

COMMITTEE REPORTS - CONSIDERATION

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair.

Joint Standing Committee on the Anti-Corruption Commission –Investigative Powers and Operational Accountability of the Anti-Corruption Commission - Eleventh Report

Resumed from 17 August on the following motion moved by Hon Derrick Tomlinson -

That the report be noted.

Hon DERRICK TOMLINSON: Prior to the adjournment, I had outlined the powers of the Anti-Corruption Commission in respect of the forms of investigation of allegations of improper conduct or corrupt behaviour by public officers and explained why the committee had recommended a change to the powers of the Anti-Corruption Commission when it undertakes an investigation in its own right. I also indicated that the nature of those powers, which are popularly characterised as coercive, intrudes into civil liberties that are held dear in our justice system. I made the point that when authority which intrudes into civil liberties is given to an agency, there is a concomitant requirement that the exercise of those powers be carefully scrutinised and supervised. There are many instances in recent history, both nationally and internationally, of organisations being established for wholesome purposes and being granted those powers and those organisations having subsequently been used for unwholesome purposes. I am not suggesting that that is the case with the ACC. I am saying, however, that if such powers are granted to an agency, the exercise of those powers must be careful scrutinised.

For that reason the committee recommendation in its eleventh report for the extension of investigative powers for the ACC reiterated the recommendation in its fifth report that a parliamentary commissioner for the Anti-Corruption Commission be established with powers to audit the investigations of the ACC and to respond to grievances of persons who felt that they had been treated unfairly, unjustly or unlawfully by the ACC investigators. The committee made the point that if the powers were to be extended, that should be done only if protections by a parliamentary inspector were established at the same time. The committee presented its recommendations as a package. We genuinely believe that the Government needs to respond to those recommendations as a package and give the powers to the ACC for a period of two years to demonstrate that they are necessary and, if it is demonstrated that they are not necessary, those powers should lapse at the end of two years. The other part of the package must also be enacted at the same time; that is, to establish the parliamentary inspector. I commend the report to the House and to the Government, and I look forward to the Government's response.

Question put and passed.

Standing Committee on Estimates and Financial Operations - Financial Management of Prisons - Twenty-ninth Report

Hon MARK NEVILL: I move -

That the report be noted.

It has been a long time between the commencement of this inquiry and the committee reporting to Parliament. The committee experienced some difficulties in getting this report to Parliament, but it has released its report earlier than the Ombudsman's report on the deaths in custody inquiry, which began before this committee's investigation and is still going.

This inquiry into the prisons area has not been an easy task. Most religions around the world, whether they be Christian, Jewish or Muslim, are about the triumph of good over evil. The philosophy of many religions has the common theme of destroying evil and promoting good. The corollary to that is that there is good and evil in everyone. Even the President of the United States is not perfect. People in high places who have great public respect often have dark sides to their nature. It is true that there is good and evil in everyone, perhaps to a lesser or greater extent. Even the worst criminals have some good in them, and that is what must be looked for to make any progress in society. The aim of our corrections system should be not only to punish criminals, but also to discover the good in them and try to foster it. It does not matter what we do with some people, we can never win. They are the types of people who will spend the rest of their time segregated from the community.

After a slow start, the Attorney General is doing a reasonably good job in the Justice portfolio. I do not know whether the Attorney General knew it at the time, but I believed that the prison system was not heading anywhere under the stewardship of Mr Payne and the former head of the Ministry of Justice, Mr Byron. Mr Byron was a charming and competent man, but his main focus was the court end of the justice system. He had come from the New South Wales court administration. During the inquiry into the Byron-Payne issue, I did not

see any correspondence that suggested Mr Byron had a great interest in the prison system. Mr Payne was a completely inappropriate person to be in charge of the prison system. He may have been competent in other areas of Government but he was out of his depth in administering the prison system. I do not know whether the Attorney General realised it at the time, but the Premier and Mr Ian Fletcher did the Attorney General a great favour in trying to shake up the administration in that area. The arrival of Alan Piper as the chief executive officer of the Ministry of Justice has seen a significant turn around in the ministry's focus and it is getting the systems right. That is not an easy task; it is akin to turning around the *Queen Mary*.

Regardless of whether the committee has achieved anything by its report, it has at least made the jobs of the Attorney General and Alan Piper much easier. While the committee was inquiring into the financial management of prisons it interviewed a number of people who were involved in the internecine warfare within the prisons department. None of them knew what the committee's recommendations would be. They did not know whether the committee would recommend that someone be removed from his position. Once the committee inquired into that area, the activities of those groups of warring tribes within the prison system seemed to recede. Their activities seemed to be rather subdued while the inquiry was under way, whereas previously those groups basically controlled the prison system. The "purple circle" or whatever the other groups were known as, had an internal focus rather than a focus on the job. We at least seem to have got past that problem within the prison system and the focus is now on improving the system instead of looking after the interests of the people who run the work force. There is no doubt in my mind that the fact that the committee was inquiring into this matter made change within the prison system much easier over the past 12 to 18 months. There is still much to be done. Our report is as much about changing public opinion as it is about changing our prison system. If we want to change public opinion, it is important that we provide the media with objective information that perhaps paints a different picture from the stereotype that is often portrayed. I asked a few months ago whether there was any evidence of an increase in home invasions or assaults against elderly people in Western Australia. The answer was that there is no evidence of any increase, that the figures are fairly static. It just happens that the media have decided to focus on the number of people who get assaulted during home invasions. It thus appears there is some explosion of crime in this area when in fact it is a normal, albeit unacceptable, pattern of crime. The next thing we see is a knee-jerk reaction to that problem because the polls show that the Government has a law and order problem, whereas it may be that as a result of media reporting there is merely a perception of a problem. We must remember that these days the jobs of chief executive officers of newspapers, radio stations and television stations depend on their ratings, and their ratings depend on what news they deliver to the public. They know which headlines in a newspaper sell more copies and which do not.

Hon J.A. Scott: Sex and violence.

Hon MARK NEVILL: There is no doubt in my mind that conflict is a major source of news interest and that conflict, as Hon Jim Scott has said, often includes sex and violence.

The committee's work to some degree was pre-empted by the Smith report on the riot at Casuarina Prison. The Smith report was an excellent document and a very frank account of what happened at the prison. I compliment the Attorney General on the fact that when there have been inquiries into the prison system, it seems that whoever has had the job has had a completely free run, which is not the case with all ministers, as many of them want to control inquiries from beginning to end. There have been a number of reports on prison inquiries. It is fairly obvious from reading them, including the Smith report, that they have not been edited by the minister. He may have been a little slow in tabling the report on Wooroloo Prison Farm recently. I have not read the report and am not aware of why it was not tabled as promptly as some previous reports, but there may have been good reason for it.

Hon Peter Foss: There was. The inspectors adopted the English practice of not reporting publicly but giving people a period of time and then going back and inspecting again.

Hon MARK NEVILL: I suspected that was the case. The independent United Kingdom inspectorate went to Holloway Women's Prison in London and were appalled at what they saw. They did not produce a report but said, "We will be back in three months. Get your act together." Then there was a very different set of circumstances.

Hon Peter Foss: Our circumstances were not quite as different as we would have liked on the second inspection, but the visit certainly had some impact.

Hon MARK NEVILL: In all these sorts of issues we must adopt a carrot and stick approach. We must give people some incentive to improve their performance, particularly if it is not at a very high standard. As I have said, the Smith report was excellent. It covered the whole gamut of problems in the prisons. I believe the biggest problem that we have in our prisons is crowding. The Smith report did not really address how we could reduce crowding in our prison system. That is not what that inquiry was set up to do.

Hon Peter Foss: Activity is probably the most important thing. Crowding leads to less activity, but one can still have less activity without crowding.

Hon MARK NEVILL: All sorts of problems develop when people do not have the space to do the activities they want to do. People cannot be controlled as well. We have only to look at Bandyup Women's Prison, where many of the social areas have been converted into dormitories, which means the capacity to provide recreational activity to people is limited.

When people put together a report, they often leave out more than they put in. I can recall many comments made to me during the inquiry which I thought were interesting and worthy of following up but either I did not get the opportunity or the subject did not fit the theme of the report. One comment that struck me was made at Bandyup Women's Prison. One of the superintendents said that most of the Aboriginal people who enter the prison system - I suppose he was generally talking about the women's prison system - come from about 10 families. He said that if the Government allocated one homemaker and one tutor to each of those families, it would probably save an absolute fortune. I did not follow that up. One would have to look at the dynamics, but it would seem to be a lot cheaper than keeping people in prison.

Hon Peter Foss: That is covered by the building blocks program, which we announced in the last budget. That is addressing that problem and recognising that families are where the answer is. That is absolutely right.

Hon MARK NEVILL: I know of a couple of Aboriginal families who have been a constant source of problems in my electorate, around Esperance and Kalgoorlie. I know that the kids will end up in the criminal justice system. Perhaps if they got a little help rather than being kicked from pillar to post because they are antisocial, we could turn some of those situations around.

Hon Peter Foss: Did you visit Banksia Hill Juvenile Detention Centre?

Hon MARK NEVILL: Yes I did.

The main theme of the inquiry was to look at alternatives to custody. Many prison systems around the world have experienced a sharp increase in the number of people incarcerated and in the rate of incarceration. That same trend has occurred in Western Australia, probably more markedly than in any other jurisdiction other than America, and certainly more markedly than anywhere in Australia. It would be a serious mistake to follow the American route. About 2 per cent of the population of the United States is in prison being supervised by another 2 per cent. If the United States had an imprisonment rate similar to that in Great Britain, three-quarters of that prison population would be free and three-quarters of the supervisors would be on the dole. The unemployment rate would not be 5 per cent; it would be more like 8 per cent. The prison system is having a significant effect on the United States economy, but I can think of better ways to spend taxpayers' funds. When visiting American prisons, one sees the best and the worst in the world. Some things are done extremely well, but the country has a culture of incarceration. That is fine while the imprisonment rates are rising. However, it gets to a point where more people are coming out of prison than going into prison and that causes damage.

Hon J.A. Scott: They simply create more offences.

Hon MARK NEVILL: That is true. During the debate on the appropriation Bills, I mentioned Ms McNamara, the chairman of the United Nations committee that criticised our Clayton's mandatory sentencing regime. Many American States lock people up for 20 years after they have been convicted of three criminal offences. These people are telling us what to do! These inconsistencies gall me. These people are political animals who like swanning around the world, staying in five-star hotels and bathing in the political spotlight. They are not focused on tackling the worst problems. If those people wanted to do some good, they would be better off focusing on the United States justice system rather than telling us what to do with ours, which is much more humane.

The executive summary and recommendations in this report highlight the key to reducing our imprisonment rate; that is, developing a sophisticated set of alternative sanctions. We cannot do that overnight. Such a change includes educating the judiciary. I asked the former Chief Stipendiary Magistrate, Con Zempilas, to what facilities he could send people convicted of drug offences, and he struggled to name one. I also asked what other programs were available and he made it clear that he did not regard that aspect of the justice system as part of his job; he believed that his job ended with the sentence. He informed me - much to the mirth of the gallery - that he was a magistrate, not a priest. I would like to see that attitude change.

Hon Peter Foss: You will be pleased to know that tomorrow I will be announcing the appointee to the drug court. Its role will be exactly what the member wants it to be. It will be tied in with the Children's Court and the District Court.

Hon Derrick Tomlinson: Do you mean you are making the archbishop a magistrate?

Hon MARK NEVILL: That is a worthwhile initiative and I compliment the Attorney. I sometimes wonder whether we should have separate courts for different offences involving drugs, domestic violence, Aboriginal people and so on. This forum probably will not need to be maintained for the next 20 or 30 years; we will be able to establish it and then phase it out.

Hon Peter Foss: That is correct. Rather than try to educate all the magistrates to change at the same time, we start a court with specific procedures and prove that it works and then try to promote it elsewhere. The other problem is that we cannot tell magistrates what to do. At the moment, we have to wait until they resign.

Hon MARK NEVILL: I mentioned in a previous debate that I would like the Attorney General to introduce an amendment to the legislation to the Stipendiary Magistrate Act to allow that to occur. There must be some capacity for the Attorney General or the CSM to be able to point out to magistrates anomalies in their sentencing patterns.

Hon Peter Foss: It is in the proposed Magistrate's Court Bill.

Hon MARK NEVILL: Is that in the pipeline?

Hon Peter Foss: I have priority for it to be introduced during this session. I hope I will get it through, but who knows.

Hon MARK NEVILL: It is very important that the members of the judiciary think about the programs to which they send offenders. It is also important that they get feedback about the effectiveness of the sentences they impose. Most of the information in this report is not new. A recommendation regarding feedback was presented by the previous Attorney General in a report in 1991. The former Chief Stipendiary Magistrate did not see that as part of his duties, but I believe it is crucial.

We must get the public involved in developing sophisticated alternatives to imprisonment. I have been racking my brain over the past two years to think of constructive solutions. I have come up with a few and I have mentioned them in this House. However, I am sure many people in the community could make worthwhile suggestions about what work offenders could do, which would benefit both the community and the offenders and which would cost much less than imprisonment.

Alternative sanctions can have an element of therapy. Offenders do not need to do literacy, social skills or anger management courses in prison - they can be done in the community.

The Dutch system had a penitentiary program that was commencing when the committee visited. Whilst there, we obtained a copy of their Act. One of the unfortunate things about these sorts of trips is that one returns with numerous documents that are then filed in the committee office library. It would be good if those documents went to the Ministry of Justice so that they could be perused for worthwhile initiatives. The Dutch had just introduced the penitentiary program after conducting a trial period. Offenders serve half their time in prison and half in the community. For people such as drug offenders it is a useful program. People can be weaned off drugs in the prison system to a certain extent and community involvement can help them. The programs are useful as they are a combination of both environments; it does not need to be one or the other. The committee got a clear message from a number of jurisdictions in Britain and Holland that home detention orders were very unsuccessful unless attached to a program. It is easy to do what the Blair Government did by putting 4 000 prisoners on home detention without a program. It was a disaster. People must have constructive activity to do. If an offender is on home detention and is bored, the first thing that will probably happen is that he will beat up his wife. It was a common theme that home detention without a program was a waste of time and counterproductive. In the report the committee recommends that that cheap option be avoided as results from other jurisdictions show that it does not work.

I have not got involved in the debate about halfway houses as I have been too busy with other things. Without necessarily knowing all the details and the site, I would support a program that relocates prisoners in the community. Caution must be used when deciding who should be placed in programs. People do get used to such programs. The old North Fremantle primary school, which I mentioned in a previous debate, was originally refurbished as a halfway house for people leaving prison. I do not know why, but the program was stopped. About 12 months ago I heard that the site might be up for sale. The property is extremely well located. It is next to the North Fremantle railway station. I do not know whether public opinion was opposed to the location of the halfway house. As I said to the Attorney General, I am prepared to address any public meeting that is opposed to having offenders living, working or studying in their community.

One of the biggest eye-openers for me was at the Bedford Hills prison in upstate New York, which I visited privately. It is a strict security women's prison with about 1 200 inmates, all of whom are serving long sentences. Most are serving sentences from 25 years to life. I spoke to one inmate whose husband hung her out of a window of a fifth-floor block of flats by her ankles. She ended up murdering him. I told her that she

probably would have received a suspended sentence in Australia. She got 25 years to life in the United States. She appeared a reasonable person to me. She had suffered a life of continual beatings. The prison is in a very fashionable area of upstate New York about one hour's travel from New York City. It is the area where Hilary Clinton was looking for a residence so that she could contest a Senate position for New York. I discovered that 200 families in the area billet children of the inmates. The children are able to visit their mothers. The actress Glenn Close lives in the area and also billets children. It has been a practice of the community for decades. One could imagine the residents of some of Australia's upmarket socio-economic areas doing that. It could be done although there probably would be some initial concern about the children growing up and becoming offenders and returning to the areas to burgle homes. It does not appear to be a problem at Bedford Hills. The community there works well with the prison system. If the Attorney General is ever in New York I urge him to make the trip to the prison as I think it is the best run women's prison I have ever seen in terms of its programs. It has its own hospital and psychiatric unit. It has a unit where inmates can live with their babies for up to two or three years. A council of prisoners ran the jail. The council organised a meeting with me and I thought that butter would not have melted in their mouths, but when I was told of some of the crimes they had committed I could not believe it. There is obviously a lot of good in those people and that is what one has to look for and tap into.

One of the most difficult aspects of our prison system is what to do with people when they are released. It is quite clear from all the research that if someone released from prison can get accommodation, employment or education it significantly decreases the risk of reoffending. It is something that frightens off Governments because of the perceived cost, but I do not think that it would be so difficult to get released offenders into accommodation or employment. A lot of people who are successful in the community have had periods in their life when they sowed their wild oats and got into trouble. They are probably quite keen to help others. When people are released from prison we cannot afford to just forget them. We have to do more work in that area because all the research indicates that providing them with help stops them reoffending.

Hon Peter Foss: The member will be pleased to hear that community-based services are taking on and training volunteers to help people who are released from jail or who have been subject to a community-based order. It is very positive change.

Hon MARK NEVILL: It is one thing to set up the schemes but another to get them to work. It takes time.

Hon Peter Foss: We are training them and funding them.

Hon MARK NEVILL: I think that is an important part of the prison system. In the speech I made the other night I mentioned that the concept of sentencing people to improve their literacy is not an expensive way to go.

It can be done in every town in the State. It is not necessary to move people long distances to places with a TAFE campus. Many people are involved in programs to teach people to read. The secretary at my former office in Esperance tutored a couple of people who had never learnt to read or write, although they were not prisoners. I forget the name of the program, but that is the sort of work she used to do. Teachers could provide these skills at weekends or in blocks. When someone is sentenced to a literacy program, he does not have to start the next Monday. The sentence can start two weeks or three months later when a place is available in a program in a particular town. People should not necessarily have to go to jail as soon as the judge finds them guilty. In Germany and the Netherlands, people are often given a month before starting their sentences. If a person has a business, he is given time to find someone to take it over and to put his affairs in order. If someone must go to prison the day after his sentence is imposed, his business could completely collapse and he would have nothing when released. In many cases, people should be given some time to get their affairs in order before they go to prison. Likewise, people do not necessarily have to start these literacy programs the day after they are sentenced; they should be able to start them when a place becomes available. In the Netherlands, people do not go to jail until a cell becomes available.

Hon Simon O'Brien: They ring you up and book you in?

Hon MARK NEVILL: They say, "Come down to reception"!

Hon Peter Foss: I think it is used selectively.

Hon MARK NEVILL: I do not think the prison has a concierge! A lot more could be done in that area.

Prison health care is an area that could be greatly improved. The Smith report highlighted the problem of lack of controls and the over-use of medication in prison. At one stage, 30 per cent of the prisoners at Bandyup Women's Prison were on antidepressants. It is obvious that the use of medication was not properly managed. It could be suggested that medication is deliberately misused as a management tool. It is the docile bodies syndrome - prisoners cause fewer management problems if they are on sedatives. I understand that matter is being addressed and the report also contains a recommendation on that issue. The Chief Justice and the Attorney General have commented in the Press about the need to deal with prisoners with mental disorders differently

from those who are “normal” except for their criminal behaviour. The committee studied Terbeschikkingstelling, the Dutch treatment program for people with mental disorders. Some of the wardens at Casuarina Prison told me that they know that some of the prisoners - who might have two-year sentences - will be back within two or three weeks of their release because they will commit another offence. In the Netherlands, if someone is given a sentence of four years or more - which means he is a serious offender - he is put into the TBS program. He is not in that program forever; his case is reviewed periodically - about every two years - by a medical panel and a judge decides whether he should be released. It is not the sort of decision the Attorney General should make. In TBS, people are given proper medical attention in secure facilities. Housing people with mental disorders with the general prison population causes extra problems for normal prisoners.

Hon Peter Foss: Our problem is not with the prisoners who can be medically treated, but with the ones who cannot. Those who can be treated medically are housed in the Franklin Centre. However, the Mental Health Act says they may not stay in Franklin if they are non-treatable, which might be because they have a pathological problem or are mentally impaired. Therefore, they are put back into the prison system. The relatively non-violent ones are now sent to Riverbank Detention Centre, and we try to deal with them as “impaired people”. Riverbank is a much more caring environment and the process works better than at Casuarina Prison.

Hon MARK NEVILL: I have not been to Riverbank, although the Attorney General has invited me to visit it.

Members will probably note that I am not speaking from copious notes, as I did not anticipate the report coming on for debate today. However, that does not detract from the importance of the issue.

The other interesting aspect of the committee’s inquiry was its visit to the New York City Department of Correction. It visited Rikers Island, which is at the end of La Guardia Airport. That prison houses 20 000 inmates, which is greater than the entire Australian prison population. It is a holding prison for people who are to be sent upstate. More deaths in custody are experienced among remand prisoners than among the general prison population, because these people have just gone into prison, are vulnerable and have not settled down. Rikers Island is a remand prison that holds people with shorter-term sentences. People with longer-term sentences are shipped to other prisons upstate. Of the 20 000-strong population at Rikers Island, three or four people die in custody each year. If the rate of deaths in custody were similar to the rate in the Western Australian prison system, there would be 140 deaths a year. It must be doing something right.

Hon Peter Foss: It seems that there are more deaths in custody in a soft regime than in a tough regime. The United States undoubtedly has the toughest prisons, yet it experiences far fewer deaths in custody than Australia. England has a similar rate to Australia. Western Australia experienced its lowest rate of deaths in custody the year Casuarina Prison was locked down and everything was supposedly pretty tough. People do not suicide when they think their life is at risk and they are struggling to stay alive.

Hon MARK NEVILL: I do not agree with the Attorney General.

Hon Muriel Patterson: Rikers Island has 42 psychiatrists. Does that have any effect?

Debate adjourned, pursuant to standing orders.

Sitting suspended from 1.00 to 2.00 pm