to the approach to be taken to the subject of remissions, is a matter of serious concern.

The authors of the papers in this issue are to be congratulated upon the work that they have done. Their papers are a valuable contribution to public debate upon this important subject. There is, however, much further work to be done, and it is to be hoped that the operation of the *Sentencing Act* 1989 will be kept under regular review.

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3 [1990] 20 NSWLR 114.

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