

8. LEGISLATIVE CHANGE

8.1 The State of the Prisons Act

Submissions from staff and particularly that of the Queensland State Service Union have drawn my attention to the state of the Prisons Act:

“The Prisons Department, like any other Government Department, operates under a Government Statute, namely the Prisons Act and Regulations. This Act and the relevant Prison Regulations have had only minor amendments made since 1959, and consequently are not adequate to meet the requirements of maintaining an efficient Prisons Service in today’s requirements or towards the year 2000. The Union has, to a number of successive Prison Ministers, made direct representations to have the Prisons Act and Regulations upgraded. The general reply has been that the necessary amendments would be made in the next session of Parliament. Prison Officers, by Law, are required to work in accordance with the Prisons Act. However, complaints are received by the Union from concerned Officers as to which Sections of the Act are current, e.g. whilst Section 33 of the Prisons Act is regarded as current legislation, Prison Officers are dissuaded from using this Section of the Act by Superintendents. Frustration occurs, as this instruction is given verbally and not in writing.”

(Queensland State Service Union submission)

Having looked at the Act and spoken to many staff I fully agree with the submission and the problems facing staff in trying to administer the Act.

A new Act is in draft form and I have examined it carefully. Basically it attends to a lot of the operational requirements.

8.2 Need for A Corrective Services Commission Act

However, I am recommending fairly sweeping changes to the organisational structure that will administer both the intended new Prisons Act and the Offenders Probation and Parole Act. Also I am concerned at the slow rate of progress in preparing the Prisons Act. I am told the Act has been in preparation now for well over a decade.

I have suggested to the Minister, therefore, that the Secretariat for the Commission of Review take over the work of drafting the Act. Basically my work would be to present the latest draft in such a way as to ensure the rapid implementation of the changes I am recommending in this and the final report.

The Minister has agreed to this and therefore I will present with my final report an Act in draft form appropriate for implementation. The most efficient way of handling the task is to prepare two Acts. The first could be termed the Queensland Corrective Services Commission Act which would establish the basic Commission and empower it to administer Correctional Services. The second Act would draw together the Offenders Probation and Parole Act and the draft Prisons Act into a single Corrective Services Act.

I have obtained the secondment of staff from the Comptroller-General’s office to undertake this task. The Justice Department is providing some essential assistance. It will be necessary to seek the priority assistance of the Parliamentary draftsman to finalise this task.

8.3 Parole, Remission and Community Corrections

There is no doubt that the parole system is the most contentious issue in the eyes of virtually all the respondents to the Review. I agree with many of the complaints about the system. I can sum them up in a few words. The present system is inefficient and it is inequitable.

It is inefficient because some prisoners are choosing to serve a longer prison term than necessary. By so doing they avoid supervision in the community. In effect, people are in prison who could be on Parole.

I will explain why this is happening. In March, 1986 Queensland introduced a standard rate of $\frac{1}{3}$ remission for all prisoners serving definite sentences of imprisonment of two months and upwards. This change brought Queensland into line with the other Australian States.

Since then prisoners on definite sentences of over six months are eligible for parole when they have served one half of their sentence. If released on parole, however, they must serve out the remaining one-half of their sentence under parole conditions. If any of these are broken, they can be returned to prison immediately. On the other hand, prisoners choosing to serve out their sentences are eligible for the $\frac{1}{3}$ remission and any other which they may have earned while in prison. Thus, only a further short period of time may need to be served beyond the eligible-for-parole date for a prisoner to be discharged completely free.

Consequently, the number of prisoners remaining in gaol longer than is necessary has become a factor in the crowding of prisons. At the same time, more prisoners are being released back into the community without the controlled supervision of experienced parole officers, and, as such, are discharged in some cases, "not into the community, but upon the community". Another problem is that the growing home detention program does not have a satisfactory legal basis.

These are "efficiency" issues with the present system. However there are, not only in my view but also in the view of many professionals in the legal and correctional field, many basic inequities built into the present system. Prisoners, quite justifiably, complain about the lack of due process from the parole system. They complain they are not advised of why they are refused parole. Aborigines complain they are discriminated against because the parole criteria does not accommodate the culture to which many tribal Aborigines return. They say they do not have, and should not be expected to have, the kinds of jobs, families and homes that the Parole Board regards as appropriate for release of prisoners into the community. The Parole Advisory Committee which is crucial to the whole process lacks any proper legal basis. Prisoners complain they wait months for advice about their parole applications. They say they have persuaded employers to hold jobs for them but the wait for the reply goes on and on. When it finally comes it says "Parole Refused" without any explanation why or advice as to how the prisoner should behave and prepare himself in order to ensure his application is more likely to be successful.

In my view the system is not "just" in the way ordinary Australians understand the term. As I stated above these views are shared by the professionals in the field of corrections.

However, the administration of community corrections of which parole forms part is tied up with the issues of sentencing options. This extends beyond my terms of reference. Nevertheless, I have been asked to address issues including home-detention

and work-release schemes, the classification of prisoners, the efficacy of fines and community sentences. Hence, I find myself in something of a dilemma.

After a great deal of thought and having sought advice, the approach I have decided to adopt is to recommend the preparation of an act to draw together all the sentences and penalties into a single cohesive framework. As I explain below this will provide a process where the issues can be properly addressed.

8.4 Need for Legislative Change to Penalties and Sentences

There is a strong case for a "Penalties and Sentences Act" to compliment the Corrective Services Commission. The intent of the legislation will be to provide for stronger community based sentences and especially to integrate the very ad hoc sentence structure that professionals in corrections have to administer. Victoria has such legislation. It was introduced between 1983 and 1985. I am advised that it has proven so successful it is already being strengthened.

Stronger community corrections should be able to provide considerable economies. Several states have lower imprisonment rates than Queensland as shown in Table 6.

TABLE 6
USE OF IMPRISONMENT IN AUSTRALIA

—	Qld.	N.S.W.	Vic.	S.A.	Tas.	W.A.
Population: (000's) (1)	2675	5605	4208	1394	449	1496
Prisoner Numbers (2):	2347	3950	1984	796	268	1603
Imprisonment Rate: . . . . .	.887	.705	.471	.571	.597	1.07

Source: (1) Australian Bureau of Statistics, 1987
(2) Australian Institute of Criminology, 1988

In fact, it was not so many years ago that Queensland was sparing in its use of imprisonment. In 1961 it had one of the lowest rates in Australia. Queensland now has one of the highest imprisonment rates. Table 7 provides details.

TABLE 7
COMPARISONS OF IMPRISONMENT RATES

Year	Qld.	N.S.W.	Vic.	S.A.	W.A.	Tas.
1961-62 . . . . .	.604	.816	.675	.788	.958	.687
1978-88 . . . . .	.877	.705	.471	.571	.597	1.07

Source: Prisoners Legal Service Discussion Paper No.1
(from Australian Prison Trends, A.I.C.)

It is very important that the new penalties and sentences legislation has a major judicial input as it would represent a fairly fundamental change from the way things are done now. But surely no one in the community really supports the kind of case that came to my attention this week. A woman was stopped for a traffic violation. The normal police check found she had not paid a fine of a little over \$200 or twenty three days gaol. They arrested her and transported her to the prison. She was eight and a half months pregnant. The legislation I am proposing will address

this kind of inappropriate imprisonment and inefficient administration of criminal justice.

This proposed legislation will also provide an opportunity to revitalise and strengthen parole and community corrections generally. It will attend to the untidy use of remissions and uncertain discharge dates. It would ensure a period of community corrections is seen to be performing its proper function as a severe sentence with a detention component, albeit one served from home, providing strong sanctions closely monitored by highly trained professionals with a proven success rate. The legislation will help ensure community corrections cease to be mistakenly seen as a "soft option".

As I think it would be difficult to organise the legislation before the Q.C.S.C. is established, I have asked Mr. Kevin Martin, Deputy Under Secretary of the Department of Justice to advise me regarding a suitable process for developing comprehensive and effective legislation in this area. He has pointed out the necessity to draw upon the views and experience of both the Judiciary and Magistracy in this area as well as the expertise available from within the Government and also from the academic community. In order to co-ordinate this input a specific inter-departmental committee should be established led by the Justice Department and inputting to Government through this Commission of Review.

My final report can then make the detailed recommendations for that group regarding the necessary sweeping changes in the area of parole and the use of community corrections based upon the submissions received by the Commission of Review. I would expect this inter-Departmental committee to be established well before then and to be working closely with the Commission of Review. The establishment of a Corrective Services Commission will continue the momentum for change in this area.

RECOMMENDATION

It is recommended that as a matter of urgency an inter Departmental working party be established to prepare a draft "Penalties and Sentences Bill".
