



**PRIME MINISTER**

FOR MEDIA

29 February 1984

The Prime Minister today sent the following letter to the Chief Minister of the Northern Territory.



PRIME MINISTER

CANBERRA

The Hon. Paul Everingham, MLA  
Chief Minister of the Northern Territory  
PO Box 3146  
DARWIN NT 5794

My dear Chief Minister

I refer to your letter of 15 December 1983 which was a response to my letter of 17 November 1983 expressing concern about aspects of the Northern Territory Criminal Code.

Our exchange of correspondence has been considered by the Commonwealth Government. I note that your Government intends to keep a careful watch on operation of the Code and that it will consider amendments after twelve months of its coming into effect. With regard to a number of the matters raised in my letter I look forward to continuing discussions and consideration of the issues in your subsequent review.

There are, however, four provisions which are of such concern as, in our view, to warrant immediate action. The amendments which we most strongly propose are:

- (i) An amendment to section 7 to preserve the traditional onus of proof in relation to criminal intent by requiring the prosecution to prove that intent even though the accused was intoxicated;
- (ii) Amendments to section 383 to replace the term "fine" by a more appropriate term and to delete the sub-section which allows imprisonment or release on bail after acquittal;
- (iii) An amendment to section 51 to permit an organisation to show cause before a judicial authority as to why it should not be proscribed or to permit judicial review of any proscription; and
- (iv) An amendment to section 360 conferring a discretion on the Courts to permit the making of an unsworn dock statement in cases where, due to the cultural background of the accused resulting in communications difficulties which cannot be resolved by the use of interpreters, it would not be in the interests of justice to expose him to cross examination.

Taking the provisions concerning intoxication ((1) and (1)) above) we have noted your arguments that the very high level of alcohol related crime in the Territory needs to be attacked strongly. Nevertheless the provisions of the Code represent very great departures from accepted criminal law standards. They raise questions in relation to Australia's international obligations and may operate particularly harshly against Aboriginal people. The need for the radical departure represented by section 7 would seem to be obviated by inclusion of section 154 of the Code. While we understand the basic purpose behind section 383, the notions of a fine and possible imprisonment after acquittal are alien to our legal heritage and may be seen as inconsistent with our international obligations.

The matter of allowing judicial examination of decisions to proscribe organisations would seem to be a basic issue of civil and political rights. Grave consequences may flow to individuals resulting from operation of the provision in the Code and the provisions of the Commonwealth Crimes Act 1914 show that it is not unprecedented for these matters to be subject to judicial consideration.

Our proposed amendment in regard to unsworn dock statements would seem to be a more appropriate approach to this problem. It will better allow people of traditional Aboriginal cultural background to put their case, where it is judged to be necessary by the Court, while avoiding some of the problems with unsworn dock statements you have mentioned in your letter.

Such is the concern held by the Commonwealth Government about these provisions on the grounds of their departure from legal standards, implications for our international obligations and likely harsh effects on Aboriginals that we are considering advising the Governor-General to recommend the above amendments to the Administrator pursuant to sub-section 9(2) of the Northern Territory (Self-Government) Act 1978.

In view of this I should be grateful to receive a response to this letter within seven days.

Yours sincerely

(R.J.L. Hawke)