

2770

COMMUNITY RESTORATIVE CENTRE

VOLUNTEER COURT SUPPORT TRAINING MANUAL

FOREWORD

The Hon. Michael Kirby AC CMG

*COMMUNITY RESTORATIVE CENTRE  
VOLUNTEER SUPPORT TRAINING MANUAL  
FOREWORD*

The Hon. Michael Kirby AC CMG  
Past Justice of the High Court of Australia  
Patron of the Community Restorative Centre

A research monograph on *Sentencing in NSW* (No. 39, March 2015) recently arrived on my desk.

It compares the sentencing statistics between different Australian jurisdictions and between Australia and comparable overseas countries. It also collects and analyses sentencing for specified offences that usually result in custodial sentences. Finally, it addresses sentencing patterns affecting people of different races. So far as Australia is concerned, this mainly involves analysis of the differential between indigenous offenders and non-indigenous.

As a background to the vital work that the Court Support Scheme (CSS) carries out, with funding from Legal Aid NSW, it is appropriate to consider the information contained in this monograph. It should be known to every judicial officer and to every lawyer practising in the field of criminal law. It should be in the minds of those participating in CSS and indeed all accused persons and prisoners. It represents a kind of barometer of attitudes to liberty and equality in Australia. Everyone in our community is affected, directly or indirectly.

In the conclusion about prison populations, the authors state:

“The number of adults in custody has reached historic highs in many jurisdictions within Australia and internationally. In 2014, Australia’s prison numbers reached a 10-year high. As at 30 June 2014, there were 33,791 prisoners (sentenced and unsentenced) in Australian prisons. This represents an increase of 10% from 2013 and equates to 0.19% of Australia’s adult population in Australian corrective services custody...

The most common offences for male prisoners (who made up to 92% of the prison population) were acts intended to cause injury, unlawful entry with intent, and robbery, extortion and related offences. New South Wales had the largest prison population of all the Australian States (31.3% or 10,566) as of 30 June 2014... [T]he number of prisoners increased in all States and Territories, except Tasmania... Indigenous offenders are over-represented in the Australian prison system. The ABS reported that, as at 30 June 2014, there were 9,264 prisoners who identified as Aboriginal or Torres Strait Islander. This accounted for just over a quarter (27.4%) of the total prison population and represented a 10% increase (834 prisoners) from 30 June 2013 to 30 June 2014... The proportion of Aboriginal and Torres Strait Islander offenders in NSW prisons was 23.6% [compared to] the Northern Territory... (85.6%), while Victoria had the lowest (7.8%).

Every informed person knows that imprisonment is often a dangerous, counterproductive and disproportionate form of punishment. These features are re-enforced by the increasing knowledge of the high levels of intellectual disability and mental ill health amongst prisoners, frequently helping to explain their offences. Moreover, imprisonment is extremely expensive: costing, on average, a daily amount for 24 hour supervision that is more than many comfortable Australian hotels in off season. This is not because of luxury. Far from it. Our prisons are overcrowded and bursting at the seams. Many are 19<sup>th</sup> century relics. It is simply the cost of the intense control that custodial institutions necessitate.

Recognising these features, s5(1) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) enshrines the common law principle. It provides:

“A court must not sentence an offender to imprisonment unless it is satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate.”

Yet as the March 2015 monograph shows, except in Canada, the imprisonment rates per 100,000 adults of the population has increased significantly in Australia, New Zealand, the United States and England since 1992. In that last year, the rate in Australia was 89. Now it is 143. In New Zealand it was 119. Now it is 190. In England it was 90. Now it is 149, almost exactly paralleling Australia's rate of growth. The United States of America, with the highest rates of imprisonment in the world, has leapt from 501 to 707. Only Canada has fallen from 125 to 118 at last measurement. Overall, these are terrible trends. They have caused the Attorney-General of the United States to speak out strongly changing in favour of the mentality that insists on more imprisonment and that attacks judges for being 'too soft on crime'.

It is because, on these statistics, many people in our State and the Commonwealth, coming before courts for sentencing, face real risks of custodial punishment under current circumstances, that the work of CSS is so important. It supports accused persons and prisoners facing courts. It helps their friends and families who come to court to be with them at their time of trial. Such moments are intensely stressful. The volunteers bring an element of human kindness to people who are often confused and deeply anxious about their fate. Perhaps our society should spend more on supporting fellow citizens in such predicaments. However, the mood of the times is not very sympathetic. This is what makes the work of the CSS so admirable and important to the administration of justice. Virtually every working day in the busy courts of the State, dealing with criminal law and sentencing, the system relies on these precious contributors. I thank them, Legal Aid and other lawyers, the court registrars and officers and also the senior administrators. If accused persons and their families are less stressed and more at ease in the unusual circumstances of the courts, they may be able to put their cases better. They may find words to identify a defence; point to exculpation; or invoke understanding of their conduct.

Above all, anything that helps to reduce our high and growing levels of custodial sentencing, needs to be explored. The political auction over

toughness on crime (which we hoped had been decently interred) now seems to be creeping back at election times in Australia. Responding to these challenges and speaking for the voiceless and disadvantaged is why I am proud to be Patron of the Community Restorative Centre. Providing help to people in their moment of greatest need is why I am specially proud of the Court Support Scheme. And this is why I welcome this revised and updated Training Manual.

A handwritten signature in black ink, appearing to read "K. Weatherill".