



KEVIN COCKS PRESENTATION

Lock 'Them' Up Disability & Mental Health Is Not A Crime

Conference

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Over the past two decades there has been growing concern about the increasing number of people with disabilities who become involved in criminal justice system. It is clearly emerging as one of the priority issues confronting the disability sector, statutory authorities, and relevant government agencies in Australia and the Western world.

This conference offers a space for concerned citizens including, people with disability, family members, advocates, prisoner support groups, social workers, psychologist, psychiatrists, lawyers, magistrates/judges to address the neglected area of people with disability in the criminal justice system. It is clearly evident that the criminal justice system impacts on the lives of people with disability in many ways, often heightening their vulnerability. Failure by the criminal justice system to appreciate people with disability issues and their support needs often results in very detrimental outcomes.

In the time that I have here today I will attempt to assist us to understand the philosophical underpinnings and historical factors which have influenced current policies, programs and decision-making frameworks of those with authority over people with disability. I will draw upon 10 case studies of people with cognitive impairment who have engaged with the criminal justice system in Qld. These case studies highlight the pathways

to the criminal justice system, for people with disability and demonstrate that these experiences reflect trends nationally and internationally.

To understand the present and future we need to know our history, in the context of the State and disability the story is not one that we can be proud of in terms of a Fair Go and Human Rights.

In the early 1800's people with Intellectual disability and mental illness/psychiatric disability were locked in goals often hulls of ships. I assume that if people with cognitive impairments were abandoned and their situation was brought to the attention of authorities then incarceration to jails was an easy and ready made solution.

Jails were the first institutions that provided a means for the authorities to manage people with a disability under the guise of 'care and control'. Ironically today it is guesstimated that at least 12/15 % of the prison population are people with an intellectual disability about the same rate of incarceration per capita as indigenous people about. It is also estimated that 7/8% of prison population have mental illness. These figures are conservative, according to prison support groups and advocates. It appears that there is no reliable data collected by prison authorities, advocates and prison visitors suggest 50% of prison population have an intellectual disability, a mental illness or both.

By the 1850's the trend internationally witnessed the rise of policies that asserted that people with a disability were best served by living in institutions, such as mental asylums, state schools, and homes for the feeble-minded. The systems that evolved from this policy position ensured that people with a disability had little control over their lives... and were totally dependant upon professionals whose job was to cure or fix people with disability. Ironically the rationale for this policy position was based on educational institutions, for people who were deaf and

blind. These educational institutions evolved in the 1600's and 1700's and were seen as a community investment in equipping people with a disability who were Deaf or Blind to have skills to function and participate in society.

This era witnessed the emergence of the medicalisation or medical ownership of people with a disability. Medical advances in this period promised to eliminate much disability, and though this promise was overstated, as time revealed people with disabilities did indeed become rarer on our streets; many were warehoused in institutions or shunted to special schools, or kept out of sight at home. The physical environment was inaccessible. The role models for people growing up with disabilities were few.

Doctors or Para-medical practitioners often passed their preconceptions about disability to their patients, creating new mythologies and stereotyping of people with a disability. These myths and stereotypes became the basis for future decision-making frameworks for the development of social and economic policy and programs for people with a disability.

Decision-making frameworks are significantly influenced by our personal values, belief systems and commonly-held assumptions about class, culture, race, gender, sexuality and, in particular, disability. Disability activists have identified two dominant paradigms or models which have heavily influenced the mythologies and stereotypes about people with disability. Essentially, people with disability are often portrayed as mad, bad and/or sad.

The first model is the Moral Model, the oldest paradigm for understanding disability. Based in religious mythology, it regarded disability as a result of sin and shame and led to the concealment and exclusion of individuals with disabilities. The moral model has little

currency today, although it must be noted that this model has had positive outcomes in laying down the principles that have led to human rights and social justice ethos.

The second model is the Medical Model, this model emerged as science took over from religion in the explanation of natural phenomena. Under this model, disabilities are seen as “diseases” or “illnesses” to be cured by doctors. When the cure is not forthcoming, issues relating to the disability are deemed to reside within the individual and to place no obligation on society in general. Support services tend to be limited and inadequate, and the lives of individuals with disabilities are often impoverished and mostly determined by “professionals”.

The moral and medical models are characterised by:

'Professionals' who had authority over the lives of people with a disability, particularly in social and economic policy arenas

Inadequate and limited support services in comparison to general society
Attitudinal, sensory, architectural, cognitive and economic barriers.

Assumptions that evolved from moral and medical models have been expressed in the literature as:

1. People with disabilities are different from fully human people; they are partial or limited people, in an "other" and lesser category. As easily identifiable "others" they become metaphors for the experience of alienation.
2. The successful "handicapped" person is superhuman, triumphing over adversity in a way which serves as an example to others; the impairment gives disabled persons a chance to exhibit virtues they didn't know they had, and teach those without disability patience and courage.

3. The burden of disability is unending; life with a disabled person is a life of constant sorrow, and the able-bodied stand under a continual obligation to help them. People with disabilities and their families--the "noble sacrificers"--are the most perfect objects of charity; their function is to inspire benevolence in others, to awaken feelings of kindness and generosity.
4. A disability is a sickness, something to be fixed, an abnormality to be corrected or cured. Tragic disabilities are those with no possibility of cure, or where attempts at cure fail.
5. People with disabilities are a menace to others, to themselves, to society. This is especially true of people with mental disability. People with disabilities are consumed by an incessant, inevitable rage and anger at their loss and at those who are not disabled. Those with mental disabilities lack the moral sense that would restrain them from hurting others or themselves.
6. People with disabilities, especially cognitive impairments, are holy innocents endowed with special grace, with the function of inspiring others to value life. The person with a disability will be compensated for his/her lack by greater abilities and strengths in other areas--abilities that are sometimes beyond the ordinary.

It is argued that the effects of current social values especially in times of economic and social stress include an assumption that a person's worth is measured according to health, wealth, productivity, intelligence, individualism, independence and attractiveness. These values are leading to a reduced acceptance of, and indifference to, marginalised populations. As a result, social and economic stress is posing a greater danger nowadays to vulnerable and powerless people.

We as a society have come to recognize the common assumptions and attitudes our culture has held about gender and race, and have tried to confront them; but we haven't, as a society, examined the common attitudes we hold about people with disabilities.

The effects of these negative assumptions on people with disabilities have been to subject them to social degradation, including:

- I. rejection by family, neighbours and even paid carers and services,
- II. isolation from non-disabled peers,
- III. restricted options for development, growth and enrichment,
- IV. concentration of people with disabilities into social groupings of rejected people,
- V. a very circumscribed set of role options,
- VI. loss of control and autonomy,
- VII. material poverty, impacting on health, housing and life expectancy,
- VIII. diminished sense of individuality and uniqueness
- IX. restricted social relationships, resulting in a lack of allies in times of need, and
- X. Neglect, damage and abuse.

When society's beliefs and attitudes about disability underpin tacit theories and assumptions as outlined above, then public policy and social relations, severely limit the life opportunities of people with disabilities, their families and allies.

People with disabilities in Australia generally and Queensland in particular have endured a regime of service provision that is typified by limited and low funding base resulting in crisis management based on poor workforce organisation, poor financial management and, above all, a anticipated role of custodial care and control.

People with disabilities have a much higher unemployment rate and a much lower workforce participation rate than their non-disabled peers. Public policy has failed people with disabilities in other areas including affordable and accessible housing, the provision of household aids for mobility and functionality, and support in daily living.

Whilst race discrimination and sex discrimination were outlawed federally in 1975, people with disabilities had to wait until 1992 to get

similar protection. Additionally, when the Queensland Anti-Discrimination Act was amended in 2001, racial and religious vilification was made illegal but not disability vilification.

All the above points to the fact in all spheres of life systems fail people with disability including the justice system.

The literature points out that people with disabilities are much more likely to be victims of crime than people without disability e.g. (rates of sexual assault up to ten times those in the general population). These crimes are underreported, that police follow-up is inadequate and that rates of prosecution and conviction are low.

Recently, in the ABC Law report it is claimed that 70-90% of people with disability living in group homes have been abused.

Dick Sobsey a researcher from the University of Alberta in Canada asserts that "When a crime is committed against a person with a mental disability, it is due to as less of a crime,"

"There is a tendency to assume that the person with the disability provoked it in some way."

In one of his studies, Sobsey gave about 100 law students two crime scenarios and asked them to determine the appropriate sentence for each of them. Both were cases of physical assault. In one case, the victim was described as "a 26 year-old man who has mild mental retardation." In the other, the victim was described as "a 26 year-old professional." Eight times as many people thought a suspended sentence was right for the assault against the person with the mental disability than for the professional. When jail was recommended, the average sentence was longer for the assault against the professional.

Some researchers suggest that as many as nine out of ten women with developmental disabilities will experience a sexual assault at some time. Even more conservative researchers agree, that many, probably most, women with developmental disabilities will experience some form of unwanted sexual contact at some time in their lives.

In summary the issues for people with disabilities who are victims of crime are:

- 1) An extremely high rate of victimization,
- 2) Underreporting of crimes,
- 3) Lack of police follow-up, and
- 4) Low rates of prosecution and conviction.
- 5) Crimes against people with disability are seen as less serious.

The stories, gathered by QAI, of people with disability who have committed criminal acts are drawn upon to highlight experiences in the criminal justice system. The stories have a number of consistent trends throughout them which are consistent with national and international research.

1. The failure of appropriate and timely provision of support to the person with disability.

There is clear evidence that the authorities were aware of the support needs of most individuals as a child with disability or an adult who acquired a cognitive impairment.

In one case a young man 'Sam' was a ward of the State as a child supported in a series of living arrangements case managed by Family Services to the age of 16. This person was abused by his parents, a number of case studies suggest that people came from dysfunctional families or inadequate/inappropriate support services.

Due to his intellectual disability Sam eventually was provided with a support package from DSQ to assist him to live in the community. He was not necessarily an easy young man to support as he was wary of services. Many services pulled out of assisting him. The reason for service withdrawal I believe is that the service didn't have the where-with-all to support him in a way that didn't heighten his vulnerability nor make him feel valued and safe.

In the early 2000's at the age of 20, Sam was charged and later convicted, for a sex offence against another man. Prior to this time he had never committed a similar violent crime although he had been charged with some property related offences. It is unlikely he had the capacity to instruct his solicitor and stand trial.

Sam is a very sociable and friendly – a big guy. It's not immediately obvious he has a disability. I don't think his case went to the mental health tribunal to determine if he was fit for trial. It's often easier and quicker for lawyers not to do this. (His advocate)

At the time he was charged and went to court, a small community organisation came in contact with Sam. They continued to provide some support for him in prison and referred him to a disability advocacy organisation. During the trial Sam's barrister resigned for some reason. Sam's advocate has since been unable to find out what happened.

Once in prison Sam's DSQ funding package was withdrawn He was sent a letter from the Minister

'Given you are now under the care of the Correctional Centre, the Centre has assumed responsibility for your care and support. When you leave ...you can apply for support through the Adult Lifestyle

Support Program. Your application will be considered when funding becomes available.'

The withdrawal of his package placed Sam at risk of serving longer sentence than others and if released significantly increased the likelihood of his recidivism. It also cut Sam off from any external relationships with paid workers who he had begun to trust. Sam has a life experience of rejection, the DSQ policy that required the Minister to make a decision to remove support from Sam continued Sam's experience of rejection.

2. Investigation/interviewing and charging process.

Due to the stigma associated with disability many people with disability mask or hide the fact they have a disability. It is well documented in the literature that people with an intellectual disability are more likely to be arrested, questioned and detained for minor public order offences. People with an intellectual disability are more likely to admit to offences, including ones they did not commit, perhaps from a desire to please the police officer or because they do not want to acknowledge that they did not understand the police officer's questions. This desire to please arises from institutional care settings where good treatment depended upon a person's willingness to conform to the wishes of those with authority. Additionally, the desire to please arises from the fundamental need to have relationships/friendship. This was evident in a number of case studies i.e.

Cameron's story highlights the vulnerability of many people with intellectual disabilities, learning disabilities or mental illness in that they often mask or hide the fact that they have a disability. As well as wanting to 'fit in' with a crowd often finding a crowd that accepts them clearly recognises their vulnerabilities and in a 'dog

eat dog ' world take advantage of People's naivety. Cameron was befriended by a couple of street kids who moved into his house and took over his life. They involved Cameron in their petty stealing activities resulting in Cameron being caught stealing garden gnomes. One of the people supporting Cameron in the court process was one of the street kids. Cameron reflected upon the support as *she was just making sure I wasn't going to say anything about her or the boyfriend.*

His storey also recognizes the fact that police did not identify that Cameron had a intellectual disability. Thus, ensuring Cameron went through the entire process without being supported to make informed decisions in instructing his solicitor to ensure his 'Best Interests' were represented during the trial.

I get sucked into this sort of stuff. I've learnt my lesson since then not to trust anyone.

Even though people with an intellectual disability are entitled under the law to have a support person present for any police interview, the reality is that it is not always possible to get a support person, especially someone who is well trained to support the rights of people with intellectual disability.

3. People with disability are more likely to receive severer sentences or serve longer prison sentences than people without disability. People with cognitive impairments are mostly excluded from rehab programs as these programs are not modified to allow them to participate. They are also more likely to be raped and abused than other prisoners. They often rely on guards or inmates to assist them look after their personal care. People with cognitive disability find it very difficult to understand the subtle nuances of the formal and informal rules of prison. Some people find it

difficult to understand why they are in prison. A combination of these experiences result in frustration and having angry outbursts resulting in detention and reported as noncompliant.

The sentence handed down to Cameron was extreme to put it mildly; the judge fined Cameron \$2000 plus the cost of replacing the gnomes. When Cameron received a letter about the fine, and had no capacity to pay, he finally involved Trish, his community support worker.

From that point Trish supported Cameron by going to Legal Aid and seeking assistance in appealing the fine. The lawyer listened to Cameron's story, took time to check he understood what was happening and allowed Trish to be present. Cameron went back to court, this time with a supportive lawyer and Trish. He was able to explain more about what had happened including his fear that the others might hurt him if he had given the police their names. The lack of support and Cameron's *disability* were also raised. No conviction was recorded and Cameron did community service at the local showground.

Six of the ten case studies involved sexual offences. In each case there was evidence of people coming from dysfunctional families, or the nature of their impairment resulting in diminished capacity to manage sexual behaviour. No or limited support services in their lives. It is clear that sexual offences are judged harshly in the community. And we believe people need to be safe and free from sexual offenders. We also believe that justice is reciprocated in the administration of justice. It is evident that for people with disability this expectation is not realised, as part of their lived experience in the criminal justice system.

In order to engage in Just and Fair Reform We require the powers to be and the community to answer the following Questions.

Is it Just that the State deems that people with disability have Inadequate and limited support services in comparison to general society?

Is it Just that the State is complicit in the governance of systems that conspire to set people with disability as less deserving of natural justice than people without disability?

Is it Just that people with disability who are victims of crime never or very rarely have their day in court?

Is it Just for offenders with disability to not receive an opportunity to understand what they have done is not acceptable and how to manage their anger or behaviour?;

Is it Just that the State knowingly denies a person the support that assists people to participate equally in society and to feel valued and give to their local community?;

Is it Just that the State knowingly denies a person the opportunity to rehabilitate themselves so they can rejoin society ?;

What is needed? Apart from a revolution! That ensures people with disability are valued and not portrayed as bad mad or sad...the revolution later...

The following are policy and program reforms that may be small steps to people with disability having equal opportunities and to feel confident that the concept of 'natural justice' is realised by more people with disability.

- a) Early intervention, by relevant authorities, in the lives of highly vulnerable people who are at greater risk of entering the criminal justice system either as victims or offenders and quite often both.

- Intervention such as appropriately tailored individualised support, mental health services, personal development opportunities etc;
- b) training of police to assist police to screen and identify if a person has an intellectual/cognitive disability then requiring independent advocacy/assistance ensuring safeguards that enhances a person with intellectual/cognitive disability rights are upheld in the interviewing and charging process;
 - c) Specialist advocates supporting both victims and offenders through the criminal justice process;
 - d) Strategies and processes to support a person with intellectual/cognitive disability to give evidence in court and allow the court to hear how the specific disability impacts upon the person;
 - e) Alternative sentencing/restorative justice???
 - f) Better screening processes in prisons so that it is clear which people going in to prison do have an intellectual disability and ensuring that programs and operations can be designed to ensure that prisoners with an intellectual disability are not discriminated against resulting in longer than average imprisonment and that they are safe.
 - g) Coordinated communication and planning for the release of prisoners with disability by relevant agencies.

The revolution... that I propose begins simply with the rejection of the identity constructed through the 'medical model'. Reclaim your identity by drawing upon your culture, gender, roots, spirituality etc for instance I'm a product of Irish/English heritage, working class boy from the bush, a father, a lover, a social activist, a punter... that portrait is very different to the one I rejected. It is one that has given me life, liberty and freedom.