

Contemporary Correctional Law and Practice in Queensland

Presentation to Conference: "Disabilities and Mental Illness Aren't Crimes Conference"

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This hotel is sited on North Quay overlooking the Brisbane River. Just up the rise and a few hundred yards to the left is Roma Street. Where Roma Street now runs one day in the 1860's, clans within the local Turrabul People on whose ground this hotel stands, engaged in a stouch of some kind which resulted in one warrior being seriously wounded, falling with an open stomach wound. Andrew Petrie, a white boy at the time, who mixed closely with the Turrabul People, had learnt their language and was protected by them, had his daughter record this event and many others in his "Reminiscences of Early Queensland". Once the warrior was wounded the stouch ceased as was the orderly tribal custom of the time. He remained where he fell, his opponents withdrew and allowed his clansman to build a fire next to where he lay, place coals, charcoal on his wounds and tend him for a number of days while he lay there. The man, sufficiently healed, eventually stood and walked away.

Whatever injustice or grievance lay behind this incident is not revealed. We can be assured that it represented one stitch in a fabric of traditional law and order stretching back thousands of years that was rapidly unraveling as the colonial invasion undermined the traditional owners' law, customs and practices throughout the continent. Thankfully their descendants remain, along with the many dispersed tribal groups and clans that now make Brisbane their home; and it is they to whom our respect is offered and thanks given as we meet on their ground.

At the beginning of the same decade my Irish-born grandfather as an infant was carried from a sailing ship into the town of Belfast (now Port Fairie) in the Western District of Victoria. His Parents had survived the Great Famine but along with many survivors, were being turned off the land, their tenancies abolished under new farming practices in Counties Limerick, Tipperarey and Clare; their political rights and cultural and religious traditions having been eroded and extinguished in the preceding centuries under a colonial invasions and usurpation. These evolving techniques provided much of the

template for the colonial dealings with indigenous Australians along with the those others of the once named British Empire. We are all heir to the enduring effects of the trauma, institutionalization and rehabilitation of peoples recovering from the effects of such terrorization in ourselves and others. Reconciliation demands that we learn to resensitize ourselves from the deadening effects upon us, both Aboriginal /Islander Australians and those of us more recently arrived and derived. Four generations later, I am in my seventh year working for the Aboriginal and Torres Strait Islander Legal Service (Qld Sth) Ltd., doing as much as I can, (in what amounts to very little), assisting indigenous people enmeshed in the criminal justice system. They continue with courage to find, take hold of and rework the threads of their cultural heritage and self determination into the future, despite a new wave of assimilationist government policies and practices.

Bill Carter former Judge of the Queensland Supreme Court and former head of the Queensland Parole Board on opening the conference referred to assertions in Sec 3 of the Corrective Services Bill currently at the Second Reading phase in the Queensland Parliament : that the purpose of the Bill included

- ensuring that the Special Needs of various groups be addressed
- that basic human entitlements (other than those precluded by being incarcerated per se) be maintained

He questioned that without further reference to mental illness or intellectual disability, nor definition of special needs groups within the Bill, how this Bill if enacted could guarantee adherence to these goals.

He underlined this further, by stating that the Correctional Services Departmental advisors and the government were overseeing the creation of a “System in Self-Denial”: retreating from the steps of previous administrations towards attempts to facilitate rehabilitation to enhance community safety. New measures include:

- reducing classifications and the perception if not the reality of prisoners’ progression towards the hope and opportunity of graduated release from prison
- the abolition of the WORC Release Program
- reducing prisoner’s program access
- creating more difficulties for cohorts of prisoners to access parole

The government chooses to remove from the stated intention of the Bill, respecting the cultural needs of Aboriginal and Torres Strait Islander people, preferring to incorporate

the unique needs of this disproportionately represented group in Queensland Prisons, under the general multicultural heading. This does reflect their practice in abolishing the Aboriginal and Torres Strait Islander Policy Unit in early 2005 leaving specific responses to indigenous specific needs in the hands of generalist managers.

The new bill in effect, does what the Minister proclaims in her second reading speech: *makes matters tougher for prisoners*. But to what end we might ask? The minister's tough rhetoric seems to reflect an implicit faith in the populist "boot camp" attitude that projects the fantasy that tough sentencing, punitive and repressive prisons with minimal prisoner rights leads to the reformation of criminals into well behaved and law abiding citizens. This is populist cant, unsupported by any research into rehabilitation but it is the view consistently presented in the popular press and the politicians on both sides of politics today. For all the rhetoric about making the community safer, this regime is increasing community risk by removing further practical measures that might ensure offenders effective rehabilitation and any a sense of fairness and hope towards preparation and reintegration into the community following incarceration.

Indigenous prisoners, women prisoners, prisoners suffering from mental illness that most frequently flows from past abuses and neglect, and the Mentally Disabled, separately or in combination, form the cohort of the most disadvantaged Queensland citizens. Prison practices involving continued oppressions, solitary confinements, classifications and transfers without redress to external review, describe a formula for creating despair, reinforcing trauma and its effects, have everything to do with control, coercion and punishment. The measures and management of prisoners under the practices of the government and Department of Corrective Services today and has too little to do with healing, rehabilitation and safe return and restoration of human beings into the community and too much to do with confinement, isolation, distance from the community, removing the rights and capacity of offenders to make choices and the building and planning for more secure prisons for more of its citizens.

Some legal aspects that reinforce underlie and reinforce this trend in the Corrective Services Bill 2006 and associated legislation are :

- The abolition of access by prisoners or their agents to external review by the Supreme Court of decisions under the Judicial Review Act 1992 in matters of classification, transfers and internal breaches of discipline.

- The removal of prisoner access under Freedom of Information Act amendments in May 2005, to Risk Assessments and the documents relied upon in making these assessments in the case of prisoners convicted of serious offences. In effect, this removes from prisoners feedback necessary for their exercise of any actions of self-advocacy and indeed rehabilitation planning. It leaves correctional managers and delegates in the position where their decisions will remain untested, based on evidence that will remain unable to be tested for accuracy as to fact, fairness, natural justice, in accord with reason or indeed law.
- The department employs and relies increasingly upon new psychology graduates to administer actuarial tests (i.e., tests based upon historical factors of disadvantage relabeled criminogenic factors) rather than measures of contemporary rehabilitative gains, to establish questionable risk assessments which determine the classification of prisoners. These assessments guide delegates at all levels in the exercise of their discretion, whether they be sentence management officers in the Centres, or Community Corrections (soon to revert to the name of Parole) Boards. Such tests can only predict with a 50% probability that certain groups of prisoners might recommit offences. The designers of the tests can equally assure us that 50% of the persons in groups regarded as having a high risk of re-offending, will **not** re-offend. The scientists' problem is, they can't tell who will and who won't re-offend using these tests. Yet it does suit Prison Management and the government to rely on such assessments to outweigh any considerations as to progress towards rehabilitation made by offenders.
- Whereas prisoners will retain the avenue of Judicial Review for decisions of Parole Boards, they will still not have access under Freedom of Information to the risk assessments that inform such decisions. This leaves parolees, for example, vulnerable to accusations of breaching conditions through malicious reports to Police, Community Corrections and Parole Boards. A recent case resulted in a parolee having to face a show cause as to why his Order should not be cancelled, when the parolee himself had informed both the community corrections and police of the malicious reports and their suspected source. After he had been told by the Police that their investigations confirmed the malicious nature and groundlessness of the accusations, the Community Corrections Board continued to insist he attend a show cause meeting. The Board eventually

confirmed the Parole Order but imposed further conditions upon the Parolee. These conditions reflected in character the nature of the complaints. Neither the parolee nor his representative could gain any access to the documents or reports relied upon by the Board to query the increased level of “risk” it implied existed by imposing further conditions on the parolee. Meanwhile, despite the Police and Corrective Services investigations, the malicious rumormonger, un-named but known to Police and type-cast by them as a serial complainant, we not be the subject of any action by Police or Corrections, nor will the details of their investigations be released to the Parolee.

- The Chief Inspector appoints and oversees Official Visitors and reports only to the Chief Executive. The Minister asserts that this constitutes one of the main checks and balances watching over the probity of decision-makers. Since when has a Department’s review of its own decisions constituted a check or a balance?
- Official Visitors may not report/investigate any matters that are under investigation by another authority
- The Ombudsman may report the results of his investigations to the Director General of Corrections but these recommendations have no force beyond that of a recommendation. He may further report to Parliament, but since the current Act Corrections 2000, has not submitted one issue to parliament from prisons investigations.
- Documents, matters under investigation by the C M C are not retrievable under Freedom of Information. If prisoners choose this form of redress, (complaint to the CMC) they may inadvertently remove further from their access, documents held by Sentence Management and the Department of Corrective Services pertaining to the issues in dispute.
- Arguments used in parliament to justify these amendments to the Freedom of Information Act appeared to be concerned to protect the department assessors from so-called “recriminations”. What hope has a mentally ill indigenous prisoner suffering mental disability of mounting any form of recrimination against protected officials? We seek only rational external review of decisions and their processes in the name of transparency, fairness and justice being done in managing the most vulnerable of our citizens. It would appear that Departmental Officers have successfully obtained the same immunity from scrutiny that Ministers currently (and notoriously) obtain by burying documents under Cabinet privilege.

- These restrictions are extended in the Corrective Services Bill preventing the release of information from inside prisons other than under authorization by the Chief Executive. Such authorization is rigorously and repeatedly refused, even to recognized experts seeking to legitimately research correctional practices. In seeming breach of such high standards of protection however, much information about prisoners' criminal histories and release processes are regularly released, without apparent concern at the impact of such information on the resettlement prospects of conditionally released prisoners by such overwhelming media attention. Nor is the Department's media unit (or otherwise quoted "unnamed Departmental Sources" or "unnamed Correctional Officers" hesitant in releasing propaganda reflecting and reinforcing the law and order agenda favored and devoured by the populist press, which in fact works against its own Department's rehabilitative statutory agenda. Whereas there is a recent example of a conviction of a journalist for attempting to interview a prisoner under false pretenses, there are no similar examples of attempts to pursue officers for release of information as described above that have come to the presenter's notice.

The current Corrective Services Bill, its complimentary measures within the on going management practices and arrangements under the Business Model Review (DCS 2004) and the further in roads into Freedom of Information Access and rights of external review, represent a return to the patronizing mentality of previous eras where lack of effective opposition and the propaganda of fear and stereotyping of opposition resulted in increasing administrative arrogance and repression. This gives serious cause for alarm, not only for the Mentally Disabled and Ill Prisoner, the Female Prisoner and the Indigenous Prisoner, but for all prisoners in Queensland, their families and the community at large who seeks safety, restorative justice and rehabilitation of its offending citizens above the short term benefits of repression behind closed doors.

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