PRISONERS' LEGAL SERVICE INC.

Justice Behind Bars

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Senate Legal and Constitutional Affairs Committee
Inquiry into Justice Reinvestment in Australia

Dear Committee members,

Re: Inquiry into Justice Reinvestment in Australia

Introduction

1. Prisoners Legal Service endorses the NATSILS and NACLC submissions into this Inquiry. In addition we wish to make further comments about the advantages of Justice Reinvestment rather than punitive approaches to sentencing and the importance of diversion from custody at the back end of a sentence.

2. Prisoners Legal Service casework has a primary focus on prisoners and so the majority of our work and experience relates to diversion from custody following a period of incarceration. Despite this focus in our submission, we are also strongly supportive of initiatives that promote front end diversion from custody.

3. We agree with NATSILS that "*the community does have a legitimate interest in increased safety and reduced crime rates… [h]owever the evidence does not support any link between this objective and 'tough on crime' approaches."*[1]

4. Justice Reinvestment supports the principal that the most effective way to address crime is not through incarceration, but instead by addressing the underlying causes of crime through local, evidence based solutions. Addressing the underlying causes of crime is both financially efficient and practically effective. It is hard to imagine a solution to crime that is more expensive and more likely to fail than the prison system.

5. Even without a Justice Reinvestment framework, it makes sense to invest in measures to ensure social equality such as employment and education. Inequality, discrimination and disadvantage are the beds upon which crime is built but they are also harmful in their own right.

[1] NATSILS submission to current Inquiry.

About Us

6. Prisoners' Legal Service (hereafter PLS) is a community legal service providing advice to prisoners and their families about matters related to incarceration. We have been operating for 28 years. PLS exists to promote justice, human rights, equity and the rule of law in the administration of punishment. We provide and promote access to justice through:

- legal advice, information and assistance to prisoners and their families;
- community legal education;
- law reform and policy development.

7. PLS offers free legal advice, information, assistance, and referrals to Queensland prisoners and their families on matters relating to their imprisonment. Most relevantly to this enquiry, we operate a Safe Way Home Program providing prisoners with assistance drafting parole applications, including relapse prevention and reintegration plans. This service has assisted over 9000 prisoners with parole applications over the last five years. As such, we hold a large amount of knowledge about parole and other back end diversion mechanisms.

8. It is our experience that prisoners are commonly from disadvantaged groups with extremely high needs, often evidencing a cross section of mental illness, addiction, homelessness and poverty. There remains a shockingly disproportionate number of Aboriginal and Torres Strait Islander people in prison.

Punitive sentences

9. Sentencing can serve a range of purposes, from punitive to rehabilitative. Tough on crime approaches usually lead to punitive approaches with longer prison sentences.

10. Two different examples of punitive sentencing recently introduced into Queensland are increased use of mandatory life sentences[2] and standard minimum non parole periods[3]. Both changes restrict the options for judges when sentencing, thus reducing the opportunity to sentence in proportion to the circumstances of the offence.

11. It is our strong belief that there is no evidence that the community will be sustainably protected by punitive measures. Rather, a punitive approach will detract essential resources from effective crime prevention strategies. The contradiction between punitive incapacity and long term rehabilitation was described by Professor Toni Makkai, former director of the Australian Institute Criminology:

[2] In Queensland, life imprisonment was already the *maximum* penalty prescribed for about 34 offences and it was the *mandatory* sentence for several offences including murder prior to the introduction of the *Criminal Law (Two Strike Child Sex Offender) Amendment Bill* 2012 (Qld). This legislation significantly increased mandatory life sentencing in Queensland by increasing the number of offences that attract a mandatory life sentence and by increasing the amount of time spent in prison on a life sentence before parole eligibility.
[3] *Law Reform Amendment Bill 2011* (Qld)

"One way that Australian correctional authorities can safeguard the community is by incapacitating offenders and keeping them away from potential victims. The community can also be protected in the longer term by minimising the likelihood of ex-prisoners reoffending after they are released...This approach is gaining prominence in Australia and internationally.[4]"

12. This extract highlights the temporary nature of punitively motivated solutions designed to increase sentences and physically separate people who commit crimes from society. It contrasts such an approach with a longer term and more visionary attitude including reform and rehabilitation initiatives. It highlights a trend towards permanent, effective solutions to crime that is gaining prominence.

13. The *National Indigenous Law and Justice Framework 2009 –2015* developed by the Standing Committee of Attorneys-General Working Group on Indigenous Justice aims to reduce over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system including by increasing diversion and crime prevention initiatives.[5] Laws, ministerial guidelines and policies that promote punitive responses to justice threaten this goal.

    We note the following comment made during a consultation on standard minimum non parole periods,

    "If Aboriginal people receive longer sentences as a result of the introduction of Standard Non Parole Periods then there is a risk that prisoners will become institutionalised and 'conditioned' to prison life. Some of those consulted gave examples of offenders released from prison who had become so conditioned by prison life that they could not cope with life back in the community. After a short time, they reoffended to return to prison."[6]

    This is sadly a story that our office is all too familiar with. The process of institutionalisation is especially acute for long term prisoners and becomes a serious impediment to reintegration.

[4] Toni Makkai in Baldrey, E. and Borzycki, M, (2003) Promoting Integration: The Provision of Prisoner Post-release Services, *Trends and Issues in Crime and Criminal Justice, No 262.*
[5] SCAG (2009) National Indigenous Law and Justice Framework 2009 –2015.
[6] Sentencing Advisory Council (Qld). (2011) Minimum standard non-parole periods: final report, p19.

Back End Diversion

14. Back end diversion from custody encompasses initiatives aiming to divert incarcerated people from custody to alternatives, such as parole. The importance of back end diversion from custody is highlighted by comments from prisoner representatives to our service:

    "To release someone from a high security environment, after years of incarceration, without progression through a less structured environment, where an offender can adjust to increasing amounts of personal responsibility, is allied to inciting maladjusted, unacceptable community behaviour; criminal activity."

    "They make us institutionalised. They break our dreams. Then when it comes time to be released they say 'you're institutionalised, we can't let you out."

    "Long termer's need progression more than short termers"

    "I'm coming from a culture in here into a different culture out there. It is a foreign culture."[7]

15. The process of allowing a person to adjust to an increasing amount of personal responsibility over their life must be prioritised as an essential aspect of de-institutionalisation.

16. The benefits of back end diversion from custody have been recognised by governments at various times, as demonstrated by the following extracts:

    "The fundamental aim of parole is to provide the prisoner with an incentive for rehabilitation through the prospect of early release, and perceived benefits of parole stemming from this prospect include increased likelihood of reform of prisoners and better overall prisoner discipline. Other benefits of parole include easing the transition from prison to the community through supervision, which reduces the risk of recidivism (re-offending).)."[8]

    "Gradual release is considered the best-practice mechanism to allow for rehabilitation of offenders and community safety,"[9]

17. Academic research also promotes the use of gradual release tools such as parole to enhance community safety:

    "*The best way of assisting prisoners to reintegrate into the community is to release them gradually, providing them with less supervisions and less support over time so they may become progressively acquainted with community life*." [10]

[7] *Report on Queensland Prisons 2010,* Prisoners' Legal Service and Catholic Prison Ministry, p10
[8] Simpson, R *Parole, an Overview, (1999(* Briefing Paper No 20/99, NSW Parliamentary Library Research Service, *p1.*
[9] Attorney-General and Minister for Justice the Honourable Kerry Shine, *Media Release*, 26 August 2008.
[10] T. Walsh, INCorrections Report, QUT, 2004, p9.

"Parole boards are in a unique position to influence the post-release experiences of prisoners and although much attention has been devoted to their punitive function, parole boards are also well placed to proactively promote rehabilitation and integration, for example by setting conditions relating to programs that parolees must participate in post-release."[11]

18. Despite this recognition, punitive measures and tough on crime politics regularly threaten back end diversion initiatives. A comparative analysis reveals that the resources and safeguards evidenced at the front end of a sentence drastically differ from those at the back. For example, the Queensland Parole Boards comprise of 20 members and in 2009-2010 considered a total of 11932 matters over the course of 140 meetings, or an average of 85 matters per meeting.[12] Legislation prohibits representation before the Parole Boards by a lawyer, whereas Legal Aid is often available for front end matters such as adjournments, committals, bail applications, trials and sentencing. Similar questions of liberty are at stake in parole applications, challenging parole refusals and returns to custody on a breach of parole. However, there is no opportunity merits review of decisions made by the Queensland Parole Board.

19. Many prisoners have commented to our service that technical parole breaches are treated in an excessively punitive way that is counter-productive to their rehabilitation. It is recognised that the period immediately following release is a difficult time in relation to money, food, accommodation and readjusting to relationships with family and friends. A number of ex-prisoners have described this feeling as similar to being dropped in a foreign country. The need for a rehabilitative, rather than punitive, approach to parole breaches is necessary to ensure successful transition. Return to custody for minor breaches often disrupts residential arrangements, employment, custody commitments or rehabilitation treatments. One prisoner commented to our service that *"Feels like you may as well be hung for lamb as mutton so I will use drugs if I'm running late."*[13]

20. It is apparent that the process of granting and rescinding parole is, at times, inconsistent with sentencing principles of imprisonment as a last resort. This principle is entirely absent from the guidelines for the Parole Boards in Queensland. Decisions about granting parole and returning people to custody on suspicion of a parole breach are as influential in respect of the quantum of punishment as the decision of the sentencing court. Therefore, the decisions in relation to parole should be subject to the same level of procedural safeguards, resourced defence and guided by the same principles.

21. Parole is one of the only remaining mechanisms for gradual release since, over the last decade, the tools available to tailor back end diversionary options to individual circumstances have been reduced. The back end diversion tools that have been reduced or eliminated in Queensland over the last decade include:

- additional classifications (40% decrease in classification options);

[11] Kinner, S. *Post Release Experiences of Prisoners in Queensland: Implications for Community and Policy, QUT, 2006, p6.*
[12] Queensland Parole Board *Annual Report* 2009/2010.
[13] *Report on Queensland Prisons 2010,* Prisoners' Legal Service and Catholic Prison Ministry.

- Reintegration leave;
- Resettlement leave;
- Home detention;
- Weekend leave;
- Remissions;
- Education leave[14];
- Leave to work outside the perimeter.

22. These changes mean that parole is now the only functional back end diversion available for prisoners in Queensland.

23. Consideration needs to be given to ensuring equal access to back end diversion from custody. The proportion of Aboriginal and Torres Strait Islander people on parole is regrettably low at 9.6% as compared to 24% of the prison population.[15] Additional problems with the parole processes are faced by the high number of prisoners with low literacy. Because the only way to apply for parole is by way of a written application, many prisoners are severely disadvantaged in the application process. Prisoners Legal Service has 2 workers who provide assistance state-wide to prisoners who need help with parole. With over 8000 prisoners released per year, this funding is insufficient to meet demand.

24. Back end diversion initiatives are an important part of getting people out of the criminal justice system in a way that assists their reintegration into society. The reduction in back end diversion initiatives through punitive sentencing and tough on crime approaches threatens safer communities. Restorative Justice, by promoting diversion from criminal justice systems, offers an opportunity to reconsider the role that diversion can play in crime prevention.

25. It is hoped that these submissions have been useful. Please contact our service for further information.

[14] Available through s 72 (1) (c) but anecdotal experience indicates that it is rarely utilised.
[15] Cunneen, C et al, (2005)Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement, Institute of Criminology, University of Sydney Law School,p89.