

NEW SOUTH WALES

DEPARTMENT OF CORRECTIVE SERVICES

CONFERENCE OF NSW PROBATION & PAROLE SERVICE

MASONIC CENTRE, SYDNEY, 25 MARCH 1983

FEDERAL SENTENCING REFORM & THE 'DRUG GRANNIES'

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The Hon Mr Justice M D Kirby CMG
Chairman of the Australian Law Reform Commission

THE NEED FOR REFORM AND THE 'DRUG GRANNIES'

The release on licence of two Federal prisoners known as the American 'drug grannies' and their deportation to America shows the need for reforms of the law governing punishment of Federal offenders in Australia. I refer, of course to the deportation on 23 March 1983 of Florice Bessire, 66, and Vera Todd Hays, 65, following their release from the Silverwater Women's Prison in Sydney after serving five years of a 14-year sentence for importing 1.9 tonnes of cannabis into Australia. The two were Federal prisoners convicted of Federal crimes. Of all the defective Australian systems for the early release of prisoners, the Federal system is the 'most defective'. The defects have been called to attention in a 1980 report of the Australian Law Reform Commission on 'Sentencing of Federal Offenders'. Some of the proposals in the report were enacted into law in 1982. However, the great tasks of sentencing reform in Australia still lie ahead. The new Federal Attorney-General, Senator Gareth Evans, is well aware of the defects in Federal sentencing law and policy. The published policy of the ALP before the election included commitments to a number of the recommendations made by the Australian Law Reform Commission:

- * Establishment of a Federal Sentencing Council to ensure more uniform punishment.
- * Implementation of law reform recommendations relating to uniformity of treatment of Federal offenders in State prisons.
- * Implementation of recommendations on reform of parole laws and procedures.
- * Increasing the resources of the Law Reform Commission to permit it to complete its Sentencing enquiry.

'WORST OF ALL'

The Australian Law Reform Commission's inquiry disclosed a number of serious defects in the way in which punishments are imposed on Federal offenders in Australia. Until laws are changed and necessary institutions established, reforms will remain haphazard and highly personalised. Amongst the defects affecting punishment of Federal prisoners set out in the Law Reform Commission's report are:

- * The necessity of involving busy political officers such as the Attorney-General in the routine consideration of individual cases of Federal prisoner parole and licence release.
- * The absence of any Federal parole board in Australia.
- * Uncertainty on the part of Federal prisoners, housed in State gaols, as to who controls their parole or release and to whom they should make submissions.
- * Serious differences between State laws and policies on parole and early release and those governing Federal prisoners.
- * Different provisions in State laws affecting the early release of Federal prisoners in some States, particularly Tasmania and Queensland where non parole periods are fixed by statute rather than the sentencing judge.
- * The persistence of the unsatisfactory features of parole in the case of Federal prisoners.

The administrative procedures associated with the early release of Federal prisoners in Australia, whether on parole or licence, are uncertain and unfair. Federal offenders do not know when they are to be released from prisons. This uncertainty is unsettling to them and unfair to them and to their families. The Federal system of parole and release on licence has inbuilt structural causes of disparity in the treatment of Federal prisoners in different parts of Australia. In most States, Federal prisoners are released early on parole. In Tasmania and Queensland, where the State legislation is different and State judges have different practices, Federal prisoners are released, if at all, on licence rather than parole. Figures secured by the Australian Law Reform Commission tended to suggest that release on licence depended significantly on the attitude of the Attorney-General of the day. Whilst some reflection of community attitudes through political officers is appropriate, it would be better for prisoners, politicians and the criminal justice system if improved institutions and procedures could be substituted for the present inequality and uncertainty.

All systems of early release in Australia, whether by parole, remission or release on licence, are unsatisfactory in numerous ways. However, the Federal system is the worst of all.

COMPARISON WITH STATE PRISONERS

Fortunately, Senator Evans knows that this is the case. His published electoral program indicates an intention to tackle the institutional problem. That problem arises inevitably out of a Federal system in which Federal prisoners are tried in State courts, sent to State prisons and where released, supervised by State parole officers. Yet they are not dealt with in the same way as State prisoners. If they had a superior nationwide system, which was more efficient and humane, they would not complain. Instead, they have an inefficient system which is unclear to them, gives them lesser benefits than State prisoners and which they must know depends very much on the personality and attitudes of the person who happens to be Federal Attorney-General when their application comes up. The comparison with the treatment of State prisoners is constantly before them, because they live together. Little things illustrate the disparities. For example, in 1977 all State prisoners were given a special remission for the Queen's visit, as is usual. But no special remission was given to Federal prisoners. In New South Wales, significant numbers of State prisoners with good records in prison, have been released on licence as part of the policy of the Minister for Corrective Services, Mr Jackson. That policy cannot extend to Federal or ACT prisoners. The Federal system is not a good one. Winston Churchill once said that you could tell the civilisation of a country by the way in which it treated its prisoners. On that test, in respect of Federal prisoners, Australia does not come up well. This is not a matter of mollycoddling antisocial people. It is not a matter of 'bleeding hearts'. It is simply a matter of introducing more certain punishment and better institutions to supervise that punishment.

REFORMS NECESSARY

It would be my hope that the 'drug grannies' case will focus attention on the need for better institutions and procedures to deal with Federal prisoners in Australia. The way ahead is pointed in the Law Reform Commission's 1980 report. Senator Evans, in his pre-election program, has indicated that he will be examining that report closely. It involves :

- * the establishment of a Federal Sentencing Council to lay down clearer guidelines for State judges and magistrates in punishing more equally Federal offenders in all parts of the country.
- * a move towards more definite sentences which prisoners will actually serve but on the basis that those sentences will be generally shorter and closer to the time that is now actually served by prisoners.
- * the abolition of the 'charade' of parole or the replacement of the present defective parole system with more routine institutions and procedures.
- * The Federal Attorney-General would be relieved of the day-to-day decisions on parole and licence, though he would retain a reserve power to recommend the prerogative of mercy.

Prisoners would know the rules, who dispensed the rules and that the rules did not greatly change with a change of Minister. Equal justice under the law involves the effort to reduce idiosyncratic features, particularly in imprisonment and criminal punishment. Pending the introduction of new laws and institutions for Federal offenders, the Attorney-General could take a number of reforming steps, including the use of license release. But these temporary expedients will be no substitute for basic structural reform covering all Federal prisoners in all parts of the country. There are not many of them — only about 400 of 10,000 prisoners. They are generally younger, less violent and there are far greater numbers of women than State prisoners (24% rather than 4%). But their needs for reform have been largely overlooked and I hope the recent case brings the need for basic changes out into the open.