

The ACT Prison – a de facto Mental Institution?

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Presented in Canberra on 12 June 2008
at a forum conducted by Christians for an Ethical Society

Introduction

Thank you very much for including me as one of your speakers in this really important series of public discussions about a terribly important issue. Prisons are the most opaque institutions that exist in any society. You do not see open days at prisons usually. You might get one before the facility at Hume opens but, once it opens, none of us will be going there unless it is at Her Majesty's pleasure, more or less. The process of engaging with what happens in a prison is really not a common phenomenon in most societies.

To take the opportunity that we have today, where we are not only about to open a new prison but, in effect, to establish a new prison system for this jurisdiction, is a hugely important opportunity. It is absolutely critical that the community be there at the initiation of this process to have its say about where that goes. I think, if we ever get to the stage where we simply rely on governments or correctional systems to make key decisions in isolation about what happens in prisons, we are in deeply dangerous territory. So I want to thank Christians for an Ethical Society for steering this process and making sure that public debate is very much a part of how we get to the stage of opening this new facility.

My qualifications for being here tonight are twofold. Gordon (Ramsay) has mentioned already the Select Committee that the Senate set up a few years ago to look at mental health issues. The weighty tome that we produced is here and a very good backstop if you need it for a door at some stage but lots of important issues were raised in here including the issue of mental health in correctional facilities. There is presently another inquiry going on by the Senate Community Affairs Committee into Mental Health which is meant to be a follow up report to that initial report to keep the ball rolling on debate about a whole series of issues in mental health in Australia.

Why a new prison now?

My second qualification for being here is that I would take a large amount of credit for having initiated the public policy debate that leads this year to the opening of the Alexander Maconochie Centre. In late 1991, a paper was published called "Paying the price", which looked at the ACT's long-term correctional needs. It concluded among other things that we needed to replace the Belconnen Remand Centre and consider building a correctional facility for full-time sentenced prisoners. The following year, as the Shadow Attorney-General, I published a paper which was called "A Report on the options available to establish cost-effective and humane prison and remand facilities in the ACT". That led, in turn, to a debate.

By the 1995 election, my party went to the election saying that, if we were elected, we would initiate the process of building an ACT prison. When we came to office in that election, we set about doing that. I was the Minister for Corrections in that government and, when we left

office at the end of 2001, there had been two or three public debates about the need for a prison. We had allocated money in the 2001 ACT budget to begin work and we had chosen a site. The new government subsequently chose a different site but the process essentially continued to roll on and culminates this year in the opening of that facility.

So, the history of this is a long one and it goes back to the perception that we were not doing justice to ourselves or to those that we sentenced in ACT courts by sending them to remote corners of New South Wales to be incarcerated in a prison system which was and still is, frankly, very far from optimal and might be described, in many ways, as one of the worst options available to people in the criminal justice in Australia today.

Why do prisons and mental health issues accompany each other?

The question that needs to be asked first of all tonight is why put together the question of mental illness and prisons. Because there is, very simply, a much greater incidence of mental illness in prisons than there is in the general population. Even if you add in the question of addiction, you come up with a very considerable incidence of these two things in the one place. The committee report that I referred to before looked at the incidence of mental illness within prison populations. It looked particularly at two studies, one in New South Wales and one in Victoria.

The New South Wales study found that 48 percent of reception inmates and 38 percent of sentenced inmates in New South Wales had suffered a mental disorder in the previous twelve months and that meant essentially a psychosis, affective disorder or anxiety disorder. It was found that 74 percent of the total population suffered from some kind of psychotic disorder, which is a broader definition again. In Victoria, a similar study found that 51 percent of prisoners reported they had been assessed or received treatment for an emotional or mental health problem prior to their imprisonment.

The New South Wales study came up with very similar figures to the Victorian study as to the number of people in the prison system who suffered from particular illnesses like schizophrenia and personality disorders. Other studies found that female prisoners had an even higher incidence of mental illness. The study by Butler and Allnutt found that approximately ninety percent of female reception prisoners in Australia had experienced a mental disorder in the twelve months before their incarceration compared with 78 percent of male prisoners.

Bear in mind that the incidence of mental illness in the general Australian population is about 18 percent in any given year and yet, in the prison population, 78 percent of men and 90 percent of women are reporting mental illness. You factor in, as well, the fact that, in Australia today, about 60 percent of mental illness is neither diagnosed nor treated and you've got potentially a population approaching 100 percent in prisons which is afflicted by some form of mental illness. Clearly, we can't isolate mental illness and its treatment from the operation of a prison. It simply cannot be done.

As I mentioned, addiction is another factor which needs to be taken into account. Addiction is classified by the World Health Organization as a form of mental illness and a person who is addicted not only behaves irrationally when they are subject to the throws of an episode of drug-taking but, of course, the fact of drug-taking is very often a form of self-medication to an underlying mental illness, so it is fair and appropriate to treat a person's addiction as being an incident of mental illness.

There are two conclusions I think we need to draw from those facts. One is that we have a simple duty of care as a jurisdiction to look at this problem that confronts us as people come through the doors of the prison. It is a stark and real and prevalent illness and needs to be faced up to under our duty of care to the people who are incarcerated there. We also have to accept that mental illness, based on these figures, is more than just a coincidence. It is almost certainly the cause of a very substantial amount of criminal behaviour. People are there because they are mentally ill or their mental illness, at the very least, is a major contributing factor to their imprisonment.

Little data to help distinguish the mad from the bad

There is not a lot of good data about that connection between mental illness and criminal behaviour except circumstantial data. It comes back to the fact that it is very hard for our courts, when sentencing prisoners, to be able to fully understand the history and background of every person who comes before them to distinguish “the mad from the bad” but the fact is that it is real and has to be faced up to. The other point is that, when courts encounter people with a mental illness or people with a suspected level of mental illness, they do not have many options available to them as to how to deal with that except, very often, to send them to jail. These are very real problems in a system, particularly a small one like ours, which lacks alternatives to full-time imprisonment. We need to use the fact that we have such large numbers of people in our system with these problems – to face up to as a very real problem but also consider it an opportunity.

Prisons will inevitably continue to receive many people with a mental illness. We need to be sure that there are very strong needs on us as a society to address the early reasons for people’s tendency towards the coincidence of criminal behaviour and mental illness. We need to treat people’s early history of these problems, to deal with trauma in childhood, particularly, which can either exacerbate mental illness or lead to criminal behaviour, because of that trauma, in later life. For lives out of control, which is often the case with people facing imprisonment, there are actually not many effective intervention points in their life.

We might identify the fact that as children they might have been subject to abuse or trauma that causes a pattern of later misbehaviour and criminal behaviour even in later life. It is often very, very difficult to do anything about it at that level. The work of identifying abuse among children is, sadly, the work of generations rather than a few sweeping government reforms. Throughout a period of lifetime of criminal activity, it might not be possible to intervene at many points but one point at which we can intervene reasonably effectively is when a person is in a criminal justice system as an incarcerated prisoner because a measure of control over the options available to those people arrives. I would say to people, “Don’t view incarceration because of mental illness simply as a problem, view it also as an opportunity.”

Australian perceptions of the role of prisons need to change

The main conclusion I think we should draw is that the perception that people in Australian society have of the use and the role of prisons needs the change. I think Australians certainly view prisons as places where we can engineer for people to be placed to protect the rest of society. People also view prisons as places where people can receive “instruction” or “correction”, i.e. if you break the law you will be incarcerated, you will lose your liberty until you work out that if you keep breaking the law you will keep losing your liberty. It is a sort of a logical and rational process but we know that for people with a mental illness that rational exercise does not always work and so the most important thing we need to do is to

begin to get people to think and, certainly, policy makers to begin to think of prisons as a kind of hospital where those who enter are, for the most part, sick and where they need to be treated humanely and appropriately according to the nature and severity of their illness.

Do we do that at the moment? The answer is “no, we don’t”. The Select Committee found that people who are going to prison in Australia, for the most part, did not receive processes of diagnosis. They did not generally get intensive intervention to assess the nature of their problems. They would be generally treated for quite serious mental illnesses like full-blown psychoses but beyond that, generally, no. Not a lot happened to people in that environment and there are all sorts of reasons for that. Prisons obviously, generally speaking, do not consider it to be their job to be treating people’s illnesses in this way. They are not equipped to do it. The environment is not productive for treatment of mental illness.

For us, particularly as a jurisdiction about to embark on setting up our own, brand new prison system, that can only be an excuse, not a reason for taking a different paradigm. Mental illness is fundamental to the reason that people are in prison. It is clear from the evidence that that is so and, if we do not address this issue, we also fundamentally undercut another key reason for having prisons and that is, in theory, to reduce the rate of recidivism in Australia – the extent to which people commit crimes again after having been punished for earlier crimes. The rate of recidivism in Australia is unconscionably high.

The latest Government Services report shows that, of prisoners released in the 2004-05 financial year, of those prisoners, more than 43 percent were back in the criminal justice system within two years. You add a couple more years to that model and you have probably got easily fifty percent of people going through the prisons back in the system again. That is a grand admission of failure for the nature of our prison system in Australia today. Frankly, I think the single most important reason we can put that down to is a failure of prisons to deal with underlying issues of mental illness. I do not dismiss how difficult it will be for any prison, even a new prison with a relatively clean slate available to us, to actually confront these issues and the environment in which prisoners find themselves. It will be very, very difficult.

Look at the standard experience of an average prisoner. Their days feature long stretches in isolation. They are necessarily segregated from other people. They are isolated, which is often not a good way of treating a person with a variety of mental disorders. There will be short bursts of potentially-threatening contact with fellow prisoners sometimes, long periods of sheer boredom, significant periods of separation from loved ones and family, limited contact with the outside world, a sense of unreality about the place in which they live, little to do all day, restrictions on their physical activities, subject to frequent searches, questionings, frequent invasions of privacy. They are often treated by those who run the prison in a dehumanizing way. If you were a fully well-adjusted person, you would be forgiven over a period of time for becoming withdrawn and suspicious and emotionally guarded in that kind of environment. Imagine how it must be if you entered that environment already affected with a mental disorder, how much harder it would be to cope in those circumstances.

If a person who is mentally ill in the prison system tries to respond to that situation by attempting or threatening self-harm, the prison system is pretty well unequipped to cope with this, except in a way which exacerbates the problem. It has been observed before by mental health advocates that putting somebody in a padded room or under 24-hour supervision to prevent an episode of self-harm, in fact, in the long term, makes the problem worse and adds

to feelings of powerlessness, suspicion and isolation. That is what our prisons, unfortunately, necessarily do all the time.

We also have the problem that we do not adequately deal in this environment with an underlying, overlapping condition of substance abuse. Very often people will have that co-morbidity, they will be mentally ill and be addicted to a substance of some kind and they will find themselves, even if they are treated for their mental illness, they will not necessarily be treated for their co-morbid drug addiction.

Prisons are supposed to be drug-free environments. In fact, of course, they rarely are but if the myth is maintained that the prisons are drug free then it is theoretically hard to deal with an ongoing addiction or perhaps even use in that environment at the same time as looking at that mental illness.

Every prison inmate must, at first, be assumed to have a mental illness

I have outlined a problem and I recognize that dealing with it in a prison environment is going to be very difficult. But I think there are a number of things we should be looking at doing and I hope doing in conjunction with this new prison that will help to attack those problems. First of all, I think we have to acknowledge that every prisoner who enters our prison system as a new inmate must be treated as, *prima facie*, a person with a mental illness. They need to be, in every case, comprehensively and competently assessed. They need to have a diagnosis made and they need to have a treatment regime prescribed - without any exceptions. You do not exempt the white collar criminals or the people there for speeding fifteen times. Everybody gets the same treatment. Everybody has an assessment done and the normality of that kind of assessment, that process is built into the prison from day one. It is important that we not build up, in doing so, an expectation that we can cure a mental illness. It is clear that much mental illness is not curable *per se* but recovery, giving people the capacity to sustain reasonable lives with their mental illness, is possible. That needs to be the goal for people in prisons as much as it is for people outside prisons.

The second thing we need to do is look at the link between drug addiction and mental health. Obviously, it would be ideal to provide drug treatment programs in the context of a prison and to attempt to reconcile these two phenomena at the same time with programs that dovetail with each other and are complementary rather than to pretend that one exists and the other does not. If people operate in an environment where they have an artificial perception of what they can do with drugs and then they pass outside the prison at the end of their sentence to something outside where drugs are much more readily-available. – if they have not been equipped with the means of dealing with that, with processes to cope – they are very likely to relapse into drug use and mental illnesses attached to that will be once again likely to flair up.

The third thing we need to do is train staff in a very specific set of skills to do with identifying and coping with mental illness. I know that the ACT Community Coalition on Corrections has suggested that there should be a special Corrections Board which would have an overview of this process and I think that that would be quite an appropriate response so that we do not disconnect the fact of incarceration from the fact of treatment.

The fourth thing we need to think about doing is that we need to give prisoners a range of day-to-day activities that understand and accept their mental state, where it exists, and combat many of the problems which occur because of the nature and regime available in the

prison. Work opportunities for engagement with the outside world, bringing people from outside the prison into it so as to normalize experiences and exchanges, I think, is a very important thing and helps prisoners to begin to adjust to the potential challenges they face outside the prison.

Rewards for participating in the treatment regime

The fifth thing I think we need to do is reconsider the nature of sentencing. We need to consider whether we should not make it possible for a longer part of the sentence to be made up of parole and for parole to be granted on conditions that a treatment regime established in prison is maintained and adhered to so that it is possible to take a person outside the prison environment, maintain that regime which has stabilised their condition or illness inside the prison and make that a condition of their freedom so that it sustains them for as long as possible outside. Ideally, sentencing itself should, one day, be subject to the capacity of a person to sustain a reasonable state of mental health and make their sentence subject to that rather than a function of the crime they have committed.

I want to close by mentioning a couple of other issues which need to be confronted. Obviously, the things that I have mentioned in this process will be very expensive. There is no question that we are going to have to spend a lot of money to make this kind of regime work and it will not be easy to find the resources to be able to make that happen. It is equally clear that the enormous cost of the criminal justice system in general and imprisonment in particular – we pay \$70,000 a year approximately for each prisoner that we sentence to full-time incarceration - is a huge cost and if we can prevent recurrence of that cost because people keep committing crimes and going back into the prison system, we save ourselves a lot of money at the end of the day.

The other question is how you construct good mental health facilities within the context of a prison. I am aware that the ACT Government has decided to place its forensic mental health facility on the campus of the Canberra Hospital rather than within the campus of the prison itself and it is hard to know whether that is or is not the right decision. It is a good decision in the sense that it allows people who are mentally ill to be treated in an environment which is more appropriate to a mental illness than in a prison but it is bad in the sense that it removes the focus of mental illness off the campus of the prison and takes away the capacity to deal with everybody's problem because the specialists and resources are there on the prison campus itself and treat the whole population in an effective way. I suspect, at the end of the day, what probably tips the decision in favour of what has been decided is that you will need a range of available specialists who will be easier to obtain on the campus of the Canberra Hospital than to obtain as visiting specialists to the campus of the prison at Symonston or Hume. That is probably a good reason to leave the present arrangements in place.

The third point I want to make is that it is really important to accompany any of these changes in policy, if we execute them, with a strong program of making the community understand what this is all about. Unfortunately, a lot of people regard prison as a form of punishment, a form of dealing with people who are bad and need to be made to understand how it is and how wrong what they have done actually is. That is not consistent with the approach that these people are ill and need to be treated like any other ill person, sympathetically with regard to what will deal with their underlying problem. We can do that with bipartisanship at the political level and with a strong emphasis on educating the public, talking to the public about why decisions might be made to take a prison-as-hospital approach in the way in which we design services.

Once again, I think it is important to emphasise we have a hugely valuable opportunity here. The Australian prison system is Australia's oldest institution. It was the very first thing that the British settlers set up when they came here and, in many ways, we still have facets of that early thinking infecting the way that we run prisons in this country. We need to break with that tradition and that history here in the ACT. It is really important that we take that opportunity. Let us hope that we can accept those issues on the basis that the key problems need to be addressed and if we do not address them, we have wasted the opportunity and, by far, the biggest problem identified in any prison anywhere in Australia, indeed, anywhere in the world, is the mental illness that accompanies those prisoners who enter that institution.