

Media Release

Chiefs of Staff, News Directors

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Reforms needed for laws surrounding dangerous criminals

Reforms are needed in Tasmania's legislation where offenders are declared as dangerous criminals by the courts, new research has found.

The Tasmania Law Reform Institute today released a research paper, *A Comparative Review of National Legislation for the Indefinite Detention of 'Dangerous Criminals'*.

A key finding of the research is that flaws in the current legislation are causing it to be underutilised.

"Courts in Tasmania have long had the power to detain prisoners indefinitely, but the Tasmanian dangerous prisoner regime has never been reviewed despite it receiving criticism from various quarters, including the Supreme Court bench," paper author Taya Ketelaar-Jones said.

The research paper looks at the differences between Tasmanian indefinite detention provisions, and those of other Australian jurisdictions.

The study considers issues associated with making a dangerous criminal declaration, including the test and standard of proof, and whether separate provisions should be introduced specifically for sex offenders.

It also examines the discharge of a dangerous criminal declaration.

"The paper was prepared following a request from Tasmanian Barrister, Mr Greg Barns to review the Tasmanian legislation," Ms Ketelaar-Jones said.

"Additionally, the Government had indicated that it intends to review dangerous criminal legislation and was interested in receiving a research paper from the Institute for consideration in undertaking that work."

The study considers issues associated with making a dangerous criminal declaration, including the test and standard of proof, and whether separate provisions should be introduced specifically for sex offenders.

It also examines the discharge of a dangerous criminal declaration. Currently the court cannot impose conditions upon discharge, and there are no provisions for periodic review.

The paper's key findings and recommendations include:

- Flaws in the current Tasmanian legislation are, paradoxically, leading to a more lenient implementation of the system because judges are reluctant to make declarations, knowing they will remain in place indefinitely. Therefore very few applications are being made to have offenders declared as dangerous criminals;
- There should be a comprehensive list of factors to be considered by the court when making a decision about whether to make a dangerous criminal declaration, and whether to discharge a declaration;
- The court should be able to impose both pre- and post-release conditions on discharge of dangerous criminal declarations, such as requiring offenders to undergo treatment programs, or participate in re-integration programs to equip them for re-entry into the community;
- There should be a system of periodic review of dangerous criminal declarations to ensure that the appropriateness of the ongoing detention of offenders is reviewed at reasonable intervals;
- To conform with human rights and criminal justice principles, the prosecution should bear the onus of proof on applications for a dangerous criminal declaration, and for discharge, as well as for a periodic review of a dangerous criminal declaration;
- No separate provisions for sex offenders should be enacted.

The paper was prepared by Ms Taya Ketelaar-Jones under the supervision of Dr Helen Cockburn.

The paper can be found at <http://www.utas.edu.au/law-reform>

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