

COMMUNITY RESTORATIVE CENTRE

ANNUAL REPORT 2018

PATRON'S FOREWORD

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A problem of great importance to prisoners, their dependants, society and the Community Restorative Centre (CRC) is that of the “revolving door” of reoffending.

In every society, a proportion of those sentenced to custodial punishment are found, in a very short time, back behind bars. This is upsetting to law abiding citizens. Often, urged on by some media commentators, they denounce the judges for imposing inadequate sentences that obviously were not high enough to deter repeat offending. Or they may denounce politicians for failing to provide increased punishments or failing to reduce access to parole or bail. Occasionally (rarely) politicians who know the real facts about the causes of criminality suspend the electoral competition for harsher laws and ever-increasing prison populations and facilities. Normally, however, the debate in society avoids the perplexing realities that need to be addressed if the “revolving door” of repeat imprisonment is to be dealt with effectively.

* Justice of the High Court of Australia (1996-2009); Patron of the Community Restorative Centre (2012 -).

One causative factor that keeps the “revolving door” turning is, or should be, well known to the Australian population by now. I refer to the status of indigenous ethnicity. The imprisonment levels of Australia’s Aboriginal and Torres Strait Islander population, and their repeated return to custodial institutions after their release, is recognised as an extremely serious and embarrassing national failure. Taken separately, the rate of incarceration of Australia’s Indigenous people makes them amongst the highest population group per capita imprisoned in the world. That statistic caused the then Federal Attorney-General (Senator George Brandis QC) to secure a report from the Australian Law Reform Commission (ALRC).¹ The Commission concluded that no solution to this propulsive dynamic would be found until all the governments of Australia established an independent justice reinvestment body to tackle the root causes of reoffending by Indigenous peoples. No one suggests that anti-social behaviour, when serious, should be ignored or that offenders should only be lightly tapped with a feather as a viable social response to reasons offences especially those involving crimes of violence. But the problem is so widespread and endemic in Australia that the recommendations of the ALRC need urgent attention. Fulfilling them will require the expenditure of quite a lot of money, as well as major steps of law reform.

Another propulsive cause of the “revolving door” phenomenon in Australia’s custodial institutions was referred to by me in an earlier Foreword for CRC.² This picked up the common feature of a very large proportion of all of Australia’s prison population (like prisoners in most countries overseas) to suffer from high levels of mental disability and

¹ ALRC, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Final Report*, (ALRC 133) (December 2017).

² Later reproduced as M.D. Kirby, “Effectiveness and Proportionality in Australia’s Custodial Punishment” (2017) 41 *Criminal Law Journal*, 181.

illness. Specifically, mention was made of the phenomenon of “acquired brain injury” which contributes substantially to repeat offending and reimprisonment. In turn, this condition is a consequence of domestic and other violence, alcohol related injuries and violence encountered from authorities: sometimes frustrated and disrespectful in their dealings with recidivism.

Yet probably the greatest causative factor of the “revolving door” is one that has long been identified by the CRC. It applies to indigenous prisoners; but also to other prisoners beyond that group. It applies to prisoners with mental and physical disabilities, but beyond that group as well. It applies to a very large proportion of prisoners who simply have nowhere safe and supportive to go, upon their discharge from custody. Setting them “free” without effective arrangements for their maintenance, at least during transition, is not a rational policy. The very fact of imprisonment compounds the problem of quickly securing a job. Changing employment needs multiplies that problem. The resources to tide the newly freed prisoner over the transition are all too frequently missing from the equation.

The CRC in New South Wales has an annual budget of \$5 million. This comparatively modest sum is gathered up from 12 different funding sources. Its focus is specifically targeted on transitional, post-release and family supportive projects across seven sites selected in New South Wales. By its help to prisoners and their families, it is a practical contributor to the reduction of crime and recidivism. It is committed to breaking the entrenched cycle of criminal justice system involvement. But the challenge of responding to times of transition from prison to the

community has actually been increasing rather than reducing in recent years.

As a consequence of federal legislation,³ the National Disability Insurance Scheme (NDIS) was designed to deal with the problem of people, including ex-prisoners, needing disability support. The absence of suitable accommodation post release is the greatest single challenge faced by CRC and its clients in the transition and reintegration of former prisoners into society. Transitioning released prisoners to the NDIS has been fraught with difficulties. Following the shutting down of long-standing accommodation support services, and their replacement with inadequate, insufficiently serviced and administered NDIS 'packages' has proved a huge challenge for the CRC. Even more so for the ex-prisoners, their families and dependants.

It is a pity that Franz Kafka is not around today to paint a compelling novel or play about the realities of dealing with discharged prisoners in contemporary Australian society. Apart from the human toll that the insufficiencies of NDIS present to discharged prisoners with disabilities, there is an obvious economic toll as well. Returning ex-prisoners with disabilities to the familiar custodial accommodation, of custodial services, inevitably imposes a large financial cost on society. Repeated estimates point out that accommodation with 24-hour available attention and services is necessarily as costly per person per night as a three star hotel and possibly sometimes one could add a star or two.

³ *National Disability Insurance Scheme Act 2013* (Cth).

Fortunately, informed parliamentarians are generally aware of this problem. An inquiry by the Legislative Council of New South Wales attracted a detailed submission from the CRC.⁴ Practical concerns addressed in that submission included:

- * The failure to identify people with cognitive impairment and intellectual disability within our prison settings;
- * Even where such prisoners are identified, the failure to establish comprehensive mechanisms to support such prisoners on discharge and, in particular, to provide sufficient support beds especially outside the main metropolitan regions;
- * The inadequate NDIS packages that are available to people with disabilities and complex needs mean that holistic support for people released from existing custodial settings are inadequate to the needs of those discharged;
- * Although planning for release is supposed to occur six months prior to discharge of someone in custody, this does not appear to be happening on the ground;
- * There is still a lack of clarity, in terms of official responsibility, for people with disabilities emanating from justice settings. Buck passing is all too often the solution of hard-pressed officials limited by inadequate federal funding and staff limitations as well as State incapacity;

⁴ Community Restorative Centre submission to the Inquiry of the Legislative Council of NSW into the implementation of the National Disability Insurance Scheme and Disability Services in NSW (2018).

- * There is no systematic approach from NDIS when it comes to identifying and working with people with disabilities when they are still inside custodial institutions; and
- * There are enormous inconsistencies affecting access to services and NDIS planning across the State and across Australia so that what happens in one jurisdiction does not necessarily happen in others.

The CRC and its heroic staff and supporters do the best they can with the complex problems they face.⁵ I pay a tribute to them. I also express thanks and respects to the parliamentarians and officials who understand the challenges and appreciate the efforts of CRC. A growing number of individuals who were formerly CRC clients have lately gone from 24-hour support in accommodation services under State control to NDIS packages of less than 2 hours support a week under federal control. These are the realities facing people who are at risk of the “revolving door” syndrome.

If compassion and rational policy making do not persuade our law-makers and the officials who advise them about the needs of law reform and policy integration, we must hope that economic arguments and cost benefit analysis will have a greater impact than they have had to date.

For the work of CRC and the support that it gives, I express an informed citizen’s grateful thanks. Kafka, where are you when we need you to

⁵ Community Restorative Centre and Social Ventures Australia: Submission to NSW Government’s request for social impact investment proposal targeting homelessness, with special reference to persons released from adult correctional centres 2017/18.

convey these complex problems to decision-makers with the power of decision?